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Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Changes to Regulation Z (FRB Docket No. R-1390)

Dear Board of Governors:

I thank you for your Request for Comments on the proposed changes to Regulation Z (Truth in Lending Act), which are found in FRB Docket No. R-1390. I write to voice strong objection to two portions of the proposed regulations, which I believe are substantial setbacks to the rights of homeowners.

TILA Right of Rescission

This country is in the midst of the worst economic crisis in decades—a crisis brought on by financial institutions that, eager for profits, made unscrupulous loans which were then sliced and diced on Wall Street with little or no oversight. The consequences of this crisis have been startling. Thousands of Minnesotans find themselves unemployed and unable to make their mortgage payments. Some find themselves in trouble because they can no longer afford the ballooning interest rate payments associated with abusive or predatory loans. The financial institutions that were once so eager to sell these mortgages often show little or no sympathy when homeowners are unable to scrape together the next month's mortgage payment.

The playing field between financial institutions and homeowners is uneven. The financial institutions and loan servicers choose whose mortgage is modified and whose home is foreclosed. In other words, financial institutions are not just a player to the mortgage transaction—they are also the referee. When faced with the decision to foreclose on or modify a mortgage, financial institutions often choose to foreclose. In recent months, we have seen well-publicized corner-cutting in the foreclosure industry, where robo-signers attest to facts of which they have no personal knowledge and mortgage assignments are seemingly created from thin air.

Through the Truth in Lending Act ("TILA"), Congress sought to give homeowners an important protection against predatory lending—the right of rescission. As currently embodied in TILA and Regulation Z (12 CFR § 226.15 and § 226.23), the extended right of rescission gives homeowners the right to rescind an illegal loan for up to three years after the making of the loan. The statute and regulation require that, if proper disclosures were not made to the borrower at the closing, the borrower can rescind the loan after providing the lender proper notice. Both the statute and Regulation Z make clear that the lender, after receiving notice, must cancel its security interest in the home. After the lender cancels the security interest, the homeowner must then tender the amount still owed on the loan.

The regulation and right of rescission serve important policy interests. If a lender violates TILA and is forced to cancel its security interest and pay back monies it has received from the homeowner, the lender loses money. The threat of financial loss incentivizes lender compliance with TILA, which in turn curbs abusive and predatory lending by ensuring that homeowners are fully apprised of the terms of their loans. As important, the extended right of rescission, as currently written, gives homeowners an important defense to foreclosure proceedings, the opportunity to refinance their loan, and leverage when seeking a mortgage modification. In states like Minnesota, where the majority of foreclosures are accomplished outside the purview of a neutral judge, the case for these important protections is even more compelling.

The extended right of rescission will be hampered if the Board's proposed changes to Regulation Z are approved as written. The proposed changes, which appear to contradict the language of TILA stating that a lender shall terminate its security interest after receiving notice from the homeowner, reverse the order of obligations by requiring the homeowner to pay the entire amount demanded by the lender *before* the lender has to cancel the security interest. Only a miniscule amount of troubled homeowners will be able to afford such a large payment at the drop of a hat, so the right of rescission will be eviscerated for nearly every homeowner trapped in a predatory loan or facing foreclosure.

The proposed changes may worsen two problems associated with this recession: 1) abusive lending, which got our country into this recession by providing Wall Street with an endless supply of loans to package; and 2) foreclosures, which are prolonging the economic crisis by keeping home prices depressed and forcing hard-working people out of their homes. The proposed changes would also aid the very financial institutions which caused this crisis by reducing the incentive to make honest loans and by making it easier to foreclose on homes. At the same time, homeowners would lose important protections. Loans that could have been modified or refinanced will now be foreclosed on; homeowners that could have stayed in their homes will now be out on the street; and lenders that were once checked by TILA's protections will lose the incentive to avoid abusive or predatory lending.

At a time when millions of homeowners are struggling to keep their homes, the evisceration of the extended right of rescission will exacerbate the inequities in a playing field that already tilts strongly in favor of the financial institutions.

Reverse Mortgage Safe Harbor Provisions

As noted above, this country is paying a heavy price for the improvident mortgage lending and securities practices by some of the country's largest financial institutions. The potential for abuse is also ripe for reverse mortgages. In a speech to reverse mortgage lenders at a conference in San Diego in 2009, an executive with Ginnie Mae hyped the potential for growth in the reverse mortgage industry:

> "I am sure one of the reasons you are here today is that you recognize the opportunity for growth in the market's reverse mortgage sector. . . . Between 2001 and 2007, (the government-insured) reverse mortgage product grew by more than 1,600 percent. . . . Today, even at this growth rate, there are approximately 27 million senior homeowners. However, only 400,000 (government-insured) loans have been originated.
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> The outlook for this market will only improve, given the demographics of our population. Baby boomers are moving toward retirement at the rate of 10,000 per day. Currently 34 million Americans are 65 or older. By 2030, there will be 71 million senior citizens, comprising 21 percent of the population. If the increasing age of Americans is not enough to spur your interest in reverse mortgage products, consider this: 81 percent of seniors own their homes, controlling more than $4 trillion in home equity, an amount that could grow to $37 trillion by 2030."

He went on to state that: "At Ginnie Mae, we believe further growth in the reverse mortgage market will be aided by a robust secondary market. . . ."

If this sounds familiar, it should. Similar comments were made by Fannie Mae/Freddie Mac executives about nontraditional mortgage products in the years prior to the mortgage meltdown.

A number of characteristics of reverse mortgages make them susceptible to possible abuse including: 1) they are targeted exclusively to senior citizens; 2) they provide the senior citizen with a substantial amount of cash in hand; and 3) they are more complex than regular mortgages.

For this reason, the FBI has announced an uptick in reverse mortgage complaints, as have consumer advocates. Three of the problem areas cited are: 1) reserve mortgages are sometimes sold to senior citizens even though more suitable and affordable alternatives are available; 2) reverse mortgages are sometimes marketed as a means of "easy credit" to finance a lifestyle that depletes the home equity that may be needed for living expenses; and 3) a senior who takes out a reverse mortgage gets ready access to cash and may be convinced to take out a reverse mortgage in order to sell other financial products, such as high-priced annuities.

The proposed rules purport to prohibit a creditor or broker from requiring a consumer to purchase another financial or insurance product, such as an annuity, as a condition of obtaining a reverse mortgage. A strong prohibition against "tying" the sale of a reverse mortgage to the sale of another financial product makes sense. Reverse mortgages have serious financial repercussions for senior citizens, and it can be unsuitable for the senior citizen to borrow money on their home simply to purchase another financial product.

Unfortunately, the proposed rule provides a "safe harbor" that swallows the rule. The "safe harbor" provision provides that transactions are in compliance with the anti-tying provision if the reverse mortgage transaction is consummated at least ten days before the consumer purchases another financial or insurance product. In other words, the so-called safe harbor provision essentially eviscerates the anti-tying rule. It is for this reason that AARP opposes the safe harbor provision. Indeed, the safe harbor provision appears to weaken existing federal law that seeks to stop the practice of encouraging senior citizens to take out expensive reverse mortgages simply so they can be sold other financial products they may not need.

Conclusion

Both the evisceration of the TILA right of rescission and the reverse mortgage "safe harbor" weaken existing federal law designed to protect consumers. Our citizens have paid a heavy price for the lax practices of the mortgage industry. This is a time to protect homeowners, not financial institutions.

To that end, I request that the Federal Reserve withdraw the provisions of the proposed changes to Regulation Z which weaken the TILA right of rescission and which offer a new "safe harbor" for reverse mortgage companies and financial salespeople to pitch senior citizens into taking out reverse mortgages simply to buy other financial products.

I thank you for your attention to this matter.

Sincerely,

LORI SWANSON
Attorney General

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