



NEW YORKERS FOR RESPONSIBLE LENDING

c/o NEDAP / 176 Grand Street, Suite 300 / New York, NY / 10012 / Tel: (212) 680-5100 / Fax: (212) 680-5104 / nyrl@nedap.org

December 22, 2010

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Via email: regs.comments@federalreserve.gov
In subject line: **FRB Docket No. R-1390**

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

Dear Ms. Johnson and Board of Governors:

The Steering Committee of New Yorkers for Responsible Lending (NYRL) is writing to urge you to withdraw the proposed Truth in Lending (“TILA”) mortgage regulations in FRB Docket No. R-1390.¹ As mounting foreclosures decimate communities across the country, now is the time to reinforce the fundamental importance of TILA rescission. Instead, the Board’s proposal would eviscerate the single most effective tool that homeowners have to stop foreclosures and avoid predatory loans: the extended right of rescission.

NYRL is a statewide coalition established in 2000 to promote access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL’s 151 members represent community financial institutions, community-based organizations, affordable housing and first-time homebuyer groups, advocates for seniors, legal services organizations, and community reinvestment, fair lending, and consumer advocacy groups. Collectively, NYRL members represent millions of New Yorkers, from communities throughout the State. Many of our members are legal services or housing counseling organizations that regularly represent low or moderate income homeowners in default or foreclosure.

The FRB Docket R-1390 contains a series of proposed changes to the Truth in Lending Act (TILA) rules governing mortgage lending. Certain parts of the proposal would undermine the reliability of TILA disclosures on home secured credit. Instead of informing consumers about the terms of their loans as Congress intended, these proposals would allow broad misstatements of loan terms through new tolerances that are without statutory authority.

Our most serious concern, however, is the proposed decimation of TILA’s extended right of rescission in 12 CFR § 226.15 and 226.23. The extended right of rescission is a critical tool necessary to enforce the strict disclosure requirements in the Truth in Lending Act, which are fundamental to ensuring transparency and fairness in the credit market. As noted in the Board’s commentary to the proposed rules, “TILA’s purposes include facilitating consumers’ ability to compare credit terms and helping consumers avoid the uninformed use of credit (2010 Federal Register, Vol. 75, No. 185, p. 58629).”

¹ See <http://www.federalreserve.gov/newsevents/press/bcreg/20100816e.htm>.

The Truth in Lending Act passed by Congress specifically provides consumers the right to unwind an illegal loan through rescission for up to three years after the loan was consummated. The statute – and current Board regulations – both provide that if the proper disclosures were not provided to the homeowner at the closing, the homeowner can rescind the loan by sending a notice to the creditor. The statute then requires the creditor to cancel the security interest. Only after the creditor has complied with its obligation to cancel the security interest is the homeowner required to tender the amount still due on the loan.

The extended right of rescission does not mean that the homeowner does not have to repay the loan. While the amount due is reduced by the finance charges, fees and amounts the homeowner has already paid, the balance is still due the creditor. Borrowers do not always have the ability to tender back the balance due under the note in one lump sum to the lender, because many borrowers are not able to obtain alternative financing. The practical effect, therefore, of the extended three-year right to rescind has been to create an incentive for the lender and homeowner – both realizing they are in an imperfect position – to settle the rescission claim through an affordable and sustainable loan modification.

Despite the clear order of these events set out in the Act passed by Congress, the Board's proposed regulations would require that the homeowner must pay the entire amount demanded by the creditor before the creditor is required to cancel the security interest in the home. This proposed order would severely undermine the primary purpose and power of TILA's extended right of rescission – the mandatory cancellation of the security interest by the creditor upon receipt of the homeowner's notice. It is precisely because of this order that the extended right of rescission under TILA has been the primary home-saving legal tool against predatory loans for the past forty-two years. This proposal would make the right to rescind completely useless to all but the wealthiest homeowners.

The gutting of the right to rescind would take away a major incentive for lenders to abide by TILA. The only remedy left for a borrower against a lender who violates TILA would be the statutory damages of \$2,000 or \$4,000 (depending on when the loan was originated). Clearly, this nominal damage amount is neither a big enough stick to ensure lender accountability, nor a large enough remedy for an unlawful or abusive mortgage.

Passage of the proposed rule will considerably exacerbate the foreclosure crisis in New York and across the country – harming countless homeowners, communities and the economy. We request that you withdraw the entire docket, and leave the update of TILA to the Consumer Financial Protection Bureau when it takes over this area in July, 2011. At the very least, we urge that you withdraw the proposed rules with respect to the extended right of rescission under § 226.23.

Thank you for this opportunity to comment.

Sincerely,

New Yorkers for Responsible Lending
Steering Committee