

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10760**
January 9, 1995]

TRUTH IN LENDING

**Proposed Amendment to Regulation Z Concerning Consumer's
Right of Rescission**

Comments Invited by January 30, 1995

*To All Depository Institutions and Others Concerned,
in the Second Federal Reserve District:*

The following statement has been issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has invited public comment on whether consumers might benefit from greater flexibility in waiving the right of rescission under the Truth in Lending Act.

Comment should be submitted by January 30, 1995.

Under Truth in Lending, consumers have three days to rescind an extension of credit when their principal dwelling is used as collateral. The Riegle Community Development and Regulatory Improvement Act of 1994 directs the Board to make recommendations to Congress on whether consumers would benefit from greater flexibility in waiving this right when loans secured by a home are being refinanced or consolidated with new creditors and no additional debt is incurred.

Recommendations must be submitted to Congress in March of 1995.

Printed on the reverse side is the text of the proposal, which has been published in the *Federal Register*. Comments thereon should be submitted by January 30, 1995, and may be sent to the Board of Governors, as specified in the Board's notice, or to our Compliance Examinations Department.

WILLIAM J. McDONOUGH,
President.

(OVER)

FEDERAL RESERVE SYSTEM

[Docket No. R-0864]

Truth in Lending**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice; request for comments.

SUMMARY: The Board is soliciting public comment on whether consumers would benefit from having greater flexibility in waiving the right of rescission in transactions with new creditors to refinance or consolidate home-secured loans (where no additional debt is incurred). The Riegle Community Development and Regulatory Improvement Act of 1994 directs the Board to make recommendations to the Congress regarding this narrow expansion of the waiver of the right of rescission, after consulting with the Consumer Advisory Council to the Board, consumers, representatives of consumers, lenders, and other interested parties. Under present law, consumers may waive the right of rescission in refinancings or consolidations with new creditors only when a bona fide personal financial emergency exists (whether or not additional debt is incurred). When a consumer refinances a loan with the same creditor and no additional debt is incurred, the right of rescission does not apply; if additional debt is undertaken, the right of rescission applies only to the new money advanced.

DATES: Comments must be received on or before January 30, 1995.

ADDRESSES: Comments should refer to Docket No. R-0864, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for the hearing impaired only, Dorothea Thompson,

Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:**I. Background**

The Truth In Lending Act (TILA), 15 U.S.C. 1601-1666j, and Regulation Z, 12 CFR 226.15 and 226.23, provide that in a consumer credit transaction in which the consumer's principal dwelling secures an extension of credit, the consumer has three business days in which to rescind the transaction after becoming obligated on the debt. This right of rescission was created to allow consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to place an important asset—the home—at risk by offering it as security for credit.

Not all credit transactions secured by a consumer's principal dwelling are subject to the right of rescission. The TILA exempts home purchase-money loans from the right of rescission. For closed-end credit transactions, the right also does not apply when a consumer refinances a home-secured loan with the same creditor (the "original" creditor) and doesn't incur additional debt (no "new money" is advanced). Refinancings by a creditor other than the original creditor, on the other hand, are completely new transactions and are subject to the right of rescission.

In a transaction subject to the right of rescission, a consumer must be given notice of the right to rescind at the time the consumer becomes legally obligated on the credit transaction. The notice must disclose that the creditor has a security interest in the consumer's home, that the consumer may rescind, how the consumer may rescind, the effects of rescission, and the date the rescission period expires.

To rescind a transaction, a consumer must notify the creditor in writing within three business days of the last of three events: (1) Consummation of the loan; (2) delivery of the TILA disclosures; or (3) receipt of the required notice of the right to rescind. The creditor may not disburse any monies or provide services or materials until the three-day rescission period has lapsed and the creditor is reasonably satisfied the consumer has not rescinded.

A consumer who rescinds the transaction must be returned to his or her original position. Specifically, the creditor must refund to the consumer all monies paid and terminate its security interest in the consumer's home. Once the creditor has fulfilled its obligations, the consumer must return any monies or property already delivered to the consumer in the transaction.

Under present law, a consumer may waive the right of rescission and receive immediate disbursement of the funds only when the consumer has a bona fide personal financial emergency. While the consumer provides the explanation for the bona fide personal financial emergency, in practice the lender determines the sufficiency of the explanation. The Board has not given much guidance as to what constitutes a bona fide personal financial emergency, as that matter is between the consumer and lender; however, a foreclosure is one example. Given the liability for failure to comply with the present rescission rules, creditors are generally reluctant to accept consumer waivers.

II. Riegle Community Development and Regulatory Improvement Act of 1994

Section 344 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160, enacted into law on September 23, 1994, directs the Board, in consultation with its Consumer Advisory Council, consumers, consumer representatives, lenders, and interested parties, to submit recommendations to the Congress on whether consumers would benefit from the ability to more freely waive the right the rescission in connection with loans with new creditors to refinance or consolidate debt, where no additional debt is incurred (no "new money" is advanced). The Board is publishing this notice to solicit the comment of interested parties on this specific issue.

Waiver of the right to rescind was a topic on the Consumer Advisory Council agenda at its November 1994 meeting. The Council members expressed many divergent views, and the Council made no specific recommendation to the Board on the rescission issue.

Based on the Council discussion, the comments of interested parties, and its own analysis, the Board will present recommendations to the Congress in March 1995.

By order of the Board of Governors of the Federal Reserve System, December 15, 1994

William W. Wiles,

Secretary of the Board

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