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# United States Senate

WASHINGTON, DC 20510-2309

December 23, 2010

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

Re: Withdrawal Request for the Proposed Truth-in-Lending Mortgage Regulations (FRB Docket No. R-1390)

Dear Board of Governors:

I write to urge you amend or withdraw the proposed Truth in Lending ("TILA") mortgage regulations regarding the "right to rescission" in FRB Docket No. R-1390. At a time when we should be providing homeowners with the strongest consumer protections available, these new regulations could erase an important safeguard that helps keep families in their homes.

As you know, TILA gives homeowners the right to rescind an illegal loan for up to three years. If a creditor fails to make the required disclosures to a homeowner, a homeowner can give notice to the creditor that he or she wishes to terminate the loan. According to the statute, when the homeowner exercises this right, the creditor must then forfeit its security interest in the home, and the homeowner must pay the creditor the remainder of the balance still owed.

The Board's proposed regulation flips around that order of operation, forcing the homeowner to tender the balance <u>before</u> the creditor forfeits the security interest. This subtle change effectively renders the right to rescission worthless to all but the wealthiest homeowners. In the real world, there is simply no way for a homeowner to tender the sum of money owed to a creditor without the ability to refinance his or her loan with another more scrupulous lender. Most homeowners facing foreclosure are low-income or are undergoing serious financial hardship. They don't have access to the large sums of money the Board's proposed regulation would require them to tender, and in this economy, it is simply impossible for a homeowner to refinance without the lien. Without voiding the security interest, there's no almost no way for a homeowner exercising their right to rescission to come up with the funds needed to pay the creditor, rendering the whole process useless.

All of this means that the Board's proposed regulation essentially guarantees that predatory lenders won't ever have to worry about the consequences of ensnaring homeowners in bad loans. Because very few homeowners could ever tender the sum owed without the security interest available to allow them to secure a new loan, there is little to no chance that predatory lenders will ever lose out on the ill-gotten fees and interest they extracted illegally from homeowners. This new right to rescission is the very antithesis of the current rule: it ensures that abusive lenders have no financial incentive to work with homeowners, but simply to make a profit and move on.

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In considering whether to finalize this new regulation, the Board needs to consider Congress's original intent in passing the Truth in Lending Act. Lawmakers wrote this legislation specifically to deter abusive lending. The right to rescission provision in the law and the ensuing regulations helped level the playing field by penalizing lenders for not properly disclosing aspects of the loan. The Board's proposed rule goes against Congress's intent to protect consumers from abusive lending.

As we've seen with the recent allegations of "robo-signing" at several large mortgage-servicers, homeowners are at risk of being victimized by bad actors throughout the housing finance market. I fear that the Federal Reserve's new rules will increase the likelihood of such bad behavior, not reduce it. In doing so, the Board will cause more unnecessary foreclosures and force more families out of their homes.

Homeowners need to have confidence that lenders are following the rules. Shifting the financial burden of abusive lending onto homeowners will increase the likelihood of fraud, improper disclosures, and mishandled casework.

I urge the Board to amend or withdraw these new rules. I thank the Board for its careful consideration, and I look forward to the Board's response to these concerns.

Sincerely,

Al Franken

Al Franken
United States Senator

CC: Elizabeth Warren, Assistant to the President and Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau