December 21, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: Docket No. R-1390

Dear Secretary Johnson:

The National Community Reinvestment Coalition (NCRC) urges you to withdraw your proposed rule on rescission and the coverage test for triggering protections under Regulation Z and the Homeowners Equity Protection Act (HOEPA). Since we are in the midst of a foreclosure crisis caused by risky and problematic lending, enhancing consumer protections are essential at this point in our nation's history. Your proposal will reduce consumer protections and will therefore harm consumers that are desperately seeking to avoid foreclosure by modifying or refinancing out of abusive loans and into affordable and sustainable loans. Moreover, your proposal will leave consumers vulnerable to new predatory lending practices in the future.

In contrast to your proposals on rescission and HOEPA coverage, your proposals on improving disclosures and protections associated with reverse mortgages are helpful with the exception of your safe harbor proposal. The safe harbor proposal must be withdrawn. With some improvements to the other elements of the reverse mortgage proposals, these proposals should move forward to implementation.

NCRC is an association of more than 600 community-based organizations that promote access to basic banking services including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America's working families. NCRC member organizations and our Housing Counseling Network work with thousands of families each year in efforts to save their homes from imminent foreclosure and problematic lending. Our counselors observe that a lack of consumer protections and rampant fraudulent lending practices was one of the major causes of the foreclosure crisis.

Right of Rescission

In 1968, Congress enacted the Truth-in-Lending Act (TILA) as part of the Consumer Credit Protection Act. The purpose of this legislation was to provide consumers with meaningful

disclosures of certain terms and conditions contained in loan documents. TILA requires the lender to provide disclosures about finance charges, interest rates, and other material loan terms. TILA affords a consumer denied these protections the right to rescind the loan and have the improper lien on the property voided. This enables the wronged borrower the right to a refund of any sums wrongfully paid to the non compliant lender, as well as an opportunity to refinance into a new loan providing the necessary funds to pay back any sums that may be due to such lender. Today, the Federal Reserve seeks to modify this long standing rule by requiring the consumer to *first* pay back the funds advanced by the lender who did not comply with the Act. Thus, for 42 years, consumers have had the opportunity and leverage to protect themselves from incorrect loan documents by exercising a right to rescind the loan. Lenders, faced with the knowledge that the loan could be rescinded were motivated to comply with the Act. This has served as a powerful tool to compliance and an invaluable remedy to consumers who have been denied the proper disclosures.

The Federal Reserve proposes a rule change that requires consumers to obtain the funds needed to pay off the creditor before the consumer can obtain redress. The Federal Reserve explains that the reasoning behind its proposal to modify the consumer's right to rescission is to reduce uncertainty and litigation costs. This change solely benefits lenders and is a major transformation from the purpose of the statute. Under TILA, as enacted, a wronged borrower is given up to three years to rescind the mortgage by providing notice to the lender who is then obligated to terminate the lien on the property. Increased consumer exercise of this statute in recent years, is a result of increased awareness that mortgage documents may be flawed and an increase in opportunities for consumer attorneys to review loan documents.

Although the underlying purpose of TILA was and remains consumer protection, the change as proposed by the Federal Reserve limits the consumers' right to rescind. The timing of this rule change is premature and deprives the incoming Consumer Financial Protection Bureau (CFPB) from exercising its mission and purpose. The new CFPB assumes responsibility for many mortgage related consumer protections as part of the financial regulatory overhaul beginning in July, 2011. The new regulator must be provided a chance to establish its rules and determine the effectiveness of consumer protection provisions currently in effect.

The Federal Reserve proposal to effectively eliminate the consumers' right to rescind is an unwarranted benefit to the mortgage industry at a time when lax enforcement by the nation's financial regulators is widely recognized to have been a major cause of the nation's economic and housing crises. Moreover, recent and ongoing developments regarding mortgage servicing and foreclosure practices raise serious questions about financial industry compliance with established regulations and statutes. The Federal Reserve has faced criticism for its enforcement

shortcomings and failure to adhere to its mission to protect borrowers from deceptive mortgage products. Indeed, this failure of the Federal Reserve and other regulators to adequately protect consumers is the very reason the Consumer Financial Protection Bureau was created.

NCRC asks the Federal Reserve to revoke the proposed requirement that wronged consumers must first pay off a violating lender before obtaining redress for such lender's non compliant practices. By withdrawing this proposed change, the Federal Reserve would recognize both the intent of TILA and the mission of the Federal Reserve to protect the credit rights of consumers.

HOEPA Coverage

The Federal Reserve recently amended Regulation Z to provide additional consumer protections for higher priced loans. Higher priced loans are defined as loans with an Annual Percentage Rate (APR) that exceeds the average APR of prime loans by 1.5 percentage points in the case of first lien loans and 3.5 percentage points in the case of second lien loans. The protections for higher priced loans include enhanced requirements to assess a borrower's ability to repay without regard to collateral, verification of borrowers income, and restrictions on prepayment penalties. When the Federal Reserve implemented their new requirements, the Federal Reserve stated that it was their intention to cover the entire subprime market and if anything, err on the side of covering "somewhat more than the subprime market."

The Federal Reserve is concerned, however, that a loan's APR is not the appropriate rate to compare against an average prime offer rate. The average prime rate is derived from a survey conducted by Freddie Mac. While both the average prime rate from the Freddie Mac survey and the APR capture contract interest rates and discount points, the Federal Reserve concludes that the APR is also capturing third party fees while the average prime offer rate from the Freddie Mac survey does not include these fees. Therefore, the Federal Reserve asserts that using the APR which includes fees that the Freddie Mac survey does not results in more loans being considered higher priced loans and therefore triggering the extra consumer protections.

The Federal Reserve Board proposes to remove the APR and replace it with a coverage rate that does not include third party charges that are not in the Freddie Mac survey. Also, fees that are not retained by the creditor or its affiliates would not be included in the coverage rate. The coverage rate would not be disclosed to the consumer while the APR would continue to be disclosed to the consumer.

NCRC believes that this proposal is quite problematic. Firstly, it would make sense to continue to err on the side of covering "somewhat more" than the subprime market since the current

foreclosure crisis demonstrates that more consumer protections, not less, are needed. Concluding that using the APR would inappropriately include more loans as those receiving enhanced protections implicitly sides with the industry argument that more protections choke off access to credit. Instead, if anything, this current crisis demonstrates that relatively few consumer protections facilitates widespread abusive lending that imperils consumers, endangers the safety and soundness of the financial industry, and threatens the economic health of the country.

Second, a level of transparency is lost by the proposed coverage rate which is not disclosed to the consumer. Consumers and their legal counsel will therefore not be able to determine if a lender properly categorized their loans as higher priced or not higher priced loans.

Third, it is unclear when broker fees and yield spread premiums (YSPs) are included in the proposed coverage rate. The APR is more appropriate as a benchmark rate to compare against the average prime offer rate because is more effective at capturing broker charges and YSPs and is therefore more effective at capturing the total loan costs for the consumer.

Fourth, the Federal Reserve's proposal is not backed up with thorough research. The Federal Reserve makes no attempt to quantify the impact of its proposal. How many loans were considered higher-priced loans under the existing rules and how many would be higher-priced under the proposed rules? What are the interest rates and other loan terms and characteristics of higher-priced loans under the existing and proposed rules? There is no effective way, short of conjecture, that invested stakeholders can effectively respond to the Federal Reserve's proposal without some estimate by the Federal Reserve on coverage levels before and after the proposed rule.

Fifth, the Federal Reserve does not offer a convincing rationale for dismissing alternatives. The Federal Reserve suggests that improving the Freddie Mac survey so that the average prime offer rate includes fees that the APR captures would be too expensive and burdensome. However, the proposal does not discuss whether the Federal Reserve and Freddie Mac even discussed the possibilities of revising its survey. Even some industry commenters had suggested that the average prime offer rate be more inclusive of fees to come closer to approximating an APR. It does not appear that alternatives to a hastily devised proposed rule have been completely examined.

The proposed rule for determining Regulation Z coverage levels must be withdrawn and re-designed. The proposal runs the risk of covering too few loans, is not based on empirical research, and does not completely examine alternatives. A rule determining coverage levels for

consumer protection laws must be done with extreme care to meet the needs for greater consumer protection in today's lending marketplace. This proposal falls short on these standards.

Reverse Mortgage Protections

In contrast to the Regulation Z coverage and rescission, the proposals regarding reverse mortgages will generally advance consumer protection. However, we urge you to eliminate the safe harbor regarding cross-selling and to improve some of the proposed advertising clarifications.

NCRC agrees with the Federal Reserve that enhanced consumer protections are critical to ensure responsible reverse mortgage lending. As the Federal Reserve states, "Home equity is a critical financial resource for reverse mortgage borrowers, who generally must be 62 years of age or older. Reverse mortgage borrowers also risk foreclosure if they do not clearly understand important facts about reverse mortgages."

<u>Counseling:</u> NCRC strongly supports the proposal for a mandatory counseling requirement before a consumer takes out a reverse mortgage since an abusive reverse mortgage product can endanger a consumer's lifetime of wealth creation in the form of a house. Counseling is now required before obtaining a FHA-insured Home Equity Conversion Mortgage (HECM) but not for proprietary mortgages that are not FHA insured. A uniform counseling requirement will help ensure that abusive practices are not targeted towards proprietary products which currently can be offered without counseling.

NCRC also believes that the proposal's prohibition on charging consumer fees until three business days after consumers have received counseling is an important safeguard that protects consumers from locking into problematic loans while they may lack a level of knowledge necessary for evaluating products. In addition, the prohibition against steering consumers to specific counselors or agencies is needed to protect against unscrupulous lenders steering consumers to sham counselors who may, in turn, steer consumers to predatory products.

<u>Cross Selling Prohibition:</u> NCRC appreciates that the Federal Reserve records the number of abuses associated with products often sold in conjunction with reverse mortgages. The Federal Reserve states that lenders have required reverse mortgage borrowers to purchase annuities, certificates of deposit, and long term care insurance. The Federal Reserve further explains that some of these products have few benefits. For example, annuities can often mature after a consumer's expected life expectancy. Borrowers who become aware of the exploitative nature of these products often face high fees for cancellation of the products.

In order to protect consumers against wealth-stripping policies with few benefits, the proposed ban against cross-selling other financial products is clearly needed. The Federal Reserve, however, proposes a safe harbor if the reverse mortgage is consummated at least ten calendar days before the consumer purchases another product. The safe harbor will completely undermine the ban. It would seem that all an unscrupulous lender has to do is to wait for the 11th day and then aggressively cross sell a problematic product. The elderly customer would have a level of trust that may be elevated if the lender waits almost two weeks before selling another product. It may appear to the customer that the lender is not pursuing a scam since the lender waited a long time before cross-selling instead of cross-selling immediately. Thus, the safe harbor may actually increase the chances for deception.

Reverse Mortgage Advertising: The Federal Reserve proposes that lenders include a number of clarifying statements that are equally prominent and in close proximity to a potentially misleading statement in an advertisement. For example, when a lender states that a reverse mortgage does not involve borrower payments during the borrower's lifetime, the Federal Reserve would require an equally prominent statement that the borrower must make payments for hazard insurance and property taxes. In general, NCRC agrees with the Federal Reserve's proposed qualifying statements.

NCRC asks the Federal Reserve to further clarify its proposal regarding payments that exceed a home's value. Some ads apparently state that a borrower will never repay more than a home is worth. In these cases, the Federal Reserve proposes the following clarification, "Your heirs cannot owe more than the value of your home unless they want to keep the house when the reverse mortgage is due. To keep the house, they must pay the entire loan balance which may be higher than the house's value." The clarification remains confusing and obscures the possibility of significant costs associated with foreclosure when the loan contract requires that the full amount is due even when the amount exceeds the home value. It would be more straightforward to prohibit the claim that the amount paid will not exceed the home value when the loan contract does not stipulate that repayments will not exceed the home value.

New Disclosures: NCRC is supportive of proposed changes that would simplify and clarify disclosure of key terms and conditions of reverse mortgages. The proposed two page document that describes how reverse mortgages work and key terms and conditions will be an improvement over the current document.

NCRC agrees that replacing the current total annual loan cost (TALC) disclosure with disclosures expressing information as dollar amounts would enhance consumer understanding of

how much money is advanced to the consumer, the total of all costs and charges, and the total the consumer would have to repay. It is also appropriate to provide this information for time periods of one year, five years, and ten years. The proposal indicating if the loan is fixed rate, adjustable rate, or step-rate is also an important disclosure. NCRC also supports the proposal to disclose all monthly and periodic fees and a statement of any limitation of a consumer's liability such as whether the loan is a non-recourse transaction. Moreover, for adjustable rate loans, the Federal Reserve proposes to disclose the highest and lowest index and margin during the past fifteen years. The Federal Reserve asks if only the range of the index value should be disclosed. NCRC believes that the consumer will gain a full understanding of possible costs of adjustable rate loans only if both the historical values of the index and margin are disclosed.

The Federal Reserve proposes that disclosures be provided to borrowers at least seven days before consummation in the case of a closed end loan but a shorter time period (three days) in the case of open-end mortgages. Early disclosures are key for consumers to have one last opportunity to review loan terms and conditions. Therefore, NCRC asks the Federal Reserve to adopt the seven day time period for open-end reverse mortgages as well.

Conclusion

A lack of rigorous consumer protections was a significant contributor to the current economic and foreclosure crisis. In this context, it is counterproductive for the Federal Reserve to be proposing a significant change to the right of rescission that will effectively eliminate this critical consumer protection. Similarly, the proposals on HOEPA coverage and the safe-harbor regarding cross-selling abusive products with reverse mortgages are counterproductive and must be withdrawn. On the other hand, the requirement for mandatory counseling and improved disclosures for reverse mortgages are helpful and should be implemented with NCRC's suggestions for improvements.

NCRC strongly urges the Federal Reserve Board against proceeding with the elements of the proposal that will weaken key consumer protections. The Federal Reserve must withdraw those proposals and allow the CFPB to consider these aspects of TILA.

Thank you for the opportunity to comment on this important matter. If you have any questions, please feel free to contact me on 202-628-8866.

NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

Sincerely,

John Taylor
President and CEO