

No. 13-684

In the Supreme Court of the United States

LARRY D. JESINOSKI, ET UX.,
Petitioners

v.

COUNTRYWIDE HOME LOANS, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF AMICI CURIAE OF AARP, NATIONAL CONSUMER
LAW CENTER, AMERICAN CIVIL LIBERTIES UNION,
NATIONAL ASSOCIATION OF CONSUMER ADVOCATES,
AND CENTER FOR RESPONSIBLE LENDING
IN SUPPORT OF PETITIONERS

NINA F. SIMON
1629 K STREET, NW
STE. 300
WASHINGTON, DC 20006
202 827-9770

CAROLYN L. CARTER
STUART ROSSMAN
NATIONAL CONSUMER
LAW CENTER

JEAN CONSTANTINE-DAVIS*
*Counsel of Record
AARP FOUNDATION
LITIGATION
601 E STREET, NW
WASHINGTON, DC 20049
jcdavis@aarp.org
202 434-2060

(Counsel continued on
inside cover)

7 WINTHROP SQUARE
BOSTON, MA 02110
617 542-8010

DENNIS D. PARKER
LAURENCE M. SCHWARTZTOL
RACHEL E. GOODMAN
AMERICAN CIVIL LIBERTIES UNION
125 BROAD ST.
NEW YORK, NY 10004
212 549-2500

ATTORNEYS FOR AMICI CURIAE

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INTERESTS OF AMICI CURIAE¹

AARP is a nonprofit, nonpartisan organization with a membership that helps people turn their goals and dreams into real possibilities, seeks to strengthen communities, and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. AARP supports the disclosure requirements and substantive protections of the Truth in Lending Act. AARP has advocated for decades that the right to rescind a mortgage is pivotal to TILA's self-enforcing statutory scheme.

The National Consumer Law Center ("NCLC") is a national research and advocacy organization focusing on the legal needs of consumers, especially low income and elderly consumers. For over 40 years the NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations across the nation have turned for legal answers, policy analysis, and technical and legal support.

¹ The parties' letters of consent to the filing of this brief have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

NCLC is recognized nationally as a preeminent expert in consumer credit legal analysis. It is author of the widely praised eighteen-volume *Consumer Credit and Sales Legal Practice Series*, including *Truth in Lending*.

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation’s civil rights laws. Since it was founded in 1920, the ACLU has appeared before this Court in numerous cases, both as direct counsel and *amicus curiae*. The ACLU’s Racial Justice Program engages in litigation and advocacy to enforce and protect the constitutional and civil rights of people who have been historically denied their rights on the basis of race, including in the area of fair lending and the racially disparate impact of the foreclosure crisis.

The National Association of Consumer Advocates (“NACA”) is a nonprofit corporation whose members are private and public sector attorneys, legal services attorneys, law professors and law students whose primary focus involves the protection and representation of consumers. NACA’s mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and serving as a voice for its members as well as consumers in the ongoing effort to curb unfair and abusive business practices. Enforcement and compliance with consumer

protection laws has been a continuing concern of NACA since its inception.

The Center for Responsible Lending (“CRL”) is a nonprofit, nonpartisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Its focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts, auto loans, and student loans.

CRL’s work grows directly from its affiliation with Self-Help, one of the nation’s largest nonprofit community development lenders. For over 30 years, Self-Help has worked to create ownership and economic opportunity in underserved communities through responsible loans and financial services. Self-Help has provided \$6 billion in financing to 75,000 homebuyers, small businesses and nonprofit organizations, and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

SUMMARY OF ARGUMENT

When Congress enacted the Truth in Lending Act (“TILA”), it required one simple act to exercise rescission: notice to the creditor. Over more than four decades, as it actively reshaped and revamped many of TILA’s other requirements, Congress never changed or added to this simple requirement. By retaining TILA’s straightforward rescission process, exercisable by a homeowner, Congress endorsed the

Federal Reserve Board's contemporaneous and longstanding interpretation that the right is exercised solely through notice.

Advancing a recently-formulated view that rescission must be exercised by filing a lawsuit, Respondents ask the Court to rewrite the plain language of the Act, which contains no such requirement. Respondents' interpretation would render meaningless Congress's express creation of civil liability for failure to respond to rescission by notice.

In adopting TILA, Congress sought to protect consumers from some of the most abusive practices in the credit marketplace. In the wake of the financial crisis that has taken such a toll on homeownership and blighted so many communities, that goal remains front and center today. Imposing an additional burden on consumers who are entitled to exercise rescission would likely lead to additional home foreclosures and the manifold collateral harms that widespread foreclosures create for communities.

ARGUMENT**I. TILA'S STATUTORY TEXT AND STRUCTURE, ALONG WITH ADMINISTRATIVE AND JUDICIAL INTERPRETATIONS, MAKE CLEAR THAT THE RIGHT TO RESCIND IS EXERCISED THROUGH NOTICE.**

Congress created the statutory right to rescind when it enacted the Truth in Lending Act in 1968. Pub. L. No. 90-321, § 125(a), 82 Stat. (1968) (currently codified at 15 U.S.C. § 1635(a) (2012)); Appendix A, 1a. Rescission protects homeowners by giving them three days outside of the pressure cooker atmosphere of a loan closing to review the costs and benefits of the transaction before risking their most valuable asset—the home. It does this by affording them the right to cancel the transaction during that three day window. Congress created the right of rescission to redress “the numerous abuses of credit which result in rendering families homeless—often after the entire or a substantial portion of a first mortgage is paid.” Kintner, Henneberger & Neill, A Primer on Truth in Lending, 13 St. Louis U.L.J. 501, 523 (1969). Other abusive credit practices emerged in the years prior to the current financial crisis; the resulting foreclosures have devastated individuals and communities. Where consumers are not provided the information Congress deemed necessary, they are deprived of the opportunity Congress intended—to use the three day period to make an informed decision and avoid abusive loans.

**A. TILA's Plain Language and
Implementing Regulation Allow
Rescission to Be Exercised
Through Simple Notice.**

The plain language of the current statute and regulation allow the consumer to exercise the right of rescission simply by giving notice to the creditor. The statute provides:

Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest . . . is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, *the obligor shall have the right to rescind the transaction* until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, *by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so.* The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(Emphasis added). 15 U.S.C. § 1635(a) (2012); Appendix A, 16a. The plain, unequivocal, unmistakable meaning of this language is that a consumer who decides to exercise the right to rescind does so by notifying the creditor.

The governing regulation is equally unequivocal:

To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(Emphasis added). 12 C.F.R. § 1026.23(a)(2) (2012); Appendix B, 38a.

As discussed in detail in the next subsections, this core language has continuously remained in place from the original enactment of the statute in 1968, through several amendments and accompanying generations of administrative interpretation.

**B. The 1968 Act Created the
Rescission Right and Directed
Its Exercise Through Simple
Notice.**

When Congress enacted TILA in 1968 it provided a consumer with a simple and straightforward means to exercise the right to rescind, whether within the first three days or later if disclosures were not provided: “by notifying the creditor . . . of his intention to do so.” Truth in Lending Act, Pub. L. No. 90-321, § 125(a), 82 Stat. (1968); Appendix A, 1a. Through the many amendments to and restructurings of TILA over more than four decades, the core text of § 1635(a), creating the right to rescind and the means of exercising it, has continued in the statute virtually unchanged.

As first enacted in 1968, TILA § 1635(a) read:

(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, *the obligor shall have the right to rescind the transaction* until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter,

whichever is later, *by notifying the creditor, in accordance with regulations of the Board, of his intention to do so.* The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

1968 Act, 15 U.S.C. § 1635(a) (emphasis added). The italicized language, which is at the core of this case, is unchanged since 1968 except for the 2010 replacement of “Board” with “Bureau.”² As a commenter noted shortly after the statute’s enactment, “the consumer could rescind the contract by simply giving the creditor notice of his intent to

² The Federal Reserve Board (“Board”) administered TILA for over 40 years until the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred its authority to the Consumer Financial Protection Bureau (“Bureau”) on July 21, 2011. *See* Pub. L. No. 111-203, §§ 1061(b)(1), (d), 124 Stat. 2079 (2010) (codified at 12 U.S.C. §§ 5581(b)(1), (d)); *Designated Transfer Date*, 75 Fed. Reg. 57,252, 57,252 (Sept. 20, 2010). The Bureau adopted the Board’s Regulation Z implementing the rescission process without change but redesignated it from 12 C.F.R. § 226.23 to 12 C.F.R. § 1026.23 (76 Fed. Reg. 79,768 (Dec. 22, 2011)).

rescind.” Note, *Truth in Lending: Judicial Modification of the Right of Rescission*, 1974 Duke L.J. 1227, 1232. And as originally enacted, if disclosures were not provided at consummation, the right to rescind continued indefinitely or until three days after the creditor provided the necessary information and notice of the right to cancel. See, e.g., William E. Boyd, *Federal Consumer Credit Protection Act—A Consumer’s Perspective*, 45 Notre Dame L. Rev. 171, 190 (1970). (“The effect is that for every day the creditor delays giving the rescission notice or making the other disclosures, the consumer is given another day within which to rescind the contract”).

Congress took pains to emphasize the Federal Reserve Board’s (“the Board”) broad rulemaking authority to implement § 1635(a), three times calling upon the Board to fill out the details of the rescission process “in accordance with regulations of the Board.” TILA’s explicit focus on the Board’s role in implementing rescission is grounded in the critical importance of the rescission right. Kintner, Henneberger & Neill, *supra*, at 527 (“Notice of the right of rescission is the most important disclosure”); *Truth in Lending Simplification and Reform Act, Hearing on S. 108 and S. 37, Before the S. Comm. on Banking, Housing, and Urban Affairs*, 96th Cong. (1979) (Remarks of Sen. Proxmire describing the right of rescission as “one of the most important protections in the act.”).

C. Contemporaneous Administrative and Judicial Interpretations of § 1635(a) Confirm That Rescission is Exercised by Providing Written Notice.

In 1969 the Board adopted Regulation Z, 12 C.F.R. Part 226, to flesh out the rescission process. Truth in Lending, 34 Fed. Reg. 2002, 2009-10 (Feb. 11, 1969); Regulation Z, 12 C.F.R. § 226.9; Appendix B, 27a – 31a.³ It directed that the right extends for three business days following either consummation or “the date of delivery of the disclosures [of rescission rights] and all other material disclosures,” whichever occurs later. *Id.* at 2010; Reg. Z, § 226.9(a); Appendix B, 27a. More importantly, it provided that rescission is exercised by providing written notice to the creditor by “mail, telegram or other writing,” and specified no other requirements. *Id.*

As adopted in 1969, Regulation Z directed the creditor to furnish “two copies” of the notice to each consumer, and provided that “one . . . may be used . . . to cancel the transaction.” *Id.*, Reg. Z, § 226.9(b), Appendix B, 28a. The notice itself instructed the borrower when to cancel – “within three business days from the [] date [of the transaction] or any later date on which all material disclosures required under

³ Through several renumberings from § 226.9 to § 226.23 to most recently § 1026.23, the rescission provision of Regulation Z has retained the same essential text and requirements. *See* Appendix B, 27a-44a.

the Truth in Lending Act have been given to you.” *Id.*; Appendix B, 28a – 29a. It also stated plainly that the borrower may cancel “by notifying [name of creditor] at [address of creditor’s place of business] by mail or telegram.” *Id.* The regulation provided that the consumer’s notice may simply say, “I hereby cancel this transaction,” with a signature and a date. *Id.* Further confirming that the consumer’s notice triggers the creditor’s rescission obligations, the regulation provided: “Within 10 days after receipt of a notice of rescission, the creditor shall” take designated steps to acknowledge and implement the rescission. *Id.*; Reg. Z, § 226.9(d); Appendix B, 30a. The Board imposed no requirement that the consumer sue to exercise this right. *See* Appendix B, 27a – 31a.

As this Court has made clear, because it is “a contemporaneous construction of [the statute] by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new,” the Board’s decision not to impose an extra-statutory requirement that a lawsuit be filed to exercise rescission is entitled to “great deference.” *Udall v. Tallman*, 380 U.S. 1, 16 (1965) (internal citations and quotations omitted); *see also Milhollin v. Ford Motor Credit*, 444 U.S. 555, 566 (1980) (“[T]raditional acquiescence in administrative expertise is particularly apt under TILA, because the Federal Reserve Board has played a pivotal role in ‘setting [the statutory] machinery in motion.’”). Deferring to the administrative interpretation of TILA is particularly logical at this juncture:

Regulation Z, like the statute it implements, has retained the same essential text and requirements for more than four decades directing exercise of the rescission right through simple notice whether within three days after consummation or three days after receipt of disclosures.⁴

After the promulgation of Regulation Z, federal courts of appeal interpreted the mechanics of rescission in accord with the Board, holding that even when exercised beyond the initial three day period, rescission is still exercised through notice alone. As the Fifth Circuit explained: two years after entering into a contract with a “home improvement contractor of dubious repute . . . Sosa invoked her statutory right of rescission . . . by directing letters to this effect to [her creditors].” *Sosa v. Fite*, 498 F. 2d. 114, 116, 117 (5th Cir. 1974) (“Sosa II”) (emphasis added). Similarly, in *Littlefield v. Walt Flanagan*, “Purchasers learned of their statutory right to rescind on February 20, 1972 [15 months after consummation], and on the next day notified the creditor that they chose to exercise the right. Defendants ignored the notice.” 498 F.2d 1133, 1134 (10th Cir. 1974); *id.* (“Regulation Z . . . details rules relating to notification by the seller to the purchaser of his right to rescind. Defendants ignored these

⁴ William E. Boyd, *supra*, at 191-92. (“Satisfaction of the basic requirements of the Act, as well as the giving of notice of the right to rescind, is a condition for the running of the three-day ‘cooling-off’ period. A creditor who fails to make these disclosures extends the period during which the consumer may rescind. . . .”)

rules.”); *see also* *Brown v. National Permanent Fed. Sav. & Loan Ass'n*, 683 F.2d 444, 447 (D.C. Cir. 1982) (“By letter dated July 18, 1980, appellee Brown exercised her statutory right to rescind”); *Palmer v. Wilson*, 502 F.2d 860, 861 (9th Cir. 1974) (“an obligor exercises his right of rescission solely by notifying the creditor within prescribed time limits of his intention to rescind.”).

In each of these cases, consumers filed suit to enlist the aid of the courts to *enforce* rescission, *not* to exercise it. “Sosa has been forced to resort to federal court only because the creditors refused to recognize and abide by the plain operation of the rescission remedy, which should have been afforded self-operating effect without the need for judicial involvement.” *Sosa II*, 498 F. 2d. at 122. That notice was sufficient to exercise rescission was a given. This notion undergirds the courts’ analyses of the violation of § 1635(b), which occurs when creditors “ignored the notice,” and the question of whether TILA provided additional redress for this second violation. *Littlefield*, 498 F.2d at 1134; *Sosa II*, 498 F. 2d at 118-19 (“[T]he statute contemplates an orderly progression of specific events Specifically, section 1635(b) envisions responsive action on the creditor's part to a rescission notice, after which the debtor then becomes obligated to tender either the property or a sum reflecting its reasonable value.”); *Burley v. Bastrop*, 407 F. Supp. 773, 777 (W. D. La. 1975) (finding “defendant's obligation was clear when it received plaintiff's notice of rescission. But . . . the Loan Company ‘failed to carry out any of [its]

statutory duties”) (internal citation omitted), *rev’d on other grounds*, 590 F.2d 160 (5th Cir. 1979).

D. Congress Retained the Mechanics of Rescission Intact When It Amended TILA in 1974.

In 1974, Congress added § 1635(f), to provide that the homeowner’s right of rescission terminates three years after consummation or upon sale of the home, whichever is earlier. Amendments to the Truth in Lending Act, Title IV, Pub. L. No. 93-495, § 405, 88 Stat. 1517-1518 (1974) (current version at 15 U.S.C. § 1635(f) (2012)) (“1974 Amendments”) (Appendix A, 5a); *see Beach v. Ocwen Federal Bank*, 523 U.S. 410, 419 (1998). While reaffirming that TILA “vests a continuing power of rescission in the credit purchaser until three days following delivery of statutorily prescribed disclosures,” Congress provided that the period for exercising the right would end three years after origination. *Sosa II*, 498 F.2d at 117-18.

In retaining the core text of § 1635(a), Congress endorsed the extant regulatory and judicial interpretations of rescission, and confirmed that the statutory right of rescission is exercised solely through written notice to the creditor. *Burley*, 407 F. Supp. at 779 (“[W]hen it amended the Truth-in-Lending Act . . . [Congress] did not choose legislatively to overrule or limit the two *Sosa* decisions regarding rescission.”). Subsequently, the Board amended Regulation Z to “limit[] to a three-year period those unexpired rights which previously

continued indefinitely,” but it did not otherwise alter 12 C.F.R. § 226.9, governing rescission. 40 Fed. Reg. 30085, 30086 (July 7, 1975) (adding § 226.9(h), “*Time limit for unexpired right of rescission.*”); see Appendix B, 32a.

E. The Enactment of Truth in Lending Simplification Did Not Alter the Extant Rescission Process.

In 1980 Congress substantially overhauled TILA by enacting the Truth in Lending Simplification and Reform Act, Pub. L. No. 96-221, § 612, 94 Stat. 168 (1980) (current version at 15 U.S.C. § 1601 (2012)) (“TIL Simplification”); Appendix A, 7a – 10a. This Act narrowed the type of transactions subject to the right to rescind and the categories of disclosure that would trigger the right, but left untouched the core statutory provisions directing the mechanics of the rescission process. In addition, Congress made other changes that underscore that the right of rescission is exercised by giving notice.

1. The TIL Simplification Act Did Not Change the Mechanics of Rescission.

In enacting TIL Simplification, Congress made no change to the plain language of § 1635(a) that directs the homeowner to exercise the right through notice, or to the creditor’s obligation in § 1635(b) to

respond to that notice.⁵ Since Congress focused on rescission in enacting TIL Simplification, and was well aware of the Board's interpretation of the mechanics of rescission, it is deemed to have acquiesced in that interpretation. *See Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 846 (1986) (“[W]hen Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency’s interpretation is persuasive evidence that the interpretation is the one intended by Congress.” (internal quotation marks omitted)). Following TIL Simplification, the Board substantially expanded Regulation Z and renumbered its rescission provision as 12 C.F.R. § 226.23. It made a slight amendment to the regulation to clarify the events from which the three

⁵ The only change was to allow creditors 20 days instead of 10 to respond to the notice. TIL Simplification, 15 U.S.C. § 1635(b); Appendix A, 8a. In testimony about this extended response time, the American Bankers Association revealed their understanding that rescission is exercised by providing notice:

We also support the extension of the time period within which a creditor has to return any money or property to the obligor after the obligor has exercised the right to rescind. *This gives the creditors a better opportunity to determine whether or not the right to rescind is valid and has been appropriately exercised. . . .*

Truth in Lending Simplification Reform Act, Hearing on S. 108 and S. 37, Before the S. Comm. on Banking, Housing and Urban Affairs, 96th Cong. (1979) (Statement of David Smith, Jr., of Amer. Banker’s Assn.). (emphasis added).

day rescission period runs, but retained the mechanics of the rescission process unchanged. 46 Fed. Reg. 20,892, at 122-123 (April 7, 1981); Appendix B, 33a – 37a. This core text remains unchanged today.

2. The 1980 Jurisdictional Amendment to § 1640(a) Demonstrates that Rescission Is Enforced, But Not Exercised, Through the Courts.

The 1980 Amendments also make plain that a lawsuit may be used to enforce rescission but is not necessary to exercise the right. Prior to the 1980 Amendments, courts were unclear about whether TILA provided a jurisdictional basis for an action to enforce rescission. *See Sosa v. Fite*, 465 F.2d 1227, 1228-29 (5th Cir. 1972) (“*Sosa I*”) (finding jurisdiction under other sources of federal law, and stating that, “whether the Act itself affords the federal court the authority to grant rescission” is “[a] more difficult issue, and one we need not reach”).

Congress settled the matter in 1980 by amending § 1640, which had governed jurisdiction over TILA actions since TILA’s enactment, to clarify the jurisdictional basis for an action to enforce rescission. The amended provision states: “any creditor who fails to comply with any requirement . . . *including any requirement under section 125* [that is, 15 U.S.C. § 1635] . . . is liable.” TIL Simplification, 15 U.S.C. § 1640(a) (emphasis added); Appendix A, 10a.

It also added that, “in the case of any successful action to enforce the foregoing liability *or in any action in which a person is determined to have a right of rescission*, [the creditor is liable for] the costs of the action, together with a reasonable attorney’s fee as determined by the court.” *Id.*, § 1640(a)(3); Appendix A, 9a. (emphasis added). With these amendments, Congress made “explicit that a *consumer may* institute suit under section 130 to enforce the right of rescission and recover costs and attorney’s fees in a successful action.” (emphasis in original). Truth in Lending Simplification Reform Act, Report of the Comm. on Banking Housing, and Urban Affairs, S. 108, 96th Cong., Sen. Report No. 96-73 at 18 (April 9, 1979) (Section by Section analysis) (“Sen. Rep. No. 96-73”); 96th Cong., 125 Cong. Rec. S396 (Jan. 23, 1979) (Remarks by Sen. Proxmire) (same). Embedded in this grant of authority to *enforce* rescission is the understanding that filing suit is not an element of *exercising* rescission. The language is permissive (“a *consumer may* institute suit”), and does not indicate that a consumer *must* file suit in order to exercise rescission.

Moreover, by authorizing such a suit under the civil liability provision, 15 U.S.C. § 1640(a), rather than under the provision governing the exercise of rescission, § 1635, Congress indicated that any civil suit concerning rescission was not directly related to the exercise of rescission. Because “section 1635 is written with the goal of making the rescission process a private one, worked out between creditor and debtor without the intervention of the courts,” *Belini v. Wash. Mut. Bank, FA*, 412 F.3d 17, 25 (1st

Cir. 2005), it “does not even contemplate the necessity of judicial intervention to effect rescission. On the contrary, the section creates legal remedies which have binding legal effect absent any court action.” *Sosa II*, 498 F.2d. at 121.

Respondents assert to the contrary – that a consumer must sue to exercise the right to rescind. Resp. to Pet’rs. Br. at 26, *Jesinoski v. Countrywide Home Loans, Inc.*, 729 F.3d 1092 (8th Cir. 2013), (No. 13-684), 2014 U.S. S. Ct. Briefs LEXIS 1078, at *46. But implicit in their assertion is that § 1635 provides jurisdiction over rescission actions, an argument belied by the statute’s text and structure. Section 1635 makes no reference to the jurisdiction of courts, and no reference to lawsuits except for two provisions about rights and remedies if a lawsuit is filed.⁶ See Appendix A, 7a – 9a; *Beach*, 523 U.S. at 416 (“The subsection says nothing in terms of bringing an action”). Congress instead located jurisdiction over rescission actions in § 1640, making clear that such actions are not necessary to effectuate the right to rescission located in § 1635.

⁶ Section 1635(b) confirms that courts can continue to exercise their inherent equitable powers to modify the rescission process; it does not provide an independent source of authority for consumers to sue to enforce rescission. Section 1635(g), which was added to “explicitly provide[] that a consumer who exercises his right to rescind may also bring suit under the act for other violations not relating to rescission,” is not a jurisdictional basis for a rescission action. Sen. Rep. No. 96-73 at 15 (April 9, 1979) (Section by Section analysis). Congress “codifie[d] the majority position of the courts” that consumers need not elect rescission or damages. *Id.*

By taking this route, Congress was clear that, while the time limits in § 1635(f) cut off *exercise* of the right, the statute of limitations for the filing of a consumer’s action to *enforce* the right appears in § 1640. Section 1640(e) requires suit “within one year from the date of the occurrence of the violation.” The “occurrence of the violation” that triggers the running of the statute of limitations for a rescission lawsuit is the creditor’s violation of § 1635(b) (requiring creditor to take specific steps to effectuate rescission). If the creditor responds to the notice by returning money or property and taking steps to void its security interest, followed by the consumer tendering back, the statute’s self-effectuating rescission process requires no involvement by a court. A consumer’s lawsuit to enforce rescission is made necessary only by the creditor who fails to respond within 20 days after receipt of the consumer’s notice by taking steps to unwind the transaction, violating § 1635(b). By amending § 1640(a) to authorize rescission actions, Congress mandated that those actions be filed within one year and twenty days after the creditor receives the rescission notice.

3. Because the Amended Statute Affords Damages For Failure to Respond to Notice of Rescission, Filing Suit Cannot Be Required to Exercise Rescission.

Initially, TILA’s statutory penalties were available only for disclosure violations, including

failure to disclose the right to rescind, but not for the creditor's violation of § 1635(b) (failing to properly respond to rescission). 1968 Act, 15 U.S.C. § 1640(a); Appendix A, 3a ("any creditor who fails . . . to disclose . . . is liable"); see *Gerasta v. Hibernia Bank*, 575 F.2d 580, 583 (5th Cir. 1978). Congress amended § 1640(a) in 1974 to make creditors liable for failures to "comply with any requirement" of specified chapters of TILA. 1974 Amendments, § 408, 15 U.S.C. § 1640(a); Appendix A, 5a – 6a. Those chapters include the rescission provisions, and at least one court concluded that, because of the 1974 amendment, § 1640(a) remedies apply when a creditor fails to comply with § 1635. *Gerasta*, 575 F.2d at 583.

In 1980 Congress made the existence of this remedy explicit by extending § 1640(a) to a violation of "any requirement under section 125 [§ 1635]." TIL Simplification, 15 U.S.C. §1640(a); Appendix A, 10a. This new "language of the Act allows a statutory penalty to be assessed for a creditor's failure to take adequate steps to respond, within twenty days, to a debtor's rightful notice of rescission," and measures the statute of limitations from the date the creditor fails to perform in response to a borrower's notice of rescission.⁷ *Belini*, 412 F.3d at 24 n.2.

⁷ "The 'date of the occurrence of the violation' cannot be the date the loan was closed; the closing is not the source of the debtor's complaint, and such a rule would create nonsensical results." *Belini*, 412 F.3d at 26.

Respondents' position before the Court fails to take account of this violation: if rescission can be exercised only upon notice *and* suit, the creditor would have no obligation to respond until the consumer files suit. At that point the court is in control of the process and the parties' obligations. Under the Respondents' analysis, there can never be a violation of § 1635(b) for failure to respond to the rescission notice, because the creditor has no obligation to respond even if it recognizes the validity of the consumer's claim.

But a consumer's valid notice of rescission alone triggers the creditor's obligation. A creditor who does not take the prescribed steps "has generally violated a 'requirement' of *section 1635* and can be held liable for damages under *section 1640*." *Id.* at 25. (emphasis in original). A consumer exercises the right unilaterally but when a consumer sues, a court decides whether the rescission is meritorious and whether the court will enforce it. *See id.* If the court determines that the rescission is not based on a meritorious claim, a creditor will have no liability for the rescission itself, and no corresponding liability for failing to respond. If the rescission is found meritorious, a creditor can "be held liable for wrongfully refusing to rescind when asked to do so by a debtor." *Id.* at 25 n.3.

As previously explained, disclosure violations under § 1635(a) were already covered by the Act when Congress adopted the amendment to § 1640(a) in 1980 expanding liability for damages to "any violation" of § 1635. There is *no violation of § 1635*

that could give effect to the 1980 amendments *other than a violation of § 1635(b)*. This amendment would be stripped of all meaning if there is no violation when a creditor fails to honor rescission.

F. The 1995 Amendments Reinforced that Rescission Is Exercised Through Notice and Elevated the Exercise of Rescission Rights for Homeowners Facing Foreclosure

In 1995 Congress responded to judicial rulings that it believed imposed outsize liability on the financial services industry by amending TILA to afford creditors certain defenses from liability. In so doing, Congress reinforced that rescission is exercised through notice in two ways. First, Congress added § 1635(h), which provides an explicit defense to rescission to creditors who use the Board's model forms to provide notice of rescission rights. *See* Appendix A, 13a. In providing this defense, Congress reinforced that these forms, which explicitly direct the exercise of rescission by notice, convey all of the information mandated by § 1635(a), regarding the exercise of rescission. As long as the creditor properly completes and delivers model forms, which direct the consumer to do nothing more to exercise rescission than to sign and return the form to the creditor, it is immunized. By providing immunity when these forms are used, Congress approved the instructions in the Board's model form directing the consumer to exercise rescission simply by signing and returning the form to the creditor and imposing no further obligation to exercise the right.

Second, Congress immunized creditors from rescinding certain previously consummated loans with specified characteristics, but also created four exceptions to this immunity. Truth in Lending Act Amendments of 1995, Pub. L. No. 104-29, § 4(a), 109 Stat. 273 (1995) (current version at 15 U.S.C. §1649(a) (2012)) (“1995 Amendments”); Appendix A, 11a – 13a. Through these exceptions Congress restored liability for individual lawsuits filed and for class actions certified before certain dates. *See id.*, 12a. Significantly for this appeal, creditors also restored liability in the case of “any consumer credit transaction *with respect to which a timely notice of rescission was sent to the creditor* before June 1, 1995.” 1995 Amendments, 15 USC § 1649(b)(1-4) (emphasis added); Appendix A, 12a – 13a. By separately protecting borrowers who had timely exercised rescission *through notice*, Congress again expressed the straightforward, plain reading of the statute and regulation that rescission is exercised through notice. Any other interpretation makes this exception a nullity.

The 1995 Amendments are also clear that when a homeowner is facing foreclosure, TILA provides greater rights to rescind. The 1995 Amendments generally denied access to rescission based on numerical disclosures unless disclosure of the finance charge was understated by at least “one-half of one percent of the total amount of credit extended.” 1995 Amendments, 15 U.S.C.

§ 1605(f)(2).⁸ However, understanding that saving homes is the primary goal of the rescission remedy, Congress revoked that rule for homeowners in foreclosure, allowing them to rescind the mortgage if the finance charge was understated by as little as \$36.⁹ *Id.*, 15 U.S.C. § 1635(i)(2); Appendix A, 13a – 15a. Congress further enhanced rescission in foreclosure by providing that the immunity it created in § 1649 does not apply when a homeowner is facing foreclosure. *Id.*, 15 U.S.C. § 1635(i)(1); Appendix A, 14a.

Moreover, allowing homeowners to exercise their rescission rights in foreclosure does not cloud title or render loans unenforceable. That uncertainty was addressed by this Court’s decision in *Beach*, in the 1995 Amendments, and in appellate decisions interpreting rescission as a “purely individual remedy.” *Andrews v. Chevy Chase Bank*, 535 F. 3d 570, 575 (7th Cir. 2008), *cert. den.* 557 U.S. 936 (2009); *McKenna v. First Horizon Home Loan Corp.*, 475 F. 3d 418 (1st Cir. 2007). But individual actions based on timely rescissions, and lawsuits filed one

⁸ The Jesinoskis’ rescission claims are unaffected by the 1995 Amendments.

⁹ If homeowners with a \$611,000 mortgage (like the Jesinoskis) are not in foreclosure, the finance charge is deemed accurate unless it is understated by at least \$3,055, or one-half of one-percent of the note.

year later, have no significant or long term impact on the functioning of the banking industry or the enforceability of mortgage contracts.

Further, if the filing of a lawsuit is mandatory, as Respondents contend, some creditors may be tempted to induce rescinding homeowners not to file a lawsuit on the false promise that the creditor will honor the rescission. If Respondents' rule prevails, and the creditor fails to deliver on its promise, the homeowner's right will nevertheless have been extinguished without consequence to the creditor, and the statute's fundamental purpose "to protect homeowners from [] unscrupulous business tactics" will be thwarted. *Gardner & North Roofing & Siding Corp. v. Board of Governors*, 464 F.2d 838, 841 (D.C. Cir. 1972).

II. BROAD ACCESS TO TILA'S RESCISSION REMEDY PROTECTS INDIVIDUALS AND COMMUNITIES FROM THE HARMFUL EFFECTS OF FORECLOSURE.

TILA violations were widespread during the run-up to the foreclosure crisis. See Lea Krivinskas Shepard, *It's All About the Principal: Preserving Consumers' Right of Rescission Under the Truth in Lending Act*, 89 N.C. L. Rev. 171, 175 (2010). Allowing homeowners to exercise their TILA rescission rights through written notice minimizes foreclosures, thereby significantly mitigating harms to individuals and communities reeling from the impact of the crisis.

Congress clearly intended TILA to help homeowners avoid foreclosure. See Section I.F., *supra*, at 24. Given that the number of mortgage defaults skyrocketed in the wake of the mortgage crisis, the importance of foreclosure avoidance to individuals and to hard-hit communities cannot be overstated. In numerous towns and cities, foreclosures have not only harmed those families losing homes but also inflicted significant costs on neighboring homeowners, whose property values have fallen, and local governments, which face increased costs and decreased tax bases.

Across the nation, enormous numbers of homeowners have lost their homes during this crisis. As of May 2014, more than five million homes have been lost since the real estate bubble burst in September 2008. CoreLogic, Inc., *CoreLogic Reports 47,000 Completed Foreclosures in May* (July 8, 2014).¹⁰ And the crisis continues. In Florida, more than 122,000 homes were foreclosed upon in the last year alone; in Michigan, that number was 44,000. *Id.* These foreclosures have had a substantial impact on the homeownership rate, which stands at 64.8%, down from a high of 69.2% in 2004. U.S. Census Bureau News, *Residential Vacancies and Homeownership in the First Quarter 2014*, CB14-61 U.S. Department of Commerce 5 (2014).¹¹ Many

¹⁰ <http://www.corelogic.com/about-us/news/corelogic-reports-47,000-completed-foreclosures-in-may.aspx>.

¹¹ <http://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

more homeowners remain under water on their mortgages and thus at elevated risk of foreclosure. *See generally* Peter Dreier, Saqib Bhatti, Rob Call, Alex Schwartz & Gregory Squires, *Underwater America: How the So-Called Housing “Recovery” Is Bypassing Many American Communities*, Haas Institute 5 (2014).¹²

The financial harms stemming from all these foreclosures do not stop at the edge of the foreclosed property. Instead, even a single foreclosure has a spillover effect on neighboring properties, *see, e.g.*, Kai-yan Lee, *Foreclosure’s Price-Depressing Spillover Effects on Local Properties: A Literature Review*, Federal Reserve Bank of Boston 1 (2008),¹³ reducing home values, even for homeowners who are current on their mortgages or have no mortgage at all. An estimated 95 million households lost home equity between 2007 and 2012 as a result of neighbors’ foreclosures. Center for Responsible Lending, *2013 Update: The Spillover Effects of Foreclosures* 1 (2013) (“*Spillover Effects 2013*”).¹⁴ A conservative estimate finds that during that time period, residents living in close proximity to properties in foreclosure (one city

¹² http://diversity.berkeley.edu/sites/default/files/HaasInstitute_UnderwaterAmerica_PUBLISH_0.pdf.

¹³ https://www.bostonfed.org/commdev/pcadp/2008/pcadp_0801.pdf.

¹⁴ <http://www.responsiblelending.org/mortgage-lending/research-analysis/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf>.

block) lost about \$2.2 trillion in property value attributable to those foreclosures. *Id.* Others have estimated the proportional loss in value within the same radius to be especially high in low to moderate-income communities. Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-family Mortgage Foreclosures on Property Values*, 17 Housing Policy Debate 57, 58, 71-72 (2006). These effects are compounded where multiple foreclosures are concentrated in one neighborhood. John P. Harding, Eric Rosenblatt & Vincent W. Yao, *The Contagion Effect of Foreclosed Properties*, 66 J. Urb. Econ. 164, 165 (2009). The impacts on homeowners of color have been especially severe—more than one-half of total spillover losses have occurred in communities of color. *Spillover Effects 2013* at 1.¹⁵

¹⁵ High-risk, predatory lending was especially common in communities of color. *See, e.g.*, Peter Dreier, Saqib Bhatti, Rob Call, Alex Schwartz & Gregory Squires, *supra*, at 5; Debbie Gruenstein Bocian, Wei Li & Keith S. Ernst, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*, Center for Responsible Lending 6 (2010), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf>. As a result, the foreclosure crisis has greatly exacerbated racial disparities in wealth. Between 2007 and 2010, the wealth of white families fell by 11 percent. *See* Signe-Mary McKernan, Caroline Ratcliffe, Eugene Steuerle & Sisi Zhang, *Less Than Equal: Racial Disparities in Wealth Accumulation*, The Urban Institute 3 (2013). By comparison, Hispanic families saw their wealth cut by over 40 percent, and black families saw their wealth fall by 31 percent. *Id.* at 2-3.

Foreclosures also significantly erode tax bases while simultaneously increasing local expenditures. In North Carolina, the total decline in home values and the local tax base resulting from foreclosures was estimated to be \$851 million in 2005 and 2006, several years before the peak of the foreclosure crisis. Center for Responsible Lending, *Subprime Spillover: Foreclosures Cost North Carolina Neighbors \$861 Million* 1 (2008).¹⁶ A report from the U.S. Senate's Joint Economic Committee noted that a city could lose up to \$20,000 per house abandoned in foreclosure in lost property taxes, unpaid utility bills, property upkeep, sewage, and maintenance. Joint Econ. Comm. of the U.S. Senate, *Sheltering Neighborhoods from the Subprime Foreclosure Storm* 15 (2007) (citing William C. Apgar and Mark Duda, *Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom*, National Multi-Housing Council (2005)).¹⁷ Vacant, foreclosed properties extract additional costs, in terms of both public safety and municipal finances. Properties that have completed the foreclosure process and are held by banks, known as "Real-Estate Owned" ("REO") properties, often remain unoccupied for extended periods, depressing neighboring property values and increasing the risk of neighborhood crime and blight.

¹⁶ <http://www.responsiblelending.org/north-carolina/nc-mortgage/tools-resources/facts-tips/nc-subprime-spillover-august-08-update.pdf>.

¹⁷ <http://www.jec.senate.gov/archive/Documents/Reports/subprime11apr2007revised.pdf>.

See Ingrid Gould Ellen, Josiah Madar & Mary Weselcouch, *The Foreclosure Crisis and Community Development: Exploring REO Dynamics in Hard-Hit Neighborhoods*, Furman Center for Real Estate & Urban Policy 2 (2013).¹⁸ The vulnerability of vacant REO properties to vandalism and theft further decreases the value of neighboring properties. See generally Stephen Whitaker & Thomas J. Fitzpatrick, *The Impact of Vacant, Tax-Delinquent, and Foreclosed Property on Sales Price of Neighboring Homes*, 11-23R Federal Reserve Bank of Cleveland 1, 4-5 (March 2012).¹⁹

Vacant properties also reduce “eyes on the street” and provide venues for illicit activity. Ingrid Gould Ellen, Josiah Madar & Mary Weselcouch, *supra*, at 4. The violent crime rate in Charlotte, North Carolina tripled in high-foreclosure neighborhoods. G. Thomas Kingsley, Robin Smith & David Price, *The Impacts of Foreclosures on Families and Communities*, The Urban Institute 17-18 (2009) (citing Michael Bess, *Assessing the Impact of Home Foreclosures in Charlotte Neighborhoods*, 1 Geography & Public Safety 1, 2-4 (2008)).²⁰ In New

¹⁸ <http://furmancenter.org/files/publications/REOHardHitWorkingPaperApril2013.pdf>.

¹⁹ <http://www.clevelandfed.org/research/workpaper/2011/wp1123r.pdf>.

²⁰ http://www.urban.org/UploadedPDF/411909_impact_of_forclosures.pdf.

York City, a single foreclosure led to a 1.3 percent increase in total crime, a 2.6 percent increase in violent crime, and a 2.6 percent increase in public order crime on that block. Furman Center for Real Estate & Public Policy, *Do Foreclosures Cause Crime?* 3 (Feb. 2013).²¹ Foreclosures in these neighborhoods require municipalities to spend more on policing²² and firefighting. A fire on a foreclosed property can cost a municipality \$34,000. G. Thomas Kingsley, Robin Smith & David Price, *supra.* at 20.²³ (citing William C. Apgar and Mark Duda, *supra.*, at 31). Foreclosures also increase demand for social services at times when hard-hit communities can ill afford to fund the increased need. *See* G. Thomas Kingsley, Robin Smith & David Price, *supra.*, at 6. Taxpayers ultimately pay the bill for the substantially increased costs of these public services caused by the foreclosure crisis.

As with other collateral impacts of foreclosure, increases in neighborhood blight and crime due to REO properties, and their related municipal costs, have disproportionately harmed communities of

²¹ <http://furmancenter.org/files/publications/DoForeclosuresCauseCrime.pdf>.

²² *See* William C. Apgar & Mark Duda, *The Municipal Cost of Foreclosures: A Chicago Case Study*, Homeownership Preservation Foundation 24 (Feb. 2005), available at <http://www.nw.org/network/neighborworksProgs/foreclosuresolutionsOLD/documents/2005Apgar-DudaStudy-FullVersion.pdf>.

²³ http://www.urban.org/UploadedPDF/411909_impact_of_foreclosures.pdf.

color. A study by the National Fair Housing Alliance found substantial disparities between the maintenance of REO properties in communities of color and those in predominantly white communities. *See generally* National Fair Housing Alliance, *The Banks Are Back – Our Neighborhoods Are Not: Discrimination in the Maintenance and Marketing of REO Properties 2* (Nov. 2011);²⁴ *see also* Debbie Gruenstein Bocian, Wei Li & Keith S. Ernst, *Foreclosures by Race and Ethnicity* at 3-4, available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf>.

The broad availability of TILA rescission rights can limit the number of foreclosures, significantly mitigating collateral harms to communities, and thereby benefitting the broader economic recovery, *see* Robert C. Hockett, *It Takes a Village: Municipal Condemnation Proceedings and Public/Private Partnerships for Mortgage Loan Modification, Value Preservation, and Local Economic Recovery*, 18 Stan. J.L. Bus. & Fin. 121, 135-36 n.65 (2012). The robust protection of TILA rights is thus vitally important to the well-being of homeowners, neighborhoods, and municipalities.

²⁴ http://www.nationalfairhousing.org/Portals/33/the_banks_are_back_web.pdf.

CONCLUSION

Congress created the right of rescission to protect homeownership and made it easy for a homeowner to rescind through simple notice. The plain language of the statute and the contemporaneous interpretation of the Federal Reserve Board confirm that a lawsuit is not required to exercise the right. The Court should uphold this rule.

Respectfully submitted,

NINA F. SIMON
1629 K STREET, NW
STE. 300
WASHINGTON, DC 20006
202 827-9770

CAROLYN L. CARTER
STUART ROSSMAN
NATIONAL CONSUMER
LAW CENTER
7 WINTHROP SQUARE
BOSTON, MA 02110
617 542-8010

DENNIS D. PARKER
LAURENCE M. SCHWARTZTOL
RACHEL E. GOODMAN
AMERICAN CIVIL LIBERTIES UNION
125 BROAD ST.,
NEW YORK, NY 10004
212 549-2500

JEAN CONSTANTINE-DAVIS*
*Counsel of Record
AARP FOUNDATION
LITIGATION
601 E STREET, NW
WASHINGTON, DC 20049
jcdavis@aarp.org
202 434-2060

ATTORNEYS FOR AMICI CURIAE

APPENDIX

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APPENDIX A

**TRUTH IN LENDING, ORIGINAL 1968
ACT**

Pub. L. No. 90-321 (1968)

(15 U.S.C. §§ 1635, 1640)

**§ 125. Right of rescission as to certain
transactions**

(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

Original Act

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within ten days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

(c) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this title by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

Original Act

(d) The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

...

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this chapter to be disclosed to that person is liable to that person in an amount equal to the sum of

(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than \$100 nor greater than \$1,000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the

Original Act

action together with a reasonable attorney's fee as determined by the court.

...

(e) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

1974 AMENDMENTS TO THE TRUTH IN LENDING ACT

Pub. L. No. 93-495 (1974); 15 U.S.C. § 1635(f), § 1640(a)

§ 405. Time limit for right of rescission

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is amended by adding at the end thereof a new subsection as follows:

“(f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the obligor.”

...

§ 408. Civil liability

(a) Section 130 (a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended to read as follows:

“(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter or chapter 4 of this title with respect to any person is liable to such person in an amount equal to the sum of--

“(1) any actual damage sustained by such person as a result of the failure;

1974 Amendments

“(2)(A) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

“(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of \$100,000 or 1 per centum of the net worth of the creditor; and

“(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. . . .”

TRUTH IN LENDING SIMPLIFICATION ACT

Pub. L. No. 96-221 (1980); 15 U.S.C. § 1635,
§ 1640(a)

SEC. 612. (a)(l) Section 125(a) of the Truth in Lending Act (15 U.S.C. 1635(a)) is amended to read as follows:

“(a) Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this title, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.”.

Truth In Lending Simplification Act

...

(3) Section 125(b) of the Truth in Lending Act (15 U.S.C. 1635(b)) is amended by striking out "ten days" each place it appears therein and inserting in lieu thereof "20 days".

(4) Section 125(b) of the Truth in Lending Act (15 U.S.C. 1635(b)) is amended by adding at the end thereof the following new sentence: "The procedures prescribed by this subsection shall apply except when otherwise ordered by a court."

(5) Section 125(c) of the Truth in Lending Act (15 U.S.C. 1635(c)) is amended by inserting "information, forms, and" after "whom".

...

"(f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this chapter have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this title institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of section 125, and (3) the obligor's right to rescind is

Truth In Lending Simplification Act

based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

“(g) In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 130 for violations of this title not relating to the right to rescind.”.

...

SEC. 615. (a) Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended--

(1) in subsection (a)(2)(B), by striking out “in such action” and inserting in lieu thereof "under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor”;

(2) in subsection (a)(3), by inserting "or in any action in which a person is determined to have a right of rescission under section 125" after "liability”;

...

Truth In Lending Simplification Act

(b) Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) by inserting “, including any requirement under section 125,” immediately after "this chapter";

...

**TRUTH IN LENDING ACT AMENDMENTS OF
1995**

Pub. L. No. 104-29 (1995); 15 U.S.C. § 1649, § 1635

SEC. 4. LIMITATION ON LIABILITY.

(a) In General.--Chapter 2 of the Truth in Lending Act (*15 U.S.C. 1631* et seq.) is amended by adding at the end the following new section:

“Sec. 139. 15 U.S.C. 1649 CERTAIN
LIMITATIONS ON LIABILITY.

“(a) Limitations on Liability.--For any consumer credit transaction subject to this title that is consummated before the date of the enactment of the Truth in Lending Act Amendments of 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this title for, and a consumer shall have no extended rescission rights under section 125(f) with respect to--

...

“(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or

1995 Amendments

“(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

“(A) may be treated as accurate for purposes of this title if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$ 200;

“(B) may, under section 106(f)(2), be treated as accurate for purposes of section 125; or

“(C) is greater than the amount or percentage required to be disclosed under this title.

“(b) Exceptions.--Subsection (a) shall not apply to—

“(1) any individual action or counterclaim brought under this title which was filed before June 1, 1995;

“(2) any class action brought under this title for which a final order certifying a class was entered before January 1, 1995;

“(3) the named individual plaintiffs in any class action brought under this title which was filed before June 1, 1995; or

1995 Amendments

“(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.”.

(c) Clerical Amendment.--The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 138 the following new item:

“139. Certain limitations on liability.”.

Sec. 5. LIMITATION ON RESCISSION LIABILITY.

Section 125 of the Truth in Lending Act (*15 U.S.C. 1635*) is further amended by adding at the end the following new subsection:

“(h) Limitation on Rescission.--An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.”.

...

Sec. 8. RESCISSION RIGHTS IN FORECLOSURE.

Section 125 of the Truth in Lending Act (*15 U.S.C. 1635*) is amended by inserting after

1995 Amendments

subsection (h) (as added by section 5 of this Act) the following new subsection:

“(i) Rescission Rights in Foreclosure.—

“(1) In general.-- Notwithstanding section 139, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

“(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

“(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

“(2) Tolerance for disclosures.-- Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the

1995 Amendments

initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$ 35 or is greater than the amount required to be disclosed under this title.

“(3) Right of recoupment under state law.-- Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

“(4) Applicability.-- This subsection shall apply to all consumer credit transactions in existence or consummated on or after the date of the enactment of the Truth in Lending Act Amendments of 1995.”.

CURRENT STATUTE

15 U.S.C. § 1635, § 1640 (2012)

§ 1635. Right of rescission as to certain transactions

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

Current Statute**(b) Return of money or property following rescission**

When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

Current Statute

(c) Rebuttable presumption of delivery of required disclosures

Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) Modification and waiver of rights

The Bureau may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) Exempted transactions; reapplication of provisions

...

(f) Time limit for exercise of right

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this

Current Statute

part have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) Additional relief

In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.

(h) Limitation on rescission

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Bureau, or a

Current Statute

comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) Rescission rights in foreclosure

(1) In general

Notwithstanding section 1649 of this title, and subject to the time period provided in subsection (f) of this section, in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if-

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

Current Statute

(2) Tolerance for disclosures

Notwithstanding section 1605(f) of this title, and subject to the time period provided in subsection (f) of this section, for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this subchapter.

(3) Right of recoupment under State law

Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

Current Statute

§ 1640. Civil liability

**(a) Individual or class action for damages;
amount of award; factors determining amount
of award**

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, subsection (f) or (g) of section 1641 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of-

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, . . .

or (iv) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$400 or greater than \$4,000;
or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser

Current Statute

of \$1,000,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 or 1638(e)(7) of this title, the costs of the action, together with a reasonable attorney's fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 1639 of this title, paragraph (1) or (2) of section 1639b(c) of this title, or section 1639c(a) of this title, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

...

(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement

Except as provided in the subsequent sentence, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation

...

Any action under this section with respect to any violation of section 1639, 1639b, or 1639c of this title may be brought in any United States district court,

Current Statute

or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 1639, 1639b, 1639c, 1639d, 1639e, 1639f, 1639g, or 1639h of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may-

- (1) intervene in the action;
- (2) upon intervening-
 - (A) remove the action to the appropriate United States district court, if it was not originally brought there; and
 - (B) be heard on all matters arising in the action; and
- (3) file a petition for appeal.

Current Statute

...

(i) Class action moratorium'

(1) In general

During the period beginning on May 18, 1995, and ending on October 1, 1995, no court may enter any order certifying any class in any action under this subchapter-

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor-

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 1638 of this title;

(ii) to properly make any other disclosure required under section 1638 of this title as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 1635(a) of this title due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Bureau or from among forms based on such model forms.

Current Statute

(2) Exceptions for certain alleged violations

Paragraph (1) shall not apply with respect to any action-

(A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 1606(c) of this title; or

(B) described in paragraph (1)(B)(iii), if-

(i) no notice relating to rescission rights under section 1635(a) of this title was provided in any form; or

(ii) proper notice was not provided for any reason other than the reason described in such paragraph.

APPENDIX B

Regulation Z, 12 C.F.R. § 226.9

34 Fed. Reg. 2009-2010 (Feb. 11, 1969)

§ 226.9. Right to rescind certain transactions.

(a) *General rule.* Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day,¹⁴ following the date of consummation of that transaction or the date of delivery of the disclosures required under this section and all other material disclosures required under this part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so. Notification by mail shall be considered given at the time mailed; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to the creditor's designated place of business.

¹⁴ For the purposes of this section, a business day is any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving, and Christmas.

Regulation Z 1969

(b) *Notice of opportunity to rescind.* Whenever a customer has the right to rescind a transaction under paragraph (a) of this section, the creditor shall give notice of that fact to the customer by furnishing the customer with two copies of the notice set out below, one of which may be used by the customer to cancel the transaction. Such notice shall be printed in capital and lower case letters of not less than 12-point bold-faced type on one side of a separate statement which identifies the transaction to which it relates. Such statement shall also set forth the entire paragraph (d) of this section, "Effect of rescission." If such paragraph appears on the reverse side of the statement, the face of the statement shall state: "See reverse side for important information about your right of rescission." Before furnishing copies of the notice to the customer, the creditor shall complete both copies with the name of the creditor, the address of the creditor's place of business, the date of consummation of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the customer may give notice of cancellation.

Notice to customer required by Federal Law:

You have entered into a transaction on
_____ which may result in a lien,
(Date)

Regulation Z 1969

mortgage, or other security interest on your home. You have a legal right under Federal Law to cancel this transaction, if you desire to do so, without any penalty or obligation within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage, or other security interest on your home arising from this transaction is automatically void. You are also entitled to receive a refund of any downpayment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying:

(Name of creditor)

at _____
(Address of creditor's place of business)
by mail or telegram sent not later than midnight of

(Date)

You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby cancel this transaction _____
(Date)

(Customer's signature)

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(c) Delay of performance. Except as provided in paragraph (e) of this section, the creditor in any transaction subject to this section shall not perform, or cause or permit the performance of, any of the following actions until after the rescission period has expired and he has reasonably satisfied himself that the customer has not exercised his right of rescission:

- (1) Disburse any money other than in escrow;
- (2) Make any physical changes in the property of the customer;
- (3) Perform any work or service for the customer; or
- (4) Make any deliveries to the residence of the customer if the creditor has retained or will acquire a security interest other than one arising by operation of law.

(d) Effect of rescission. When a customer exercises his right to rescind under paragraph (a) of this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the

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customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within 10 days after the tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

Regulation Z, § 226.9(h) (1975)

40 Fed. Reg. 30086 (July 17, 1975)

§ 226.9. Right to rescind certain transactions.

...

(h) *Time limit for unexpired right of rescission.* In the event the creditor fails to deliver to the customer the disclosures required by this section or the other material disclosures required by this Part, a customer's right to rescind a transaction pursuant to this section shall expire the earlier of (1) three years after the date of consummation of the transaction, or (2) the date the customer transfers all his interest, both equitable and legal, in the property.

Regulation Z, § 226.23 (1981)

46 Fed. Reg. 20848 121-123 (April 7, 1981)

§ 226.23. Right of rescission.

(a) *Consumer's right to rescind.* (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. n47

n 47 For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

Regulation Z, § 226.23 (1981)

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, n48 whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with § 125(f) of the act.

n 48 The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, and the payment schedule.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

Regulation Z, § 226.23 (1981)

(2) The consumer's right to rescind the transaction.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

(c) *Delay of creditor's performance.* Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) *Effects of rescission.* (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action

Regulation Z, § 226.23 (1981)

necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d) (2) and (3) of this section may be modified by court order.

(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

37a

Regulation Z, § 226.23 (1981)

(f) *Exempt transactions.* The right to rescind does not apply to the following: . . .

12 C.F.R. §1026.23 – CURRENT REGULATION Z

§1026.23 Right of rescission.

(a) Consumer's right to rescind. (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3)(i) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice

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required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(ii) For purposes of this paragraph (a)(3), the term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g).

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b)(1) Notice of right to rescind. In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall be on a separate document that identifies the transaction

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and shall clearly and conspicuously disclose the following:

(i) The retention or acquisition of a security interest in the consumer's principal dwelling.

(ii) The consumer's right to rescind the transaction.

(iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(iv) The effects of rescission, as described in paragraph (d) of this section.

(v) The date the rescission period expires.

(2) Proper form of notice. To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this part or a substantially similar notice.

(c) Delay of creditor's performance. Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

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(d) Effects of rescission. (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

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(e) Consumer's waiver of right to rescind. The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) Exempt transactions. The right to rescind does not apply to the following:

. . . .

(g) Tolerances for accuracy. (1) One-half of 1 percent tolerance. Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) Is understated by no more than 1/2 of 1 percent of the face amount of the note or \$ 100, whichever is greater; or

(ii) Is greater than the amount required to be disclosed.

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(2) One percent tolerance. In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) Is understated by no more than 1 percent of the face amount of the note or \$ 100, whichever is greater; or

(ii) Is greater than the amount required to be disclosed.

(h) Special rules for foreclosures. (1) Right to rescind. After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

(i) A mortgage broker fee that should have been included in the finance charge was not included; or

(ii) The creditor did not provide the properly completed appropriate model form in Appendix H of this part, or a substantially similar notice of rescission.

(2) Tolerance for disclosures. After the initiation of foreclosure on the consumer's principal dwelling

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that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

- (i) Is understated by no more than \$ 35; or
- (ii) Is greater than the amount required to be disclosed.