No. 13-684

IN THE
Supreme Court of the United States

LARRY D. JESINOSKI AND CHERYLE JESINOSKI, INDIVIDUALS,
Petitioners,
v.

COUNTRYWIDE HOME LOANS, INC., SUBSIDIARY OF BANK OF AMERICA N.A., D/B/A AMERICA'S WHOLESALE LENDER, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR PETITIONERS

LYNN E. BLAIS
MICHAEL F. STURLEY
727 East Dean Keeton Street
Austin, Texas 78705
(512) 232-1350

MICHAEL J. KEOGH
KEOGH LAW OFFICE
P.O. Box 11297
St. Paul, Minnesota 55111
(612) 644-2861

ERIN GLENN BUSBY
411 Highland Street
Houston, Texas 77009
(713) 868-4233

DAVID C. FREDERICK
Counsel of Record
MATTHEW A. SELIGMAN
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@khhte.com)

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QUESTION PRESENTED

The Truth in Lending Act provides that a borrower "shall have the right to rescind the transaction until midnight of the third business day following . . . the delivery of the information and rescission forms required under this section . . . by notifying the creditor . . . of his intention to do so." 15 U.S.C. § 1635(a). The statute further creates a "[t]ime limit for [the] exercise of [this] right," providing that the borrower's "right of rescission shall expire three years after the date of consummation of the transaction" even if the "disclosures required . . . have not been delivered." *Id.* § 1635(f).

The question presented is:

Does a borrower exercise his right to rescind a transaction in satisfaction of the requirements of Section 1635 by "notifying the creditor" in writing within three years of the consummation of the transaction, or must a borrower file a lawsuit within three years of the consummation of the transaction?

PARTIES TO THE PROCEEDINGS

Petitioners Larry D. Jesinoski and Cheryle Jesinoski were the plaintiffs and the appellants in the proceedings below.

Respondents Countrywide Home Loans, Inc., a subsidiary of Bank of America N.A., d/b/a America's Wholesale Lender; BAC Home Loans Servicing, LP, a subsidiary of Bank of America, N.A., a Texas Limited Partnership, formerly known as Countrywide Home Loans Servicing, L.P.; Mortgage Electronic Registration Systems, Inc., a Delaware Corporation; and John and Jane Does 1-10 were the defendants and the appellees in the proceedings below.

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INTRODUCTION

The Truth in Lending Act provides the right to rescind certain home mortgages to promote the informed and efficient use of credit. The statute requires creditors to disclose to borrowers the material terms of the credit offered. Congress mandated meaningful disclosure to allow borrowers to compare credit terms and to make informed credit choices. It then created the right to rescind the transaction as an opportunity for the borrower to consider carefully the credit terms offered and to make a deliberate, informed choice about whether to accept them. To provide that opportunity in light of the disclosures required by the statute, the right to rescind extends for three days after the loan is consummated, or for three days after the mandatory disclosures are provided to the borrower, whichever is later. That right expires three years after the loan is consummated, even if the creditor never provides the mandatory disclosures.

This case raises the question whether a borrower must file a lawsuit to rescind the mortgage. Under the plain language of the statute, the answer is no. Congress used the word "notify" as the method for a borrower's exercise of the statutory right of rescission. Under that term's plain meaning and the longstanding construction by the agencies charged with administering the statute, the borrower must provide only written notice to the lender. The statute does not require the filing of a lawsuit.

The contrary interpretation accepted by the courts below and espoused by respondents rests on a strained construction of the concept of notice and necessitates adding words Congress did not include in the statute. It also thwarts the statutory purpose

of providing a non-judicial mechanism for borrowers who do not receive the statutorily required disclosures to rescind the mortgage, subject to carefully scripted procedures that return parties to their pre-transaction position.

Under the ordinary meaning of the terms that Congress used, petitioners exercised their rescission right when they provided written notice within three years of the transaction. When respondents denied the grounds for the rescission and refused to take the actions required by the statute within the 20-day statutory period, petitioners' claim accrued and they brought suit for declaratory relief within one year of respondents' default. By upholding the dismissal of petitioners' lawsuit as untimely, therefore, the court below erred.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-3a) is reported at 729 F.3d 1092. The opinion of the district court (App. 4a-9a) is not reported (but is available at 2012 WL 1365751).

JURISDICTION

The court of appeals entered its judgment on September 10, 2013, and denied a petition for rehearing on November 13, 2013 (App. 10a-11a). The petition for a writ of certiorari was filed on December 6, 2013, and granted on April 28, 2014 (JA60). This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant provisions of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and of the Federal Reserve Board's Regulation Z are reproduced both at App. 12a-19a and in the addendum to this brief.

STATEMENT

A. Statutory Background

"Passage of the Truth in Lending Act in 1968 culminated several years of congressional study and debate as to the propriety and usefulness of imposing mandatory disclosure requirements on those who extend credit to consumers in the American market." *Mourning v. Family Publ'ns Serv., Inc.*, 411 U.S. 356, 363 (1973). Congressional hearings leading to the passage of the statute revealed that, "[b]ecause of the divergent, and at times fraudulent," lending practices, "many consumers were prevented from shopping for the best terms available and, at times, were prompted to assume liabilities they could not meet." *Id.* (citing H.R. Rep. No. 90-1040, at 13 (1967); S. Rep. No. 90-392, at 1-2 (1967)). Practices resulting in the uninformed and inefficient use of credit included "vicious secondary mortgage schemes" that "victimized" and "defrauded" homeowners. 114 Cong. Rec. 1611 (1968) (statement of Rep. Cahill). Expert testimony confirmed that "such blind economic activity is inconsistent with the efficient functioning of a free economic system such as ours." *Mourning*, 411 U.S. at 363-64 (citing *Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the H. Comm. on Banking and Currency*, 90th Cong., pt. 1, at 76 (1967)).

The Truth in Lending Act "was designed to remedy the[se] problems." *Id.* at 364. Congress found that "economic stabilization would be enhanced and the competition among various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit." 15 U.S.C. § 1601(a). It stated that "[t]he informed use of credit results from an awareness of

the cost thereof by consumers." *Id.* The statute sought "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." *Id.* In particular, the statute requires creditors to disclose to borrowers certain material terms of a mortgage, including "finance charges, annual percentage rates of interest, and the borrower's rights." *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998) (citing 15 U.S.C. §§ 1631, 1632, 1635, 1638).

Section 1635(a)[1] provides that certain borrowers who secure a loan with their "principal dwelling" "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 . . . , whichever is later, by notifying the creditor . . . of his intention to do so." 15 U.S.C. § 1635(a); *see also id.* § 1635(e) (exempting certain mortgages from Section 1635(a)). Section 1635(a) thereby creates an unconditional right to rescind for three days after the consummation of the transaction and, if the creditor fails to provide the disclosures required by the statute, extends that right to rescind until three days following the ultimate delivery of that information. The statute thus allows the borrower to rescind for at least three days after receiving the disclosures.

A borrower's exercise of the right to rescind sets in motion a series of automatic steps to unwind the

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[1] This brief refers to the section numbers in Title 15 of the United States Code, which is the convention used by this Court in *Beach*, rather than to the section numbers in the enacted version of the Truth in Lending Act.

transaction, imposing obligations on both the creditor and the borrower. Section 1635(b) provides that, when a borrower "exercises his right to rescind under [Section 1635(a)], he is not liable for any finance or other charge, and any security interest given by the [borrower] . . . becomes void upon such a rescission." *Id.* § 1635(b). It next provides that, "[w]ithin 20 days after receipt of a notice of rescission, the creditor shall return to the [borrower] any money or property given as . . . downpayment . . . and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." *Id.* Subsequently, "[u]pon the performance of the creditor's obligations under this section, the [borrower] shall tender the property to the creditor," but, "[i]f the creditor does not take possession of the property within 20 days after tender by the [borrower], ownership of the property vests in the [borrower] without obligation on his part to pay for it." *Id.* These "procedures prescribed" by Section 1635(b) "shall apply except when otherwise ordered by a court." *Id.*

As originally enacted, the right to rescind never expired, extending the three-day rescission right until the creditor delivered proper disclosures, whenever that might be. In 1974, Congress amended the statute to impose a three-year limit on the right to rescind even if a creditor never delivers the disclosures required by the statute. *See* Act of Oct. 28, 1974, Pub. L. No. 93-495, § 405, 88 Stat. 1500, 1517 (codified as amended at 15 U.S.C. § 1635(f)). Section 1635(f) thus provides that a borrower's "right of rescission shall expire three years after the date of consummation of the transaction . . . notwithstanding the fact that the information . . . required under this

section or any other disclosures required under [the Act] have not been delivered to the [borrower]." 15 U.S.C. § 1635(f).

B. Regulatory Background

The Act delegated to the Federal Reserve Board "broad authority to promulgate regulations necessary to render the Act effective." *Mourning*, 411 U.S. at 365; *see* Truth in Lending Act, Pub. L. No. 90-321, tit. I, §§ 103(b), 105, 82 Stat. 146, 147, 148 (1968). The statute further provided that "[t]hese regulations may contain such classifications, differentiations, or other provisions . . . as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." *Id.* § 105, 82 Stat. 148. Section 1635(a) itself provides that "the [borrower] shall have the right to rescind the transaction . . . by notifying the creditor*, in accordance with regulations of the Board*, of his intention to do so." *Id.* § 125(a), 82 Stat. 152 (codified as amended at 15 U.S.C. § 1635(a)) (emphasis added).

In 1969, the Board promulgated the requisite implementing regulations (which became known as "Regulation Z") after a notice-and-comment process that included consultation with an advisory panel of "representatives of diverse retail, lending, and consumer groups." *Mourning*, 411 U.S. at 368. Regulation Z states that, "[t]o exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication." 12 C.F.R. § 226.23(a)(2).

The regulations mandate that the creditor deliver the required disclosures to every person who has an ownership interest in the property, each of whom has the right to rescind. *See id.* § 226.23(a)(1) ("each

consumer whose ownership interest is . . . subject to the security interest shall have the right to rescind"); *id*. § 226.23(b)(1) ("a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind"); *id.* § 226.17(d) ("If the transaction is rescindable . . . , the disclosures shall be made to each consumer who has the right to rescind."). This requirement ensures that every owner of the property is informed of the transaction's terms and of the right to rescind. *See* Official Commentary to 12 C.F.R. § 1026.23(b)(1) ("In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice . . . and one copy of the disclosures."), *available at* http://www.consumerfinance.gov/eregulations/1026-23/2013-30108_20140118#1026-23-b-1-ii. The regulations thus protect the interests of both spouses should they divorce or choose for any reason not to act jointly with respect to the property.

In the past decade, Congress again confronted "the prevalence of unsound lending practices, including predatory lending tactics" that it had first addressed a generation before. S. Rep. No. 111-176, at 43 (2010). In 2010, Congress responded to the financial crisis with the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Dodd-Frank Act aimed "to protect consumers from abusive financial services practices" including predatory mortgage lending. *Id.*, Preamble, 124 Stat. 1376. The Dodd-Frank Act created the Consumer Financial Protection Bureau, to which Congress transferred regulatory authority

over the Truth in Lending Act, using the same broad terms of delegation. *See* Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, tit. X § 1061(b)(1), (d), 124 Stat. 1376, 1955, 2036, 2039 (codified at 12 U.S.C. § 5581(b)(1), (d)). Under that authority, in 2011 the Bureau re-promulgated Regulation Z without changing the rescission provision. *See* Interim Final Rule, Truth in Lending (Regulation Z), 76 Fed. Reg. 79,768, 79,803-04 (Dec. 22, 2011) (promulgated at 12 C.F.R. § 1026.23); Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 79,730, 79,850 (Dec. 31, 2013) ("[t]he Bureau declines to . . . amend the rescission rules)" (citing 15 U.S.C. § 1635(a)).

C. Factual Background

On February 23, 2007, petitioners Larry and Cheryle Jesinoski refinanced the mortgage on their primary residence in Eagan, Minnesota, by executing a promissory note for $611,000 with Countrywide Home Loans, Inc. App. 5a.[2] At the closing of the transaction, the creditor failed to provide two copies of a Notice of Right to Cancel for each of the Jesinoskis and two copies of a Truth in Lending Disclosure Statement, as required by the statute. *See* JA29 (Am. Compl. ¶¶ 19-20). The creditors never delivered the required disclosures. App. 5a.

On February 23, 2010, within the three-year limitation period set by Section 1635(f), the Jesinoskis

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[2] Because petitioners' case was dismissed on the pleadings, this background provides the First Amended Complaint's pleaded facts, which at this stage of the case are assumed to be true. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321 (2007).

exercised their right to rescind the transaction by sending written notice of rescission to respondents. *Id.*; *see* Add. 9-10. On March 12, 2010, respondent Bank of America Home Loans replied to the Jesinoskis' notice of rescission by refusing to acknowledge the rescission. App. 5a. No other interested party responded to the Jesinoskis' notice of rescission. *See* JA30 (Am. Compl. ¶ 33). The creditors subsequently failed to take, within 20 days of receipt of the notice of rescission, any of the steps required by Section 1635(b) to return the money paid by the Jesinoskis or to reflect the termination of the security interest in the Jesinoskis' home. *See id.* (Am. Compl. ¶ 31).

D. Proceedings Below

On February 24, 2011, the Jesinoskis filed a complaint in the United States District Court for the District of Minnesota seeking to enforce the rescission they had exercised one year earlier. App. 5a-6a. Their amended complaint, filed on July 22, 2011, sought a declaration that the mortgage transaction had been rescinded by their written notice dated February 23, 2010; damages under Section 1640 for respondents' violations of the statute; and damages under state-law causes of action arising from violations of federal mortgage regulatory law. App. 6a. Respondents answered and moved for judgment on the pleadings on the ground that the Jesinoskis' suit was barred because the complaint was filed more than three years after the consummation of the transaction. App. 7a-9a.

The district court granted respondents' motion. App. 9a. The court held that "a suit for rescission filed more than three years after consummation of an eligible transaction is barred by [the Act's] statute of

repose" in Section 1635(f). *Id.* Because "there is no dispute that [the Jesinoskis] failed to file suit within the three-year period," the court held that "their claims are time-barred." *Id.*

The Jesinoskis appealed to the Eighth Circuit, which affirmed the district court's judgment. The per curiam opinion noted that the Eighth Circuit "recently weighed in on the circuit split regarding this precise issue and held that a party seeking to rescind a loan transaction must file suit within three years of consummating the loan." App. 2a (citing *Keiran v. Home Capital, Inc.*, 720 F.3d 721, 726-29 (8th Cir. 2013), *petition for cert. pending*, No. 13-705 (U.S. filed Dec. 9, 2013)). On that ground alone, the court of appeals "affirm[ed] the district court's judgment on the pleadings in favor of the lenders." *Id.*

Two members of the panel each concurred separately to express their views that the Eighth Circuit's precedent compelled the wrong result. Judge Melloy wrote that, "[w]ere we writing on a clean slate, . . . I would hold . . . that sending notice within three years of consummating a loan is sufficient to 'exercise' the right to rescind." App. 2a-3a (Melloy, J., concurring in the judgment) (citing 12 C.F.R. § 1026.23(a)(2)). Judge Colloton wrote that he "believe[s] that *Keiran* . . . was wrongly decided . . . and I would reverse the judgment of the district court if the question presented were open in this circuit." App. 3a (Colloton, J., concurring).

The Jesinoskis petitioned for rehearing en banc, which the Eighth Circuit denied by a vote of 6 to 4. App. 10a.

SUMMARY OF ARGUMENT

I.A. Section 1635(a) of Title 15 both creates the right to rescind and specifies the method of its exercise: "by notifying the creditor." The ordinary meaning of this phrase is that the borrower must inform the creditor that the borrower rescinds the mortgage contract. Every dictionary definition of "notify" confirms that ordinary meaning and none mentions a lawsuit. In accord with that ordinary meaning, Congress consistently used "notify" and "notice" elsewhere in the statute to mean "inform." There is thus no textual basis in the statute to impose an unstated requirement that the borrower file a lawsuit to exercise the right to rescind.

B. The structure of the statute confirms that there is no requirement to file suit to exercise the right to rescind. Section 1635(a) creates a single right to rescind that may be exercised within three days of either the consummation of the transaction or the delivery of the required disclosures. Even respondents do not take the position that the statute requires a borrower to file a lawsuit within three days of the transaction. Yet it is untenable to interpret the statute to require different methods of exercising the right when the statute specifies the method by a single instance of the phrase "by notifying the creditor." Section 1635(b), in turn, establishes carefully scripted procedures to unwind the transaction that explicitly do not require the involvement of a court and therefore no lawsuit is required to initiate them. Finally, Section 1635(f) limits the life of the right to rescind not by imposing a statute of limitations on filing suit but by providing that the right "shall expire" three years after the consummation of the transaction. This manner of limiting the

duration of the right demonstrates that no lawsuit is required to exercise it.

C. The statutory and legislative history of Section 1635 provide further confirmation that notifying the creditor is sufficient to exercise the right to rescind. Congress actively engaged with the statute in the years after its original enactment, amending it multiple times without altering the method to exercise the right to rescind. Tellingly, Congress considered and rejected an amendment in 1977 to create a cause of action "to determine the consumer's right to rescind." Congress's action took place against the backdrop of the Federal Reserve Board's interpretation of Section 1635(a) to require only written notice to exercise the right to rescind. The subsequent statutory history thus demonstrates that Congress understood that Section 1635(a) did not require a lawsuit and that it acquiesced to the Board's interpretation.

The legislative debates preceding the original enactment of the statute further illuminate Congress's intent to create a simple, non-judicial remedy. Both statements by the sponsoring members of Congress and the conference report evince the intent that notice alone be sufficient to exercise the "vitally important" right Congress created to give the statute's disclosure requirements "real teeth."

D. The text, structure, and history of Section 1635 manifest its purpose to create a non-judicial right of rescission. In creating the right to rescind, Congress meant to provide a simple mechanism for borrowers to reconsider their credit decision for three days after they receive all the disclosures required by the statute. To that end, Congress codified core components of the longstanding common-law remedy

of rescission. At common law, a party effectuates a rescission simply by notifying the non-rescinding party. A lawsuit for restitution is required only if the non-rescinding party refuses to tender what must be returned under the rescission that had been accomplished by notice. In codifying that well-established common-law remedy, Congress achieved the statute's remedial purpose to promote the informed and efficient use of credit.

A requirement to file suit would frustrate Congress's purpose by manufacturing thousands of needless lawsuits from a statute it passed to protect borrowers without resorting to burdensome litigation. Moreover, such a requirement is not necessary to prevent "uncertainty" regarding title because notice informs a creditor that the right has been exercised just as readily as does a lawsuit, and any dispute about the validity of the exercise of the right may be resolved promptly.

II. The Federal Reserve Board and now the Consumer Financial Protection Bureau have long interpreted Section 1635 to require only that the borrower notify the creditor in writing to exercise the right to rescind. The Bureau has confirmed in *amicus* briefs before the courts of appeals that neither the statute nor the regulation imposes a further, unstated requirement to file suit. These interpretations by the agencies charged by Congress with implementing the statute warrant this Court's deference.

III. Section 1635(f) provides only that the right to rescind "shall expire" after three years and in no way alters the manner in which that right may be exercised. The text, history, and purpose of Section 1635(f) demonstrate that it was enacted to address the specific problem of *unexercised* rights of rescis-

sion that could create uncertainty. This Court's decision in *Beach v. Ocwen Federal Bank*, 523 U.S. 410 (1998), confirms that Section 1635(f) was narrowly targeted to prevent the exercise of the right after three years, not to impose a requirement to file suit within three years. Because petitioners notified their creditors within three years of the consummation of the transaction of their intention to rescind, their exercise of the right was timely. Because petitioners' subsequent lawsuit to enforce their exercise of the right was filed within any possible statute of limitations that might apply, their lawsuit was timely.

ARGUMENT

I. A BORROWER EXERCISES THE RIGHT TO RESCIND UNDER SECTION 1635(a) BY NOTIFYING THE CREDITOR OF THE INTENTION TO DO SO

The plain text of Section 1635(a), as well as the statute's structure, statutory and legislative history, and purpose, demonstrate that "notifying the creditor" is sufficient to exercise the right to rescind and that there is no further requirement to file suit. Congress's actions in the 45 years since Regulation Z was first promulgated confirm its endorsement of the agency's interpretation of the statute.

A. The Plain Text Of Section 1635(a) Establishes That Notifying The Creditor Is Sufficient To Exercise The Right To Rescind

The text of Section 1635(a) is clear: a borrower exercises "the right to rescind . . . by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so." 15 U.S.C. § 1635(a). The Court "begin[s] with the Act's language." *United States v. Tinklenberg*, 131 S. Ct. 2007, 2012 (2011). "[W]here, as here, the statute's language is plain, 'the

sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, . . . 'judicial inquiry is complete.'") (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009) (internal quotation marks omitted). The ordinary meaning of the phrase "notifying the creditor," confirmed by Congress's consistent usage across the statute, requires only that the borrower inform the creditor of the intention to rescind the transaction and entails no further requirement that the borrower file a lawsuit.

1. Dictionaries contemporaneous to the enactment of Section 1635(a) establish that the ordinary meaning of "notifying the creditor" is to inform the creditor.[3] Those dictionaries define the verb "to notify" to mean "to give notice," "to make known," or "to inform." *See Webster's New International Dictionary* 1669 (2d ed. 1952) ("*Webster's Second*") (defining "notify" as "[t]o give notice of; to make known; to declare; to publish"); *Webster's Third New International Dictionary* 1545 (1961) ("*Webster's Third*") (defining "notify" as "to point out: INDICATE,

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[3] Because the statute does not define the term "notifying," the Court may look to contemporaneous dictionaries for its meaning. *See*, *e.g.*, *Taniguchi v. Kan Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2003 (2012) (relying on "survey of the relevant dictionaries" to establish "ordinary or common meaning" of statutory term).

DENOTE" and "to give notice of : make known : DECLARE, PUBLISH"); *American Heritage Dictionary of the English Language* 897 (1st ed. 1969) ("*American Heritage*") (defining "notify" as "[t]o give notice to (someone); inform"). Those dictionaries in turn define "notice" to mean "information," "warning," or "announcement." *See Webster's Second* 1669 (defining "notice" as "[i]nformation; intimation or warning, esp. of a formal nature; announcement"); *Webster's Third* 1544 (defining "notice" as "formal or informal warning or intimation of something: ANNOUNCEMENT"); *American Heritage* 897 (defining "notice" as "[a]ny announcement, information, or indication of some present or coming event").

Legal dictionaries corroborate these ordinary meanings of "notify" and "notice." *See*, *e.g.*, *Black's Law Dictionary* 1211-12 (4th ed. 1968) ("*Black's*") (defining "notify" as "[t]o give notice to; to inform by words or writing, in person or by message, or by any signs which are understood; to make known"); *id.* at 1210 (defining "notice" as "[i]nformation; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge"). None of these dictionaries mentions filing a lawsuit in defining "notify" or "notice."

2. The ordinary meaning of the phrase "notifying the creditor" is confirmed by the statute's consistent usage of the terms "notify" and "notice" to refer to providing information. "[T]he normal rule of statutory interpretation" is "that identical words used in different parts of the same statute are generally presumed to have the same meaning." *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005); *see also United States v. Castleman*, 134 S. Ct. 1405, 1417 (2014)

(Scalia, J., concurring in part and concurring in the judgment) ("presumption of consistent usage" assumes that "a term generally means the same thing each time it is used"). Section 1640(b) provides that creditors are not to be liable for certain violations of the statute if, within 60 days after discovering the error and "prior to the institution of *an action* under this section or the receipt of written *notice* of the error from the [borrower], the creditor . . . *notifies* the person concerned of the error." 15 U.S.C. § 1640(b) (emphases added). This provision explicitly distinguishes between "the institution of an action," which plainly refers to a lawsuit, and "written notice" and "notifies," which refer to providing information. Similarly, Section 1641(g)(1) requires creditors who are new assignees of a mortgage to "notify the borrower in writing" within 30 days of the assignment. *Id.* § 1641(g)(1). Neither of these provisions requires the creditor to file a lawsuit, thereby confirming that Congress used the verb "notify" solely to mean to inform.

The statute's use of the word "notice" further establishes Congress's intent to employ the ordinary meaning of "notify." Section 1638a(b) requires creditors or servicers of certain mortgages to provide "written notice" before an interest rate change. *Id.* § 1638a(b). Congress demonstrated that this notice requirement does not entail a lawsuit by specifying that the notice shall be "separate and distinct from all other correspondence to the consumer." *Id.* Likewise, the originally enacted version of Section 1637(c) provided that certain information regarding "open end consumer credit plan[s] . . . shall be disclosed in a *notice* mailed or delivered to the [borrower] not later than thirty days after that date." Pub.

L. No. 90-321, § 127(c), 82 Stat. 155 (emphasis added). In neither provision can "notice" plausibly refer to a lawsuit because in both "notice" is sent or received to communicate information. Consequently, in Section 1635(a), "notifying the creditor" must refer to informing the creditor.

3. From its plain meaning and the ways "notify" and "notice" are used in adjoining provisions of the statute, the conclusion is inescapable that the phrase "notifying the creditor" in Section 1635(a) refers to providing information. Nothing in the statutory text supports the notion that a borrower must file suit to exercise the right to rescind. *See Bates v. United States*, 522 U.S. 23, 29 (1997) (the Court will "ordinarily resist reading words or elements into a statute that do not appear on its face"). The unambiguously plain meaning of Section 1635(a), therefore, is that a borrower exercises the right to rescind by informing the creditor and that the filing of a lawsuit is not necessary to effectuate a rescission.

B. The Statute's Structure Confirms That A Borrower Exercises The Right To Rescind By Notifying The Creditor Of The Intention To Do So

The statute's structure confirms that Section 1635(a)'s plain meaning requires the borrower only to "notify the creditor" to exercise the right to rescind with no further requirement to file suit. Statutes "should not be read as a series of unrelated and isolated provisions." *Gonzales v. Oregon*, 546 U.S. 243, 273 (2006) (internal quotation marks omitted). Rather, a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."

Hibbs v. Winn, 542 U.S. 88, 101 (2004) (internal quotation marks omitted).

1. Section 1635(a)'s structure itself confirms that notice is sufficient to exercise the right to rescind. Section 1635(a) establishes the method for exercising the right to rescind either within three days after the consummation of the loan (if all required disclosures are provided by that time) or within three days after the delivery of the required disclosures and rescission forms (if the creditor failed to provide them when the loan was made). It establishes that right, applicable in both circumstances, in a single sentence using a single instance of the phrase "by notifying the creditor." *See* 15 U.S.C. § 1635(a).

Reading Section 1635(a) as requiring only notice during that initial three-day period following the transaction but dictating the filing of a lawsuit during the three-day period following the subsequent and ultimate delivery of the required disclosures is untenable. *See* Resp. Cert. Br. 24-25. Because both notification provisions are the exercise of a single right created by the very same words of the very same sentence, respondents' approach necessitates adding textual requirements that Congress did not include. *See Burwell v. Hobby Lobby Stores, Inc.*, Nos. 13-354 & 13-356, slip op. 20 (U.S. June 30, 2014) ("'To give th[e] same words a different meaning for each category would be to invent a statute rather than interpret one.'") (quoting *Clark v. Martinez*, 543 U.S. 371, 378 (2005)) (alteration in original).

The final sentence of Section 1635(a) further verifies that a borrower exercises the right to rescind simply by informing the creditor. That sentence states that "[t]he creditor shall . . . provide . . . appropriate forms for the [borrower] to exercise his right to

rescind." 15 U.S.C. § 1635(a). That provision plainly requires the creditor to supply forms by which the borrower can notify the creditor, thereby "exercis[ing] his right to rescind." Such forms would not aid the borrower "to exercise his right to rescind" if doing so required filing a lawsuit. The structure of Section 1635(a) therefore confirms the ordinary meaning of its text that a borrower exercises the right to rescind by informing the creditor.

2. The detailed and time-sensitive procedures that Congress carefully scripted in Section 1635(b) for unwinding the transaction after the borrower exercises the rescission right support the conclusion that Congress intended the right to be exercised by notice, not by the filing of a lawsuit. Section 1635(b) provides that, "[w]hen [a borrower] exercises his right to rescind under [Section 1635(a)], he is not liable for any finance or other charge, and any security interest given by the [borrower] . . . becomes void upon such a rescission." 15 U.S.C. § 1635(b). The creditor's obligations under Section 1635(b) are expressly triggered by the "receipt of a notice of rescission," *id.*, confirming that informing the creditor is sufficient to exercise the right to rescind. "Within 20 days" of receiving that notice, the creditor "*shall* return" money or property given by the borrower and "*shall* take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." *Id.* (emphases added). Section 1635(b) sets forth that process without mentioning litigation or the involvement of a court.

Moreover, the procedures of Section 1635(b) governing rescissions under Section 1635(a) are affirmatively inconsistent with the litigation process. The

20-day time limit for the creditor to return the borrower's money or property and take action to reflect the termination of the security interest leaves no room for the deliberate pleading schedule of the civil justice system. *See* Fed. R. Civ. P. 12(a) (establishing times for responsive pleadings). Indeed, Section 1635(b) demonstrates that the rescission process ordinarily proceeds without judicial intervention by providing that "[t]he procedures prescribed by this subsection *shall apply* except when otherwise ordered by a court." 15 U.S.C. § 1635(b) (emphasis added). Accordingly, because no action by a court is required to unwind the transaction, no lawsuit is required to exercise the right to rescind.

3. Congress confirmed it understood that exercising the right to rescind did not require filing a lawsuit when it enacted the time limit in Section 1635(f). It imposed a three-year limit on the right to rescind not by means of a statute of limitations but rather by providing that the right would "expire." 15 U.S.C. § 1635(f). By its terms, that three-year "[t]ime limit" terminates the "right of rescission" without mentioning a lawsuit. *Id.*; *see Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 416-17 (1998) (explaining that Section 1635(f) "says nothing in terms of bringing an action" and "talks not of a suit's commencement but of a right's duration"). In stark contrast, Section 1640(e) expressly imposes a statute of limitations on the statute's cause of action for damages. *Compare* 15 U.S.C. § 1635(f) ("[A borrower'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 . . . .") *with id.* § 1640(e) ("[A]ny action under this section may be brought . . . within one year from the date

of the occurrence of the violation . . . .”). These “unmistakably different treatments” in different provisions of the statute “reflect a deliberate intent on the part of Congress.” *Beach*, 523 U.S. at 418. Accordingly, Congress’s decision not to impose a statute of limitations in Section 1635(f) confirms that a lawsuit is not required to exercise the right to rescind in Section 1635(a).

4. Finally, Congress’s intent that the right to rescind be exercised by notice alone may be gleaned inferentially from its express creation of a damages action in Section 1640. Although in Section 1635(a) Congress expressly provided that notification would be sufficient to trigger rescission, it set forth in Section 1640 a more complex set of requirements for a lawsuit alleging damages. Section 1640 creates a cause of action, establishes venue, sets out statutory damages, and creates a statute of limitations for civil actions for damages alleging violations of the statute. *See* 15 U.S.C. § 1640(a) (setting statutory damages for “any creditor who fails to comply with any requirement imposed under this part”); *id.* § 1640(e) (“any action under this section may be brought . . . within one year from the date of the occurrence of the violation”). By expressly creating a cause of action for damages, Congress plainly knew how to require litigation when it wanted to. Its deliberate decision not to impose such a requirement for the right to rescind is powerful evidence that Congress intended notice to be sufficient. *See Touche Ross & Co. v. Redington*, 442 U.S. 560, 571-72 (1979) (where statutory provision is “flanked by provisions . . . that explicitly grant private causes of action,” it is “[o]bvious[] [that] when Congress wished to provide” one “it knew how to do so and did so expressly”);

Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis, 444 U.S. 11, 22 n.13 (1979) ("[T]he 1970 amendments to the companion Act are another clear indication that Congress knew how to confer a private right of action when it wished to do so.").

5. Other provisions of the statute that mention courts or civil actions in the context of rescission do not reflect an intention to require the filing of a lawsuit to effectuate a rescission. Instead, these provisions govern the interaction of Section 1635 with other legal proceedings in which the right to rescind may be at issue. Section 1635(b), for example, provides that its procedures "shall apply except when otherwise ordered by a court." Congress added that language to Section 1635(b) in 1980 to clarify the equitable powers of courts in separate legal proceedings to alter the procedures set forth in that Section. *See* S. Rep. No. 96-368, at 29 (1979) ("Upon application by the consumer or the creditor, a court is authorized to modify this section's procedures where appropriate. For example, a court might use this discretion in a situation where a consumer in bankruptcy or wage earner proceedings is prohibited from returning the property.").

Courts might need to alter the Section 1635(b) procedures in a range of different circumstances. One is when the creditor seeks a declaratory judgment on the validity of the borrower's rescission. *See* Regulation Z; Truth in Lending, 75 Fed. Reg. 58,539, 58,628 (Sept. 24, 2010) ("Some creditors use the judicial process to resolve rescission issues. For example, some creditors seek a declaratory judgment whether the consumer's right to rescind has expired."). Another is when the creditor initiates a foreclosure proceeding in which the borrower asserts the right to rescind as an affirmative defense where damages

arising from the rescission offset the underlying mortgage debt. *See*, *e.g.*, *Beach*, 523 U.S. at 413-14. The exception for those circumstances confirms that, absent such a separate legal proceeding, no action by a court is necessary to implement Section 1635(b)'s procedures.

Similarly, the fee provision in Section 1640(a)(3) does not entail a requirement that a borrower file a lawsuit to exercise the right to rescind. That section provides for an award of costs and attorneys' fees in "any successful action to enforce . . . liability [for violations of the statute] or in *any action* in which a person is determined to have a right of rescission." 15 U.S.C. § 1640(a)(3) (emphasis added). Congress plainly was aware that the right to rescind may arise in other legal proceedings, including bankruptcy proceedings, foreclosure proceedings, or a suit under the Declaratory Judgment Act brought by either the borrower or the creditor to determine whether a right to rescind had been validly exercised. Section 1640(a)(3) operates to shift the costs of those legal proceedings to a creditor when it unlawfully refuses to honor a validly exercised rescission right. Given 1640(a)(3)'s clear effect of relieving borrowers of the burdens of litigation, it would be anomalous to suppose that Congress intended that provision to support interpreting Section 1635(a) as requiring the filing of a lawsuit to exercise the rescissionary right.

C. The Statutory And Legislative History Verify That Congress Intended Notice To Be Sufficient To Exercise The Right To Rescind

1. The statutory history of Section 1635 evinces Congress's intent that notice be sufficient to exercise the right to rescind. Congress has revisited the right

to rescind in the Truth in Lending Act many times since 1968, both expanding it and limiting it. At no time, however, has Congress amended the provision authorizing the borrower to "rescind the transaction . . . by notifying the creditor . . . of his intention to do so." To the contrary, when faced with a proposed amendment authorizing either party to bring an action to determine the right to rescind, Congress declined to enact it.

In 1974, Congress both expanded and restricted the right to rescind, and added a provision reinforcing the Board's mandate to promulgate authoritative interpretations of the Act. In those amendments, Congress – in response to concerns that the unlimited right to rescind was causing market uncertainty – imposed a three-year time limit on the exercise of the right. *See* Pub. L. No. 93-495, § 405, 88 Stat. 1517 (codified as amended at 15 U.S.C. § 1635(f)); *see also "Fair Credit Act": Executive Session of the Subcomm. on Financial Institutions of the S. Comm. on Banking, Hous. & Urban Affairs*, 92d Cong. 121 (1972) ("The problem involved is that if a creditor failed to comply with all of the disclosure requirements, the title could be obscured or clouded indefinitely, because the consumer would then still have the right to rescind and avoid the underlying security interest."). Notably, in enacting this time limit Congress chose *not* to change the mechanism for exercising the right from a non-judicial rescission to litigation. *See* 15 U.S.C. § 1635(f). At the same time, Congress expanded the right to rescind by making clear that it applies not only to security interests that are expressly bargained for, but also to those that "aris[e] by operation of law." Pub. L. No. 93-495, § 404, 88 Stat. 1517. Finally, Congress reaffirmed

the authority of the Board to promulgate rules implementing the Act by providing immunity from liability for "any act done or omitted in good faith in conformity with any rule, regulation, or interpretation [of the Act] by the Board." *Id.* § 406, 88 Stat. 1517.

In 1977, Congress explicitly rejected an amendment to the statute that would "permit[] either party to bring an action to determine the right to rescind." *Simplify and Reform the Truth in Lending Act: Hearings on S. 1312, S. 1501, and S. 1653 Before the Subcomm. on Consumer Affairs of the S. Comm. on Banking, Hous. & Urban Affairs*, 95th Cong. 56 (1977) ("1977 Senate Hr'g") (statement of Philip C. Jackson, Jr., Governor, Board of Governors of the Federal Reserve System); *see id.* at 90 (reproducing Federal Reserve Board draft bill, § 125(d) ("Either the consumer or the creditor may bring an action to determine the consumer's right to rescind.")); S. 1846, 95th Cong. § 15(d) (introduced July 13, 1977) ("Either the consumer or the creditor may bring an action to determine the consumer's right to rescind."). When Congress considered that amendment, the Governor of the Federal Reserve Board testified that "[t]he present statute and regulation contemplated that rescission would work informally with little or no need for recourse to the courts." 1977 Senate Hr'g 56 (statement of Philip C. Jackson, Jr., Governor, Board of Governors of the Federal Reserve System). In rejecting the proposed amendment, Congress confirmed it understood that exercising the right to rescind required no lawsuit and manifested its intent to preserve that non-judicial remedy. *See*, *e.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000) (finding it probative that Congress

"squarely rejected proposals to give the [Food and Drug Administration] jurisdiction over tobacco").

In the 1980 amendments to the statute, Congress again reaffirmed its intent to maintain a non-judicial rescission process. In the Truth in Lending Simplification and Reform Act, Pub. L. No. 96-221, tit. VI, 94 Stat. 132, 168 (1980), Congress amended Section 1635(b)'s rescission procedures significantly but did not alter Section 1635(a)'s provision that borrowers can rescind the transaction simply by notifying the creditor. In particular, Congress expanded the time within which the creditor must terminate the security interest and return the borrower's money from 10 days to 20 days. *See id.* § 612(a)(3)-(4), 94 Stat. 175. The 1980 amendments also explicitly authorized courts to modify the non-judicial procedures specified in Section 1635(b), resolving the controversy over whether courts were authorized to modify those procedures when the right to rescind was implicated in other judicial proceedings. *See* Robert K. Rupp, Comment, *Who Can Win in Truth in Lending Rescission Transactions?*, 43 Ohio St. L.J. 693, 708 (1982). Finally, Congress created an exception to the three-year limit on the right to rescind in Section 1635(f) for circumstances in which "any agency empowered to enforce the provisions of [the Act]" institutes an enforcement proceeding within three years after the date of the consummation of the proceeding and finds a violation of Section 1635. Pub. L. No. 96-221, § 612(a)(6), 94 Stat. 176. In such a circumstance, the borrower has until one year following the conclusion of the agency proceeding in which to exercise the right to rescind. *See id.*

In the Truth in Lending Act Amendments of 1995, Congress again both limited and expanded the right

to rescind, without altering the non-judicial nature of the rescission process. *See* Pub. L. No. 104-29, § 8, 109 Stat. 271, 275-76. First, Congress relieved creditors of liability for certain violations of the disclosure requirements and provided a safe haven from exercises of right to rescind predicated "solely" on the "form" of written notice used to inform borrowers of their rights if the creditor used the "appropriate form of written notice published and adopted by the Board" or a "comparable written notice." *Id.* § 5, 109 Stat. 274. At the same time, however, Congress extended rescission rights for borrowers in foreclosure proceedings by providing substantive grounds for rescission for borrowers in "any judicial or non-judicial foreclosure process" that are not available to other borrowers. *Id.* § 8, 109 Stat. 275-76. That expanded right to rescind is expressly limited by the three-year expiration period in Section 1635(f). *See* 15 U.S.C. § 1635(i)(2). Thus, throughout Congress's frequent engagement with the statute's right to rescind, it has preserved notice as the method of exercising that right.

Congress's acquiescence to the Federal Reserve Board's longstanding, authoritative construction of Section 1635 draws further support from that statutory history. From the outset, the Board interpreted Section 1635(a) to require only written notice to exercise the right to rescind. In 1969, the Board promulgated Regulation Z, which clarifies that "the customer shall have the right to rescind . . . by notifying the creditor by mail, telegram, or other writing of his intention to do so." 34 Fed. Reg. 2003, 2009-10 (Feb. 11, 1969). "Congress is presumed to be aware of an administrative or judicial interpretation of a statute." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). Against

the backdrop of that unambiguous administrative interpretation, Congress has amended the Truth in Lending Act many times in the subsequent 46 years, including direct changes to other aspects of the right to rescind, but has never amended Section 1635(a) to require borrowers to file a lawsuit to exercise the rescission right. Indeed, as noted above, Congress considered and rejected a legislative proposal to amend Section 1635 to create a cause of action "to determine the consumer's right to rescind."

Congress's active engagement with Section 1635 against the background of its "abundant[] aware-[ness]" of Regulation Z demonstrates affirmative acquiescence in the Board's interpretation of Section 1635(a). *Bob Jones Univ. v. United States*, 461 U.S. 574, 600-01 (1983); *see id.* ("[i]n view of its prolonged and acute awareness of so important an issue, Congress's failure to act on the bills proposed on this subject provides added support for concluding that Congress acquiesced" to agency's interpretation); *Haig v. Agee*, 453 U.S. 280, 301 & n.50 (1981) (finding "weighty evidence of congressional approval of the [administrative] interpretation" when it amended a statute without changing the relevant section, thereby "adopt[ing] the administrative construction"). Congress thus has endorsed the longstanding administrative interpretation that a borrower exercises the right to rescind by notifying the creditor in writing.

2. The legislative debates and history of Section 1635(a) further support the conclusion that Congress intended to create a rescission right that a borrower could exercise without resort to litigation. Section 1635 was enacted to protect consumers from "fraudulent mortgage schemes . . . consummated in an atmosphere of hurry, rush, and fast talking" and

empower them "to study and investigate the contemplated seriousness of the obligations which they are able to undertake." 114 Cong. Rec. at 1611 (statement of Rep. Cahill).

Representative Sullivan explained that the right to rescind was a "vitally important" provision of the statute and emphasized that "the rights given to the . . . borrower . . . have real teeth." *Id.* at 14,388 (statement of Rep. Sullivan). She clarified that, "[w]hen the debtor gives notice of intention to rescind, that voids the mortgage absolutely and unconditionally regardless of whether either the debtor or the creditor does any of the things that [Section 1635] requires be done subsequent to the giving of notice of intention to rescind." *Id.* (statement of Rep. Sullivan). In explaining the sequence of events that completes the rescission process, the conference report makes no mention of a lawsuit: "[u]pon the exercise of th[e] right" to rescind, "any security interests created under the transaction are voided, the creditor must refund any advances, and the [borrower] must tender back any property . . . which he has received from the creditor." H.R. Conf. Rep. No. 90-1397, at 26 (1968), *reprinted in* 114 Cong. Rec. 14,375, 14,382 (1968). These legislative materials corroborate that Congress intended to create a simple, non-judicial rescission remedy that would protect consumers without requiring burdensome litigation.

D. The Statute's Purpose Confirms That Section 1635(a) Creates A Non-Judicial Rescission Right That A Borrower Exercises By Notifying The Creditor

1. At its essence, the Truth in Lending Act is a disclosure statute. Its "broad purpose [is] promoting 'the informed use of credit' by assuring 'meaningful

disclosure of credit terms' to consumers." *Ford Motor Credit Co. v Milhollin*, 444 U.S. 555, 559 (1980) (quoting 15 U.S.C. § 1601 (1970)). This Court therefore has recognized that "[t]he Truth in Lending Act was designed to remedy the problems which had developed" in the use of consumer credit and, "[t]o accomplish its desired objective, Congress determined to lay the structure of the Act broadly." *Mourning v. Family Publ'ns Serv., Inc.*, 411 U.S. 356, 364-65 (1973). "Accordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights." *Beach*, 523 U.S. at 412. Such full disclosure is intended to permit borrowers to evaluate and compare credit terms before committing to a particular credit transaction. The statute's rescission provision gives those disclosure requirements teeth by discouraging violations and by allowing borrowers to escape mortgages they entered without the full and accurate information that Congress determined they should receive. That remedial purpose is most fully realized through the simple requirement that the borrower notify the creditor to effect a rescission, without the burdens of unnecessary litigation.

2. In enacting the statute's rescission provision, Congress intended to codify long-settled principles of rescission law. At common law, a plaintiff who is entitled to rescind a transaction "may rescind by notice to the defendant that he has done so, if he also restores the defendant to what he gave in the transactions or tenders restoration." 1 Dan B. Dobbs, *Law of Remedies* § 4.8, at 673 (2d ed. 1993); *see also id.* § 4.3(6), at 616 ("a plaintiff is entitled to rescind by

declaring the transaction rescinded").[4] "When he has done that, the plaintiff has rescinded." *Id.* § 4.8, at 673. If the other party agrees to the rescission, "rescission is accomplished by agreement of the parties." *Id.* § 4.3(6), at 616. Even if the non-rescinding party disputes the rescission, "rescission is still accomplished, but the plaintiff must bring suit to obtain restitution of her money." *Id.* Thus, under the common law of rescission, "the court does not effect the rescission upon which restitution is based; the plaintiff effects the rescission, and the court gives a judgment for restitution if that is needed." *Id.* § 4.8, at 674. Section 1635 comports with that well-established common-law rule that notice itself effects the rescission. *See United States v. Texas*, 507 U.S. 529, 534 (1993) ("In order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the common law.") (citation omitted).

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[4] In enacting Section 1635, Congress followed the basic outlines of the common-law rescission process, modifying the tendering procedures slightly to be more favorable to the borrower. Thus, Section 1635(a) begins with the fundamental premise that rescission is accomplished by notifying the creditor. Section 1635(b) modifies the process of non-judicial rescission by relieving the borrower of the obligation to tender restoration when he provides that notice. As Professor Dobbs observed: "Tender rules are being reformed. A federal statute aimed at consumer credit protection permits a consumer to rescind a loan transaction in some circumstances, and puts the burden on the consumer to tender restoration of the loan proceeds only after the lender has appropriately released the consumer of liability." 1 Dobbs § 4.8, at 677 (citing 15 U.S.C. § 1635(b)). Congress's intentional departure from the common law only as to the specific order of tendering highlights its adoption of the common law's non-judicial rescission remedy more generally.

3. A judicially invented requirement to file suit would introduce practical problems and would frustrate Congress's purpose in passing the statute. Such a rule does violence to the statutory text, manufactures legal obstacles for homeowners seeking to vindicate their rights under a law that was enacted to protect them, and risks flooding the federal courts with thousands of needless lawsuits to accomplish rescissions that Congress intended to be completed privately and without litigation. Reading a litigation requirement into a remedy that Congress intended to be non-judicial would bypass the procedures Congress carefully scripted in Section 1635(b) for unwinding the transaction. It thus would eviscerate the efficiencies of the statute by requiring thousands of needless lawsuits under a regime designed to process rescissions privately in the first instance and without the intervention of the courts. Accordingly, the policy goals animating Congress's purpose are achieved by interpreting Section 1635(a) to require only notifying the creditor that the borrower is exercising the right to rescind.

4. The non-judicial rescission remedy that Congress enacted does not result in any uncertainty regarding title in the mortgage markets. A borrower's notice to the creditor eliminates any commercial uncertainty to the same extent as a lawsuit. If a creditor agrees that the borrower has exercised a valid right of rescission, then there is no commercial uncertainty as the parties unwind the transaction pursuant to the procedures of Section 1635(b). If, by contrast, a creditor disputes that the borrower has a valid right of rescission – because, for example, the creditor contends it delivered all the required disclosures at closing – then the creditor may seek a

judicial determination of the validity of the borrower's right without delay. *See* 75 Fed. Reg. at 58,628 ("Some creditors use the judicial process to resolve rescission issues. For example, some creditors seek a declaratory judgment whether the consumer's right to rescind has expired."). Consequently, any remaining uncertainty is entirely the result of the creditor's own inaction. Moreover, in no circumstances would "unexercised" rights clouding title linger beyond the three-year time limit established by Section 1635(f). Either a borrower exercises the right to rescind by notifying the creditor within three years of the transaction, or the right expires when those three years lapse.

Even if a legitimate policy concern were present, the Court cannot discard the statute's plain text. When the meaning of the statutory text is clear, this Court may not rewrite the statute to avoid "practical problems" it may perceive in its implementation. *Lewis v. City of Chicago*, 560 U.S. 205, 216 (2010); *see id.* at 217 ("[I]t is not our task to assess the consequences of each approach and adopt the one that produces the least mischief. Our charge is to give effect to the law Congress enacted. . . . If [the statute has] effect[s] [that were] unintended, it is a problem for Congress, not one that federal courts can fix."); *see also Caminetti*, 242 U.S. at 490 ("If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning."). Accordingly, even if Section 1635(a) created uncertainty by requiring only notice for a borrower to exercise the right to rescind, that policy concern would provide no warrant for the Court to cast aside the plain meaning of Section 1635(a)'s text.

II. THE AUTHORITATIVE AND LONGSTANDING ADMINISTRATIVE INTERPRETATION RECOGNIZING THAT WRITTEN NOTICE IS SUFFICIENT TO EXERCISE THE RIGHT TO RESCIND IS ENTITLED TO DEFERENCE

A. Regulation Z Resolves Any Doubt That Written Notice Is Sufficient To Exercise The Right To Rescind

The statute expressly mandates the agency to issue regulations implementing its provisions. *See* 15 U.S.C. § 1604(a) ("The Bureau shall prescribe regulations to carry out the purposes of this subchapter."). One year after the Act's passage, the Federal Reserve Board promulgated Regulation Z to implement the statute. Regulation Z specifies that, "[t]o exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication." 12 C.F.R. § 1026.15(a)(2). In the more than four decades since, the Board and now the Bureau have retained that interpretive regulation. That longstanding and consistent interpretation of Section 1635(a), left untouched by Congress and unchanged by the agencies, is entitled to deference.

This Court long has recognized that the Federal Reserve Board's interpretations of the statute warrant particular deference. As this Court explained, "[b]ecause of their complexity and variety, . . . credit transactions defy exhaustive regulation by a single statute." *Ford Motor Credit*, 444 U.S. at 559. When Congress enacted the Truth in Lending Act, it therefore "entrust[ed] its construction to an agency with the necessary experience and resources to monitor its operation." *Mourning*, 411 U.S. at 365; *see Ford*

Motor Credit, 444 U.S. at 559-60 (explaining that the Act "delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit"). The Act authorized the Board to "prescribe regulations to carry out the purposes of this title" and provided that "[t]hese regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions . . . , as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." Pub. L. No. 90-321, § 105, 82 Stat. 148 (codified as amended at 15 U.S.C. § 1604). Accordingly, this Court has afforded substantial deference to the Board's authoritative interpretations of the statute in Regulation Z. *See Ford Motor Credit*, 444 U.S. at 567-68 (recognizing "an unmistakable congressional decision to treat administrative rulemaking and interpretation under [the statute] as authoritative"); *see also Mourning*, 411 U.S. at 369 ("[T]he validity of a regulation promulgated [by the Board] will be sustained so long as it is reasonably related to the purposes of the enabling legislation.") (internal quotation marks omitted).

In the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress created the Consumer Financial Protection Bureau and transferred to the Bureau the same broad authority to implement the statute that it had initially conferred on the Board. *See* Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, tit. X, § 1061(b)(1), (d), 124 Stat. 1376, 1955, 2036, 2039 (codified at 12 U.S.C. § 5581(b)(1), (d)). The Bureau then repromulgated the Board's Regulation Z without

substantive changes. *See* Interim Final Rule, Truth in Lending (Regulation Z), 76 Fed. Reg. 79,768, 79,803-04 (Dec. 22, 2011) (promulgated at 12 C.F.R. § 1026.23); Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 79,730, 79,850 (Dec. 31, 2013) ("[t]he Bureau declines to . . . amend the rescission rules") (citing 15 U.S.C. § 1635(a)). Accordingly, the same deference is due Regulation Z under the Bureau's authority as was accorded the Board.

The Board and the Bureau's interpretation is plainly a permissible construction of Section 1635(a). "[A]bsent some obvious repugnance to the statute, the Board's regulation implementing [the Truth in Lending Act] should be accepted by the courts." *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 219 (1981). The agency's interpretation must "govern[] if it is a reasonable interpretation of the statute – not necessarily the only possible interpretation, nor even the interpretation deemed *most* reasonable by the courts." *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 218 (2009); *see Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) ("[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."). The agency's interpretation requiring only "written notice" is clearly a reasonable construction of Section 1635(a), which specifies only "notifying the creditor" as the method of exercising the right to rescind and does not even mention a court proceeding. *See Entergy*, 556 U.S. at 220 (upholding regulation because statute did not "unambiguously preclude" agency's interpretation).

B. The Bureau Recently Confirmed Its Interpretation Of Section 1635(a) As Requiring Only Written Notice

Since re-promulgating Regulation Z, the Bureau has explained in recent *amicus* briefs before the courts of appeals that it has accepted the Federal Reserve Board's longstanding interpretation as its own. The agency's interpretation of its own regulations advanced in its *amicus* briefs is also entitled to deference. *See Chase Bank USA, N.A. v. McCoy*, 131 S. Ct. 871, 878 (2011) ("[W]e conclude that the text of [Regulation Z] is ambiguous, and that deference is warranted to the interpretation of that text advanced by the [agency] in its *amicus* brief."). In its *amicus* briefs, the agency unambiguously interpreted Regulation Z to require only notice to a creditor to exercise the right to rescind. *See*, *e.g.*, Brief of the Consumer Financial Protection Bureau as Amicus Curiae in Support of Plaintiff-Appellant and Reversal at 10, 14, *Rosenfeld v. HSBC Bank, USA*, 681 F.3d 1172 (10th Cir. 2012), 2012 WL 1074082 ("[u]nder the plain terms of § 1635 – and the Bureau's controlling interpretation of that provision – consumers exercise their rescission right by providing notice to their lender," and "[c]onsumers are not required also to sue their lender within the three-year period provided under [Section] 1635(f)"); *see id.* at 2 (stating that agency also would file briefs in Third, Fourth, and Eighth Circuits).

That interpretation of Regulation Z warrants this Court's deference. Regulation Z specifies that the borrower exercises the right to rescind under Section 1635(a) by notifying the creditor in writing. In its *amicus* briefs, the agency simply confirmed that the regulation imposes no further requirement,

unmentioned in the statute or in Regulation Z, that the borrower file suit. That interpretation is clearly consistent with Regulation Z and is therefore controlling. *See Auer v. Robbins*, 519 U.S. 452, 461 (1997) (an agency's interpretation of its own regulation is "controlling unless plainly erroneous or inconsistent with the regulation") (internal quotation marks omitted). Accordingly, the Court should uphold the agency's interpretation of Section 1635 and Regulation Z that notifying the creditor in writing is sufficient to exercise the right to rescind.

III. SECTION 1635(f) DOES NOT REQUIRE A BORROWER TO FILE A LAWSUIT WITHIN THREE YEARS TO EXERCISE THE RIGHT TO RESCIND

If this Court concludes that the right of rescission can be exercised by providing written notice within three years of the transaction – as petitioners undisputedly did – the judgment below should be reversed and the case remanded. The Court need not also address when a lawsuit must be brought seeking a declaration that the rescission was effective.

In resolving the question presented, however, it is useful to understand that Section 1635(f) does not impose a requirement that the borrower file a lawsuit within three years of the transaction to exercise the right to rescind. The courts of appeals that have departed from Section 1635(a)'s plain language that notifying the creditor exercises the right to rescind have relied mistakenly upon Section 1635(f) to manufacture such a requirement. That misreading of the statute would impose an obligation to file suit when Congress intended to avoid litigation. The text, history, and purpose of Section 1635(f), confirmed by this Court's analysis in *Beach*, provide

no basis for departing from Section 1635(a)'s plain language requiring a borrower only to notify the creditor to exercise the right to rescind. As a result, petitioners' suit to enforce the rescission they already had accomplished by notifying their creditor was timely.

A. Section 1635(f) Requires Only That A Borrower Exercise The Right To Rescind By Notifying The Creditor Within Three Years Of The Transaction

1. The text of Section 1635(f), like that of Section 1635(a), is clear: the "right of rescission shall expire three years after the date of consummation of the transaction." 15 U.S.C. § 1635(f). That provision makes no mention of a lawsuit and "talks not of a suit's commencement but of a right's duration." *Beach*, 523 U.S. at 417. In "governing . . . the right's duration," *id.*, Section 1635(f) is silent regarding the manner in which a borrower must exercise that right. Section 1635(f) thus requires only that the right to rescind be exercised – in whatever manner it must be exercised pursuant to Section 1635(a) – within three years of the consummation of the transaction. Because a borrower exercises the right to rescind under Section 1635(a) by notifying the creditor of that intention to do so, as long as the borrower provides that notice within three years of the transaction, Section 1635(f) is simply inapplicable.

The history and purpose of Section 1635(f) confirm that it establishes only a time limit within which a borrower must notify the creditor to accomplish the rescission. Congress enacted Section 1635(f) in 1974 to address the specific problem of "unexpired" rights to rescind and their potential to cloud the title of residential properties. *See* Board of Governors of the

Federal Reserve System, *Annual Report to Congress on Truth in Lending for the Year 1972*, at 16 (Jan. 3, 1973), *reprinted in* 119 Cong. Rec. S2803, S2813 (daily ed. Feb. 20, 1973) ("[T]itles to many residential real estate properties may become clouded by uncertainty regarding unexpired rights of rescission."); S. Rep. No. 92-750, at 1, 7 (1972) ("[t]he legislation . . . resolves a number of problems arising out of the administration of the disclosure provisions of the Truth in Lending Act as recommended by the Federal Reserve Board," and the amendments "are primarily in response to recommendations of the Federal Reserve Board for improving the administration of the Truth in Lending Act").

Congress crafted a narrowly tailored solution to this problem that did not affect the sufficiency of notice to exercise the right to rescind. Prior to the enactment of Section 1635(f), a borrower's right to rescind expired three days after the creditor provided the disclosures required under the statute, whenever that might be. As a result, when a creditor failed to provide the required disclosures, an unexpired, unexercised right of rescission could cloud title indefinitely. Section 1635(f) resolved that uncertainty by providing that unexercised rights "shall expire three years after the date of . . . the transaction." 15 U.S.C. § 1635(f). By contrast, once a borrower exercises the right to rescind by notifying the creditor, there is no uncertainty of title because both the borrower and the creditor are aware that the right has been exercised. Any dispute about the validity of that exercise can be resolved promptly. Accordingly, Section 1635(f) does not change the manner in which the right is exercised – which had been well-established and confirmed by the Board's interpretation in Regu-

lation Z for five years at the time Section 1635(f) was enacted – and does not impose a litigation requirement where one previously had not existed.

2. This Court's decision in *Beach* accords with that straightforward interpretation of Section 1635(f). The Court in *Beach* addressed not the method by which a borrower may exercise the right to rescind under Section 1635(a) – the only question in this case – but rather whether that right may be exercised for the first time as an affirmative defense after the three-year time limit established by Section 1635(f) had lapsed. 523 U.S. at 411-12. The *Beach* Court held that Section 1635(f) "permits no federal right to rescind, defensively or otherwise, after the 3-year period of [Section] 1635(f) has run." *Id.* at 419. It explained that Section 1635(f) "govern[s] the life of the underlying right" and "talks not of a suit's commencement but of a right's duration." *Id.* at 417. Accordingly, because the homeowner in *Beach* had not attempted to exercise the right to rescind – by suit, by notifying the creditor, or by any other means – within the three-year period of Section 1635(f), that right was extinguished when that three-year period lapsed. The Court simply held that once the unexercised right expired the homeowner could not revive it as an affirmative defense.

Beach's holding therefore does not address, much less decide, the question here. As the Third Circuit explained in *Sherzer v. Homestar Mortgage Services*, 707 F.3d 255 (3d Cir. 2013), "nowhere in *Beach* does the Court address *how* [a borrower] must exercise his right of rescission within that three-year period." *Id.* at 262. Thus, "[t]he most that can be gleaned" from *Beach* is the unremarkable conclusion that, "however the right of rescission is to be exercised, it must

be done within three years." *Id.* at 263. Unlike the borrowers in *Beach*, petitioners *have* exercised their right to rescind within the three-year period, exactly as Section 1635(a) requires: "by notifying the creditor . . . of [their] intention to do so." 15 U.S.C. § 1635(a); *see* Add. 9-10. This Court's decision in *Beach* in no way questions the legitimacy of that manner of exercising the right to rescind.

B. Petitioners' Suit Was Timely

Petitioners' suit to enforce the rescission they already had accomplished by notifying respondents satisfies any possible statute of limitations that might apply. Section 1635 does not explicitly create a cause of action to enforce a rescission and imposes no statute of limitations on such an action. Whether such an action is brought as a suit for a declaratory judgment under 28 U.S.C. § 2201 or as a suit under an implied right of action in Section 1635(a) itself, the federal statute provides no express statute of limitations. *See* 15 U.S.C. § 1635(a); 28 U.S.C. § 2201(a) (creating right of action for declaratory relief without specifying statute of limitations). Whether the Court borrows the relevant state-law statute of limitations, as is its usual practice, or applies a one-year statute of limitations borrowed from Section 1640, petitioners' suit was timely.

1. Petitioners' suit was timely under any possible statute of limitations borrowed from Minnesota state law

When a federal statute does not specify a statute of limitations, this Court ordinarily borrows the most relevant statute of limitations from state law. *See North Star Steel Co. v. Thomas*, 515 U.S. 29, 33 (1995) (when "federal statutes fail to provide any limitations period for the causes of action they

create, . . . courts . . . borrow a period, generally from state law, to limit these claims"); *id.* at 33-34 (this Court's "practice has left no doubt" that state statutes of limitations are "the lender of first resort"); *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 414 (2005) (this Court "generally 'borrow[s]' the most closely analogous state limitations period"); *see also North Star Steel*, 515 U.S. at 37 (Scalia, J., concurring in the judgment) ("I remain of the view that when Congress has not prescribed a limitations period to govern a cause of action that it has created, the Court should apply the appropriate state statute of limitations, or, if doing so would frustrate the purposes of the federal enactment, no limitations period at all.").

Under that approach, petitioners' suit was timely under the appropriate state-law statute of limitations from Minnesota, where the transaction arose. Minnesota imposes a six-year statute of limitations for suits "upon a liability created by statute." Minn. Stat. Ann. § 541.05, subd. 1(2). That statute of limitations applies to the most "closely analogous" state-law cause of action: suits to enforce a state-law right of rescission for home sales when a developer fails to provide a "disclosure substantially similar to that required by the federal Truth in Lending Act." *Id.* § 83.28, subd. 1(2); *cf. Anderson v. Anderson*, 197 N.W.2d 720, 726 (Minn. 1972) (applying § 541.05 to an action to rescind a sale of real property); *Saclolo v. Shaleen*, No. A10-2165, 2011 WL 2750706, at *4-5 (Minn. Ct. App. July 18, 2011) (holding suit seeking to rescind sale of real property was time-barred by § 541.05). Section 541.05 also provides a six-year statute of limitations "upon a contract or other

obligation, express or implied, as to which no other limitation is expressly prescribed." Minn. Stat. Ann. § 541.05, subd. 1(1). Petitioners' suit was therefore filed comfortably within any applicable state-law limitations period.

2. Petitioners' suit also is timely should the Court borrow the one-year statute of limitations found in Section 1640(e)

Section 1640(a) creates a cause of action for damages against creditors for violations of the statute. 15 U.S.C. § 1640(a). Subject to exceptions not relevant here, Section 1640(e) then provides that "any action under this section may be brought . . . within one year from the date of the occurrence of the violation." *Id.* § 1640(e). That "statute of limitations begins to run when the cause of action 'accrues'—that is, when 'the plaintiff can file suit and obtain relief.'" *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 610 (2013) (quoting *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of California, Inc.*, 522 U.S. 192, 201 (1997)). Consequently, "this Court has often construed statutes of limitations to commence when the plaintiff is permitted to file suit." *Id.*

Petitioners' claim seeking a declaration that their rescission was effective did not accrue until respondents refused to honor the rescission effected by petitioners' written notification. Pursuant to Section 1635(b), "[w]ithin 20 days after receipt of a notice of rescission," respondents were required to "return . . . 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." 15 U.S.C. § 1635(b). A borrower cannot

sue to enforce a rescission until 20 days after notifying the creditor, because until that time the creditor may comply with Section 1635(b) by satisfying its legal obligations arising from the borrower's rescission. As a result, the creditor has not yet violated the statute until 20 days after receiving notice. Until then, a suit to enforce the rescission would be incurably premature. A subsequent suit to enforce the rescission is thus a suit to compel the creditor to tender pursuant to the right that the borrower already has exercised. Accordingly, as the court below recognized, "[t]he failure-to-rescind cause of action accrue[s] when plaintiffs request[] rescission and the bank[] denie[s] the request." *Keiran v. Home Capital, Inc.*, 720 F.3d 721, 729 (8th Cir. 2013), *petition for cert. pending*, No. 13-705 (U.S. filed Dec. 9, 2013).

Petitioners notified respondents of their intention to rescind the mortgage transaction on February 23, 2010. *See* Add. 9-10. Respondents never took the steps required by Section 1635(b) and thereby violated the statute at the expiration of Section 1635(b)'s 20-day window on March 16, 2010. Petitioners then filed suit to enforce the rescission on February 24, 2011, within one year of respondents' violation. Their suit was therefore timely even under a one-year statute of limitations.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

LYNN E. BLAIS
MICHAEL F. STURLEY
727 East Dean Keeton Street
Austin, Texas 78705
(512) 232-1350

MICHAEL J. KEOGH
KEOGH LAW OFFICE
P.O. Box 11297
St. Paul, Minnesota 55111
(612) 644-2861

ERIN GLENN BUSBY
411 Highland Street
Houston, Texas 77009
(713) 868-4233

DAVID C. FREDERICK
Counsel of Record
MATTHEW A. SELIGMAN
KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@khhte.com)

July 15, 2014

ADDENDUM

TABLE OF CONTENTS

STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. The Truth in Lending Act, 15 U.S.C. § 1635, provides:

§ 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.

(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.

(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

This section does not apply to—

(1) a residential mortgage transaction as defined in section 1602(w)[1] of this title;

(2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; or

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

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[1] Section 1602(w) of this title, referred to in subsec. (e)(1), was redesignated section 1602(x) of this title by Pub. L. 111-203, title X, § 1100A(1)(A), July 21, 2010, 124 Stat. 2107.

(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 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 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.

(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.

2. Regulation Z of the Federal Reserve Board provides in relevant part:

12 C.F.R. § 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.[47]

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail,

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[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.

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) 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,[48] 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.

(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 and shall clearly and conspicuously disclose the following:

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[48] 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 §§ 226.32(c) and (d) and 226.35(b)(2).

(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.

* * *

Larry Jesinoski
Cheryle Jesinoski
4165 Cashell Glen
Eagan, MN 55122

Date February 23rd 2010

Bank Of America Fax Correspondence Number
1-805-520-5019

Delivery Confirmation Mail Return Receipt # 7009
0820 0001 5826 3285

To: Bank of America
P.O. Box 5170
Simi Valley 93062-5170

Attn: Legal Department Regarding Account Number 159328556
Re: Original Loan # 159328556 (America's Wholesale Lender)
Property address: 4165 Cashell Glen
Eagan, MN 55122

ACTUAL NOTICE TO RESCIND

Dear Legal Department:

On or about February 23rd 2007, a federally related mortgage loan transaction was closed utilizing America's Wholesale Lender as the Lender. The transaction was subsequently, and soon thereafter, transferred to Bank of America for purported servicing.

We have conducted a reasonable investigation and inquiry into this matter and concluded that this transaction was ratified without sufficient and

correct evidence that all obligors were in fact provided the following:

- Sufficient correct copies of our Notice of Right to Cancel under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a), and
- Sufficient correct copies of a Truth in Lending Disclosure Statement under Reg. Z §§ 226.23(b)

The foregoing material disclosures were not provided in a manner we could retain.

In addition, we did not receive the correct Truth in lending Disclosure Statements and we are entitled to two copies of this document. The (your) failure to provide effective notice of these mandatory disclosures effectively extends our rescission rights under 15 U.S.C. § 1635(f).

We hereby give effective notice to rescind and cancel the transaction indicated above without any further notice. Notice to the Principals is Notice to the Agent and Notice to the Agent is Notice to the Principals.

2/23/10	2/23/10
Date	Date
/s/ LARRY JESINOSKI	/s/ CHERYLE JESINOSKI
Larry Jesinoski	Cheryle Jesinoski