No. 13-684

In the Supreme Court of the United States

LARRY D. JESINOSKI AND CHERYLE JESINOSKI,
PETITIONERS

v.

COUNTRYWIDE HOME LOANS, INC., ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq*., gives borrowers the right to rescind certain transactions "by notifying the creditor." 15 U.S.C. 1635(a). TILA provides, however, that "[a]n 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." 15 U.S.C. 1635(f). The question presented is as follows:

Whether the present suit is time barred because it was commenced more than three years after the relevant transaction was consummated, even though the borrowers provided the creditor written notice of their decision to rescind the transaction within the specified three-year period.

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3 Henry Campbell Black, *A Treatise on the Rescission of Contracts and Cancellation of Written Instruments* (1916) 16
Black's Law Dictionary (rev. 4th ed. 1968) 12
Board of Governors of the Federal Reserve System:
Annual Report to Congress on Truth in Lending for the Year 1971, as reprinted in 118 Cong. Rec. 816 (1972) 19

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Annual Report to Congress on Truth in Lending for the Year 1972, as reprinted in 119 Cong. Rec. 4597 (1973) 19
114 Cong. Rec. (1968):
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p. 14,390 18
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Dan B. Dobbs, *Law of Remedies* (2d ed. 1993) 16
H.R. Conf. Rep. No. 1429, 93d Cong., 2d Sess. (1974) 19
H.R. Rep. No. 1040, 90th Cong., 1st Sess. (1967) 18
Richard A. Lord, 26 *Williston on Contracts* (4th ed. 2003) 16
Regulation Z; Truth in Lending, 75 Fed. Reg. 58,610-58,611 (Sept. 24, 2010) 32
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Webster's New Twentieth Century Dictionary (2d ed. 1969) 12

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INTEREST OF THE UNITED STATES

This case concerns the right to rescind certain transactions under the Truth in Lending Act (TILA or the Act), 15 U.S.C. 1601 *et seq.* The Consumer Financial Protection Bureau (CFPB or Bureau) is authorized to "prescribe regulations to carry out the purposes" of the Act, 15 U.S.C. 1604(a), and shares authority for enforcing the Act with other federal regulators, 15 U.S.C. 1607. The United States therefore has a substantial interest in this Court's resolution of the question presented.

STATEMENT

1. a. Congress enacted TILA in 1968 to promote the "informed use of credit." 15 U.S.C. 1601(a); see *Mourning* v. *Family Publ'ns Serv., Inc.*, 411 U.S. 356,

363-366 (1973). To that end, the Act requires creditors to provide borrowers with "meaningful disclosure[s] of credit terms," 15 U.S.C. 1601(a)—such as "finance charges, annual percentage rates of interest, and the borrower's rights," *Beach* v. *Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998)—so that "the consumer will be able to compare more readily the various credit terms available to him," 15 U.S.C. 1601(a).

TILA also gives borrowers a "right to rescind" some kinds of consumer-credit transactions. 15 U.S.C. 1635(a); see 15 U.S.C. 1635(d) (right to rescind is unwaivable except in emergency circumstances). The rescission right applies to certain transactions in which a creditor takes a security interest in an obligor's "principal dwelling" and in return provides money or property that the obligor uses for non-business purposes. 15 U.S.C. 1635(a); see 15 U.S.C. 1603. The right does not apply to transactions that finance the acquisition or initial construction of a home, or to mortgage refinancing with the original creditor. See 15 U.S.C. 1635(e).

Under Section 1635(a), "the obligor shall have the right to rescind" a covered 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 his intention to do so." 15 U.S.C. 1635(a). Creditors must "provide, in accordance with regulations * * * , appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section." *Ibid.*

Section 1635(a)'s window for exercise of the obligor's rescission right generally does not close until three business days after the later of the date the transaction is consummated or the date when a creditor provides the required forms and material disclosures. 15 U.S.C. 1635(a); see 15 U.S.C. 1635(i) (discussing rescission rights exercised after initiation of foreclosure). Even if the creditor never provides those materials, however, the federal right to rescind does not extend indefinitely. Instead, under Section 1635(f), which was added to TILA in 1974, "[a]n 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." 15 U.S.C. 1635(f); see Act of Oct. 28, 1974, Pub. L. No. 93-495, § 405, 88 Stat. 1517.[1]

Pursuant to Section 1635(b), the obligor's exercise of the rescission right triggers a series of steps through which the transaction is unwound. See *Beach*, 523 U.S. at 412-413. First, "[w]hen an obligor 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 obligor * * * becomes void upon such a rescission." 15 U.S.C. 1635(b). Second, "[w]ithin 20 days after receipt of a notice of rescission, the creditor shall return to the

[1] Pursuant to a 1980 amendment to TILA, that time limit is extended when a government agency commences a proceeding within three years after a transaction is consummated and finds that a creditor has violated Section 1635, so long as "the obligor's right to rescind is based * * * on any matter involved in such proceeding." 15 U.S.C. 1635(f); see *ibid.* (explaining that the rescission right may expire as late as "one year following the conclusion of the proceeding, or any judicial review or period of judicial review thereof").

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." *Ibid.* Third, "[u]pon the performance of the creditor's obligations under this section, the obligor shall tender" any property the creditor has previously delivered (or "its reasonable value"). *Ibid.*

TILA contemplates the possibility that a court will resolve a dispute between the parties after the obligor sends a notice of rescission. For example, the unwinding procedures set forth in Section 1635(b) "shall apply except when otherwise ordered by a court." 15 U.S.C. 1635(b). And a creditor who fails to comply with "any requirement under section 1635" is subject to a suit by the obligor for damages, which must be brought "within one year from the date of the occurrence of the violation." 15 U.S.C. 1640(a) and (e).

b. When TILA was enacted, Congress delegated "broad authority" to implement the statute to the Board of Governors of the Federal Reserve System (Board). *Mourning*, 411 U.S. at 365; see, *e.g.*, 15 U.S.C. 1604(a). The Board promulgated implementing regulations (known as "Regulation Z"), including regulations that specify how notice of rescission is to be provided. See *Mourning*, 411 U.S. at 368-369; 12 C.F.R. Pt. 226; 15 U.S.C. 1635(a) (borrower may rescind covered transaction "by notifying the creditor, *in accordance with regulations* * * * , of his intention to do so") (emphasis added).

In a 2010 enactment, Congress transferred to the Bureau the authority to implement and promulgate rules under TILA. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-

203, §§ 1061(b)(1), 1100A(2), 1100H, 124 Stat. 2036, 2107, 2113; *Designated Transfer Date*, 75 Fed. Reg. 57,252 (Sept. 20, 2010) (designating transfer date of July 21, 2011). On December 22, 2011, the Bureau re-promulgated Regulation Z pursuant to that transferred authority, making no relevant substantive changes to the text of the provisions that address the right of rescission. *Truth in Lending (Regulation Z)*, 76 Fed. Reg. 79,768; see 12 C.F.R. Pt. 1026.[2]

Regulation Z provides 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. 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." 12 C.F.R. 226.23(a)(2); see 12 C.F.R. Pt. 226, Apps. H-8, H-9 (model forms for exercising rescission right); 12 C.F.R. 1026.23(a)(2). Regulation Z further provides that, if a creditor fails to deliver the required disclosures, "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." 12 C.F.R. 226.23(a)(3); see 12 C.F.R. 1026.23(a)(3).

2. On February 23, 2007, petitioners refinanced the mortgage on their home in Eagan, Minnesota, obtaining a loan that they used to "pa[y] off multiple consumer debts." Pet. App. 5a (internal quotation marks

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[2] Because all relevant events in this case occurred before the effective transfer date, this brief cites to the Board's regulations when discussing the parties' dispute. See pp. 5-6, *infra*.

omitted).[3] The lender failed to provide petitioners with the required number of copies of the Notice of Right to Cancel and the loan disclosures. *Ibid.*; see J.A. 29, 32-33; see also 12 C.F.R. 226.17(d), 226.23(b). The Notice of Right to Cancel that petitioners did obtain stated (under the bold heading "HOW TO CANCEL") that, "[i]f you decide to cancel this transaction, you may do so by notifying us in writing" using "any written statement that is signed and dated by you and states your intention to cancel." J.A. 29, 38-39.

On February 23, 2010, exactly three years after the transaction was consummated, petitioners sent written notice of rescission to all interested parties by certified mail. Pet. App. 5a. On March 12, 2010, respondent BAC Home Loans Servicing sent petitioners a letter stating its refusal to honor the rescission notice. *Ibid.* No other recipient responded to the notice or took any of the steps listed in Section 1635(b). J.A. 30.

3. a. On February 24, 2011, petitioners commenced this action, asserting claims under TILA and Minnesota law. Pet. App. 5a-6a. Petitioners requested that the court "declare the mortgage transaction rescinded," and they sought damages for the "failure" to honor the rescission notice. J.A. 33, 35.

Shortly after answering the complaint, respondents moved for judgment on the pleadings. See J.A. 40, 56. Citing Section 1635(f), respondents contended that petitioners could not pursue any claim premised on a right of rescission because they had filed their com-

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[3] The facts set forth here are drawn from the allegations in petitioners' amended complaint.

plaint more than three years after the refinancing took place. See Mot. for J. 1-2; J.A. 56-57.

The district court granted the motion. The court "assume[d] without deciding" that petitioners had "pled a plausible claim that they did not receive the required documents at the closing." Pet. App. 7a & n.3. The court concluded, however, that petitioners' suit was "time-barred" because the complaint was not filed within three years of February 23, 2007, the date that petitioners had "closed on the loan." *Id.* at 7a-8a. The court described Section 1635(f) as a "three-year statute of repose on claims for rescission." *Id.* at 8a-9a.

b. The court of appeals affirmed. Pet. App. 1a-3a. The court explained that "[t]he sole issue on appeal is whether mailing a notice of rescission within three years of consummating a loan is sufficient to 'exercise' the right to rescind a loan transaction pursuant to 15 U.S.C. § 1635(a) or * * * whether a party seeking to rescind the transaction is required to file a lawsuit within the three-year statutory period." *Id.* at 2a. The court concluded that it was bound by circuit precedent, see *Keiran* v. *Home Capital, Inc.*, 720 F.3d 721 (8th Cir. 2013), petition for cert. pending, No. 13-705 (filed Dec. 9, 2013), to enforce the latter approach. Pet. App. 2a. Two of the three panel members wrote separate concurrences expressing the view that *Keiran* was wrongly decided. See *id.* at 2a-3a.

c. By a vote of 6 to 4, the court of appeals denied petitioners' request for en banc review. Pet. App. 10a-11a. Judge Colloton concurred in the denial on the ground that the issue presented was ripe for resolution by this Court. *Id.* at 11a.

SUMMARY OF ARGUMENT

A. TILA gives borrowers a federal right to rescind certain consumer-credit transactions, and the statute unambiguously describes how to exercise the right: "by notifying the creditor, in accordance with regulations." 15 U.S.C. 1635(a). The regulation that the notifying obligor must act "in accordance with" states that "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 sending of the notice triggers a series of steps through which the transaction is unwound. See 15 U.S.C. 1635(b) (giving the creditor 20 days from "receipt of a notice" to take certain acts). Section 1635(f) states that "[a]n obligor's right of rescission shall expire three years after the date of consummation of the transaction." 15 U.S.C. 1635(f). That provision places an outer limit on the period of time within which the borrower may rescind a covered transaction, but it says nothing about *how* the rescission right is exercised, and it does not establish a time limit for the filing of suit in court to enforce the legal effect of a valid notice of rescission.

Various TILA provisions contemplate that a court may become involved in a rescission-related dispute after an obligor sends a creditor a rescission notice. The court's task in such a suit is to decide whether the obligor has already rescinded the transaction by means of a notice that was timely and otherwise valid when sent—and, if so, what consequences should follow. No TILA provision, however, requires the obligor to bring suit in order to exercise his federal right to rescind.

TILA's history and purposes confirm that an obligor who sends a notice of rescission has exercised the "right of rescission" under Section 1635(f). In order to clarify

and simplify consumer-credit transactions, Congress made the means for exercising the rescission right straightforward, not costly and complex. Section 1635(f) does not suggest any intent to change that straightforward process. Rather, it simply ensures that, even in cases where the creditor fails to make the disclosures that TILA requires, the borrower must exercise his rescission right within a defined period.

B. Respondents contend that, if the obligor seeks to rescind a covered transaction more than three business days after the transaction is consummated, and the creditor contends that its disclosures were complete (and thus that the notice is untimely), the obligor must sue for rescission before the three-year period in Section 1635(f) expires. That contention lacks merit. Neither TILA nor its implementing regulations suggest any such rule. Respondents' argument conflates the TILA provisions (including Section 1635(f)) that govern the time for exercising the rescission right with the separate inquiry used to determine the timeliness of the suit.

Treating Section 1635(f) as a limit on the time for filing suit would create a number of anomalies. It would treat the three-day limit in Section 1635(a) and the three-year limit in Section 1635(f) differently, without any warrant in the statutory text. It would establish a deadline for suit that runs from a date before the borrower has a complete and present cause of action for a creditor's violation of Section 1635(b). It would create a substantial danger that, when an obligor sends a notice of rescission just before the end of the three-year period, a cause of action for a violation of Section 1635(b) would become time-barred before it accrues at all. Respondents further suggest that, even when the borrower sends a timely rescission notice, actual rescission of a covered

transaction does not occur until a court resolves in the obligor's favor any dispute over the notice's validity. But treating Section 1635(f) as establishing a three-year deadline for obtaining a favorable judicial ruling would create a particularly unreasonable scheme in which the obligor's federal rescission right would depend on the speediness of the court's decisionmaking.

Section 1635(f) is not a "statute of repose" that places an "outer limit on the right to bring a civil action." *CTS Corp.* v. *Waldburger*, 134 S. Ct. 2175, 2182 (2014). Section 1635(f) does not limit, or even address, the right to sue. *Beach* v. *Ocwen Fed. Bank*, 523 U.S. 410, 417 (1998). And in cases like this one, where the borrower's suit alleges that the creditor unlawfully failed to unwind a covered transaction after receiving a timely rescission notice, Section 1635(f)'s time limit does not run from "the date of the last culpable act or omission of the defendant." *CTS Corp.*, 134 S. Ct. at 2182.

Contrary to respondents' contention, recognizing that Section 1635(f) does not limit the time for filing suit will not subject creditors to open-ended TILA liability. A creditor who receives a notice of rescission sent within the Section 1635(f) period can immediately resolve any uncertainty about the status of the underlying transaction by filing suit seeking to declare the notice invalid. Uncertainty can also be resolved through a suit by the obligor. Although TILA does not impose a specific deadline by which an obligor must sue when a creditor fails to honor a notice of rescission, the Court can (in accordance with its usual practice) borrow a limitations period for such suits from an analogous source of law. In addition, a court that deems a rescission notice to have been valid when sent has flexibility in deciding whether the procedures in Section 1635(b) should apply. Thus, Congress

has struck a reasonable balance between obligors' and creditors' interests.

C. For those reasons, the plain text of the provisions at issue precludes respondents' view that Section 1635(f) specifies the time within which a suit like petitioners' must be filed. But if the Court regards those provisions as ambiguous, deference to the agency's views—which is "especially appropriate" in the TILA context, *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 565 (1980)—would be warranted. The Board, and then the Bureau, adopted a regulation that represents a reasonable determination that the procedure for exercising the rescission right is the same whether or not the obligor acts in the first three days after the transaction, and whether or not the creditor accepts the validity of a rescission notice. And the Bureau has filed several amicus briefs taking that position, reflecting the agency's considered and consistent views about the proper interpretation of Regulation Z and of TILA itself.

ARGUMENT

A. An Obligor Exercises The Right Of Rescission By Sending A Notice And Is Not Required Under Section 1635(f) To File Suit Within The Three-Year Period Specified By That Provision

1. a. Under TILA, "[a]n 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." 15 U.S.C. 1635(f). That provision "says nothing in terms of bringing an action" or "a suit's commencement"; rather, it speaks to the "duration" of the rescission

right. *Beach* v. *Ocwen Fed. Bank*, 523 U.S. 410, 417 (1998). An obligor who exercises his "right of rescission" before it expires has satisfied the time limit set forth in Section 1635(f).

Section 1635(a), in turn, unambiguously describes *how* an obligor may exercise the rescission right. That subsection states that "the obligor shall have the right to rescind the transaction * * * by notifying the creditor, in accordance with regulations" of the relevant agency, "of his intention to do so." 15 U.S.C. 1635(a). Section 1635(a) also mandates that the creditor "provide * * * appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section." *Ibid.*

Section 1635(a) thus makes clear that, if a creditor fails to make the disclosures that TILA requires, an obligor who sends a notice of rescission within Section 1635(f)'s three-year period has exercised the "right of rescission" before its expiry, regardless of whether he asserts a claim in court within the same period. The obligor's responsibility in exercising the right is to "notify[]" the creditor—that is, "[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." *Black's Law Dictionary* 1211 (rev. 4th ed. 1968); see also, *e.g.*, *Webster's New Twentieth Century Dictionary* 1225 (2d ed. 1969). An obligor can make his exercise of the rescission right "known" to the creditor using any writing, without invoking the authority of a court to do so. Indeed, Section 1635(a) expressly contemplates that the obligor can deliver the requisite notification by filling out a pre-printed form—hardly an indication that the filing of a full-fledged complaint is required. See 15 U.S.C. 1635(a).

Section 1635(a) also states that an obligor who wishes to "notify[] the creditor" must do so "in accordance with regulations." 15 U.S.C. 1635(a). Because TILA gives "an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation," the relevant portion of Regulation Z is a "legislative regulation[]" that must be "given controlling weight unless" it is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 843-844 (1984). Regulation Z confirms 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); see 12 C.F.R. Pt. 226, Apps. H-8, H-9 (model rescission forms, provision of which limits rescission rights under 15 U.S.C. 1635(h)). And, like Section 1635, the regulation does not require the commencement of a lawsuit or refer to any means of exercising the right other than sending a written notice.

b. Other TILA provisions bolster the conclusion that sending a notice is sufficient to exercise the "right of rescission" within the time specified by Section 1635(f). Section 1635(b) states that, "[w]hen an obligor exercises his right to rescind under subsection (a)," he "is not liable for any finance or other charge, and any security interest * * * becomes void upon such a rescission." 15 U.S.C. 1635(b). Accordingly, "[w]ithin 20 days after receipt of a notice of rescission, the creditor shall return to the obligor" certain money or property, "and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." *Ibid.*; see *ibid.* (stating that these "procedures * * * shall

apply except when otherwise ordered by a court"); see also 12 C.F.R. 226.23(d)(1)-(2). Section 1635(b) confirms that sending the written notice described in Section 1635(a) is not simply a preliminary step on the way to exercising the "right of rescission." Rather, provision of the notice *constitutes* the exercise of the right, with the operative legal consequences that timely rescission entails.

2. TILA adverts to the possibility that a court may become involved, at the behest of either the obligor or the creditor, after the obligor sends the rescission notice. See 15 U.S.C. 1635(b), (c) and (g); 15 U.S.C. 1640(a)(3), (c) and (g). *Inter alia*, the Act creates a cause of action for damages in 15 U.S.C. 1640, which imposes monetary liability on "any creditor who fails to comply with * * * any requirement under section 1635" and specifies where and when such an action may be brought. 15 U.S.C. 1640(a) and (e); see *Beach*, 523 U.S. at 417-418. The relevant provisions do not suggest, however, that an obligor must file suit within three years after the relevant transaction in order to prevent expiration of the rescission right under Section 1635(f).

a. In a variety of contexts, courts may be called on to determine the validity and legal effect of a borrower's notice of rescission. A creditor in receipt of a notice of rescission may seek a declaration that the notice was untimely, or that the Section 1635(b) procedures should be altered in light of the circumstances presented. See 15 U.S.C. 1635(b); 28 U.S.C. 2201; *New Me. Nat'l Bank* v. *Gendron*, 780 F. Supp. 52, 56 (D. Me. 1991). An obligor may sue for damages under Section 1640 for a creditor's failure to follow the unwinding procedures of Section 1635(b), and may seek a

declaration that the notice of rescission is valid and that the creditor is bound to comply with those procedures. See, *e.g.*, *Palmer* v. *Champion Mortg.*, 465 F.3d 24, 26-27 (1st Cir. 2006); see also 28 U.S.C. 2201. The obligor also may exercise the right of rescission through notice given to the creditor in the context of an ongoing bankruptcy or judicial foreclosure case, see, *e.g.*, 15 U.S.C. 1635(i), or may invoke a notice already sent as part of a defense raised in such an action, see, *e.g.*, *Family Fin. Servs., Inc.* v. *Spencer*, 677 A.2d 479, 482, 487 (Conn. App. Ct. 1996).

If an obligor who has sent a rescission notice is involved in a suit against a creditor that has ignored or declined to recognize the validity of the notice, the court must determine whether the notice was valid and enforceable when it was sent. If the court concludes that the notice was timely and otherwise valid, it will hold that the "right of rescission" was exercised as of the notice date, and the court can consider whether there is some special reason why the Section 1635(b) procedures should not "apply." 15 U.S.C. 1635(b); see, *e.g.*, *Sherzer* v. *Homestar Mortg. Servs.*, 707 F.3d 255, 264-265 (3d Cir. 2013) (explaining that obligor who has sent a timely notice of rescission retains "the right to the return of his property and to clear title—the rights flowing from rescission"). If the court finds that the notice was untimely or otherwise invalid, it will hold that the rescission right was never validly exercised, and that the creditor remains entitled to enforce the terms of the underlying transaction. See *id.* at 265. The court's role thus is not to rescind or decline to rescind the transaction; it is to determine whether the borrower has *already* rescind-

ed the transaction through the (extra-judicial) means specified in the statute.[4]

b. In keeping with that understanding of the court's role, TILA's rescission-related references to a

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[4] The common-law doctrine of "rescission at law," on which Congress appears to have drawn in enacting Section 1635(a) and (b) (while making some modifications to render Section 1635 more friendly to the obligor, see 15 U.S.C. 1635(b)), works in substantially the same way. See *Williams* v. *Homestake Mortg. Co.*, 968 F.2d 1137, 1139-1141 (11th Cir. 1992); Richard A. Lord, 26 *Williston on Contracts* § 68:28 (4th ed. 2003); cf. *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1363 (2013) (presuming that "Congress intended to retain the substance of the common law") (internal quotation marks omitted). Pursuant to that doctrine, one party may under certain circumstances rescind a transaction by "giv[ing] notice to the [other party] that the transaction has been avoided." *Griggs* v. *E.I. DuPont de Nemours & Co.*, 385 F.3d 440, 445-446 (4th Cir. 2004); see, *e.g.*, *Douglass* v. *Nationwide Mut. Ins. Co.*, 913 S.W.2d 277, 281-282 (Ark. 1996) (rejecting proposition that "court action is required for a rescission at law"); *Prewitt* v. *Sunnymead Orchard Co.*, 209 P. 995, 995, 998-999 (Cal. 1922); 3 Henry Campbell Black, *A Treatise on the Rescission of Contracts and Cancellation of Written Instruments* §§ 577-578 (2d ed. 1929). The non-rescinding party might dispute whether the party who gave notice in fact had a right to rescind. But if a court finds the notice to have been proper at "the time at which" it was provided, the court treats the rescission as "complete and perfect" as of that time. *Prewitt*, 209 P. at 998-999 (internal quotation marks omitted); see, *e.g.*, *Phelps* v. *U.S. Life Credit Life Ins. Co.*, 984 S.W.2d 425, 427 (Ark. 1999) (explaining that party who sent a notice had "achieved rescission by its own acts"). The court's role is merely to "confirm[] and enforc[e] that rescission" and to grant restitution if necessary. *Peterson* v. *Highland Music, Inc.*, 140 F.3d 1313, 1322-1323 (9th Cir.), cert. denied, 525 U.S. 983 (1998); see, *e.g.*, *Griggs*, 385 F.3d at 445-446; Dan B. Dobbs, *Law of Remedies* § 4.8, at 462 (2d ed. 1993) ("[T]he plaintiff effects the rescission, and the court gives a judgment for restitution if that is needed.").

judicial proceeding do not require the obligor to bring suit in order to exercise his federal right to rescind. The statute refers generally to "action[s] in which a person is determined to have a right of rescission under section 1635," 15 U.S.C. 1640(a)(3); "action[s] in which it is determined that a creditor has violated [Section 1635]," 15 U.S.C. 1635(g); and "action[s] brought under * * * section 1635," 15 U.S.C. 1640(c). All of those provisions are fully consistent with the understanding that a court's task in any suit in which the right of rescission is questioned—including a Section 1640 damages action against a creditor for failure to comply with Section 1635(b)—is to ascertain whether a prior extra-judicial notice of rescission was valid when it was sent and what consequences should follow. None of the provisions requires an obligor to file suit to exercise the right to rescind.

3. TILA's history and purposes confirm that an obligor who sends a written rescission notice has exercised the "right of rescission" under Section 1635(f) and need not file a lawsuit within the specified three-year period. See, *e.g.*, *Anderson Bros. Ford* v. *Valencia*, 452 U.S. 205, 219-223 (1981) (examining "the underlying purpose of the TILA").

The statute is intended "to assure a meaningful disclosure of credit terms," and to ensure that borrowers who might otherwise be confused or misled have a fair understanding of the transaction and of their rights. 15 U.S.C. 1601. Congress enacted TILA's rescission provisions in response to fraudulent home-improvement schemes in which "homeowners, particularly the poor," were "trick[ed] * * * into signing contracts at exorbitant rates, which turn[ed]

out to be liens on the family residences." 114 Cong. Rec. 14,388 (1968) (statement of Rep. Sullivan); see *id.* at 14,384 (statement of Rep. Patman); see also *Mourning* v. *Family Publ'ns Serv., Inc.*, 411 U.S. 356, 363 (1973) (citing H.R. Rep. No. 1040, 90th Cong., 1st Sess. 13 (1967)). The right of rescission, which is broad and generally unwaivable where it applies, is a "vitally important" part of Congress's effort to combat such practices. 114 Cong. Rec. at 14,388 (statement of Rep. Sullivan); see *Barrett* v. *JP Morgan Chase Bank*, 445 F.3d 874, 881-882 (6th Cir. 2006).

In keeping with Congress's overarching purpose to make things clearer and simpler for borrowers, the exercise of the rescission right is intended to be straightforward. See 15 U.S.C. 1635(a) and (b); see also 114 Cong. Rec. at 14,390 (statement of Rep. Sullivan) (explaining that conferees rejected a proposal to require rescission notices to be sent by registered mail because they wanted to "keep[] a strong, workable provision"). Indeed, Congress has repeatedly amended TILA's rescission provisions against the backdrop of an agency regulation stating that the right of rescission can be exercised by providing notice via "mail, telegram or other means of written communication," 12 C.F.R. 226.23(a)(2). Cf., *e.g.*, *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 184-185 (1988). No provision of the statute or the regulations, and no portion of the model rescission forms that many creditors supply to obligors, suggests that the commencement of a lawsuit is a prerequisite to the valid and timely exercise of the rescission right. See 15 U.S.C. 1635(h); 12 C.F.R. Pt. 226, Apps. H-8, H-9.

To be sure, Section 1635(f), which was enacted several years after Section 1635(a) and (b), has a narrow-

er purpose than those provisions. Congress enacted Section 1635(f) to address concerns that, if a particular obligor did not receive the disclosures mandated by Section 1635(a), his right to rescind the transaction would never expire. See Board of Governors of the Federal Reserve System, *Annual Report to Congress on Truth in Lending for the Year 1972*, *as reprinted in* 119 Cong. Rec. 4595, 4597 (1973) ("[T]he titles to many residential real estate properties may become clouded by uncertainty regarding unexpired rights of rescission. The Board recommends that Congress amend [TILA] to provide a limitation on the time the right of rescission may run."); Board of Governors of the Federal Reserve System, *Annual Report to Congress on Truth in Lending for the Year 1971*, *as reprinted in* 118 Cong. Rec. 816, 818 (1972); see H.R. Conf. Rep. No. 1429, 93d Cong., 2d Sess. 37 (1974) (indicating that Section 1365(f) was part of "a series of basically technical amendments designed to improve the administration of [TILA]"); S. Rep. No. 750, 92d Cong., 2d Sess. 1 (1972).

By enacting Section 1635(f), Congress imposed an outer limit on *when* the rescission right may be exercised. Nothing in Section 1635(f) suggests, however, that Congress intended to change the existing rules regarding *how* specified transactions may be rescinded. Nor was such a change necessary to accomplish the purposes that Section 1635(f) was intended to serve. Requiring an obligor to provide notice to a creditor within three years of a transaction reduces uncertainty and places a meaningful limit on a previously unlimited right. Within a few days after the end of that three-year period, the creditor will know conclusively whether the obligor's right has been exer-

cised—and if the obligor does not send notice in time, his right will be lost forever.

B. Respondents' Assertion That Their Initial Disclosures Were Complete Does Not Alter The Procedures By Which Petitioners Can Exercise Their Right To Rescind Or Require Petitioners To File Suit Within Three Years After The Transaction

Respondents do not dispute that, within the initial three-day period after a transaction occurs, a written notice is sufficient to exercise the obligor's right to rescind. Respondents have argued, however, that if an obligor seeks to rescind more than three business days after the transaction, and the creditor contends that its initial disclosures were complete, the obligor must sue for rescission within the three-year time limit set forth in Section 1635(f). See Resp. to Pets. 19-30. That contention lacks any grounding in the text of the relevant provisions and should be rejected.

1. a. Neither TILA nor its implementing regulations draw the distinction that respondents have posited. The relevant provisions do not suggest that an obligor acting a month after the transaction, or three years after the transaction, should exercise the right to rescind any differently than an obligor acting on the second or third day after closing. Nor do they support the unlikely proposition that the adequacy of a given rescission notice depends on an event (the creditor's subsequent acknowledgment or denial of the obligor's right to rescind) that has not yet occurred when the rescission notice is transmitted.

TILA's directive that "[a]n obligor's right of rescission shall expire" at the end of three years, 15 U.S.C. 1635(f), likewise does not support respondents' argument. What an obligor must do during the "life of the

right," *Beach*, 523 U.S. at 417, is "exercise[]" it, 15 U.S.C. 1635(b), not seek or obtain judicial confirmation that the exercise was timely and proper. When the parties dispute whether a particular notice of rescission was timely, courts may sometimes be asked (by either the creditor or the obligor) to resolve that disagreement in order to determine whether the notice should be given operative legal effect. In resolving that question, however, the court will consider (among other things) whether the notice of rescission was sent while the obligor still had the right to rescind, not whether suit was commenced before the right expired.

An examination of the separate three-day time limit set forth in Section 1635(a) confirms that understanding. In cases where a lender's initial disclosures are complete, the "right to rescind" expires at midnight of the third business day following the transaction. See 15 U.S.C. 1635(a). Respondents appear to agree that an obligor can exercise his "right to rescind" during that period by sending a written notice, and that an obligor who takes that step can validly commence suit after that three-day window if the creditor subsequently fails to unwind the transaction in accordance with TILA's requirements. See Resp. to Pets. 2-3, 19; see also 15 U.S.C. 1635(b) (setting 20-day deadline for creditor to respond to notice). Respondents thus recognize that, in cases where the creditor's initial disclosures are complete, the statutory time limit for exercising the "right to rescind" does *not* govern the filing of suit in the event that a dispute

arises as to the effectiveness of the borrower's rescission notice.[5]

There is no textual basis for treating Section 1635(f)'s three-year deadline any differently. Section 1635(a) and Section 1635(f) use essentially identical language ("right to rescind" and "right of rescission," respectively) to describe a right that must be exercised during specified time periods. Neither provision suggests that the manner in which the right must be exercised depends on which time limit is at issue. Cf. *Clark* v. *Martinez*, 543 U.S. 371, 378 (2005). In each instance, the statute refers to the obligor's right to rescind, not to the complete unwinding of the transaction. And if a dispute arises about the validity of a particular rescission notice, or about what consequences should flow from the notice, litigation to resolve that dispute can be commenced after the specified period for exercising the rescission right has ended. See, *e.g.*, *Sherzer*, 707 F.3d at 264; *Cocroft* v. *HSBC Bank USA*, No. 10 C 3408, 2012 WL 1378645, at *2-4 (N.D. Ill. Apr. 20, 2012); *Keiran* v. *Home Capital, Inc.*, 720 F.3d 721, 731-735 (8th Cir. 2013) (Murphy, J., concurring in part and dissenting in part), petition for cert. pending, No. 13-705 (filed Dec. 9, 2013).

b. Treating Section 1635(f) as a deadline for filing suit would create additional anomalies.

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[5] Respondents are wrong in suggesting (Resp. to Pets. 24) that the validity of a rescission notice cannot become the subject of disagreement in cases where the creditor's initial disclosures are complete. Parties sometimes disagree about when the transaction was consummated, or when the notice was actually mailed or faxed. See, *e.g.*, *Stump* v. *WMC Mortg. Corp.*, No. Civ. A. 02-326, 2005 WL 645238, at *8-9 (E.D. Pa. Mar. 16, 2005).

i. This Court has "repeatedly recognized that Congress legislates against the standard rule that the limitations period commences when the plaintiff has a complete and present cause of action." *Graham Cnty. Soil & Water Conservation Dist.* v. *United States*, 545 U.S. 409, 418 (2005) (internal quotation marks omitted). The alleged TILA violation of which petitioners principally complain is respondents' refusal, *after* receiving petitioners' notice of rescission, to unwind the transaction within 20 days by taking the steps specified in Section 1635(b). Respondents do not dispute that petitioners have a federal cause of action to challenge that refusal. Under the "standard rule" described in *Graham County*, if Congress had intended Section 1635(f) to establish a limitations period for filing suit, one would expect that period to run from the accrual of petitioners' cause of action. The three-year period specified in Section 1635(f), however, runs instead from the (much earlier) date of the underlying transaction. That fact substantially undermines respondents' contention that Section 1635(f) establishes a deadline for filing suit.

ii. Under Section 1635(b), a creditor has 20 days after receiving a "notice of rescission" to "return to the obligor any money or property" and to take other specified steps. 15 U.S.C. 1635(b). If a borrower gives written notice to the creditor just before the three-year window expires, he will not know immediately whether the creditor will in fact unwind the transaction in accordance with the statute. And until the creditor's 20-day window for unwinding the transaction expires, the borrower will ordinarily have no sound basis for alleging that the creditor has violated Section 1635(b).

Respondents' interpretation of Section 1635(f) thus creates a substantial danger that a borrower's cause of action for an alleged violation of Section 1635(b) may become time-barred before it accrues—a result this Court has particularly discountenanced. See *Graham County*, 545 U.S. at 418-419. To be sure, the borrower could avoid that result by sending the rescission notice more than 20 days before the three-year period expires, thereby preserving his ability to file suit within the three-year period if the creditor does not unwind the transaction within 20 days. A rule requiring borrowers to take that approach, however, would effectively reduce, below the three years specified in Section 1635(f), the outer limit within which a borrower may exercise his right to rescind.

iii. Respondents also suggest that, even when the borrower's notice of rescission is timely communicated to the creditor, the transaction is not *actually* rescinded until a court resolves in the borrower's favor any dispute between the parties as to the effectiveness of that notice. See Resp. to Pets. 24-25. But if a favorable judicial ruling is an essential prerequisite to the borrower's actual exercise of his right of rescission, even the borrower's filing of suit within three years of the transaction would not satisfy Section 1635(f). Rather, on that view of the statute, if a borrower's suit remains pending three years after the transaction, the borrower's right of rescission will expire and the suit must be dismissed. That would make the availability of the rescission right dependent on the speediness of the court's decisionmaking—an

unreasonable scheme that Congress is unlikely to have intended.[6]

2. Relying heavily on this Court's decision in *Beach*, respondents describe Section 1635(f) as a "statute of repose" that "fundamentally *limits* the ability to file an action." Resp. to Pets. 23 (internal quotation marks omitted); see *Keiran*, 720 F.3d at 727-729. That characterization is inapt.

a. This Court recently explained that a "statute of repose" places an "outer limit on the right to bring a civil action." *CTS Corp.* v. *Waldburger*, 134 S. Ct. 2175, 2182 (2014). The Court also observed that the time limit established by a statute of repose "is measured not from the date on which the claim accrues but instead from the date of the last culpable act or omission of the defendant." *Ibid.* Section 1635(f), by contrast, does not limit or otherwise address the right to sue, and its three-year time limit does not run from the defendant's "last culpable act or omission" (here, respondents' allegedly unlawful refusal to unwind the relevant transaction in accordance with Section 1635(b)). Rather, Section 1635(f) places an outer limit, measured from the date of the underlying transaction, on a borrower's exercise of his "right of rescission," thereby referring to the Section 1635(a) notification procedure that governs the "right to rescind."

It is not unusual for a statute to set a deadline for performing some action other than initiation of a lawsuit—for instance, the filing of a notice of objection, or

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[6] Reading Section 1635(f) to fix a period in which an action must be commenced could also have the counterintuitive effect of extending the three-year limit in the bankruptcy context. See *Stanley* v. *Trinchard*, 579 F.3d 515, 517-519 (5th Cir. 2009) (discussing 11 U.S.C. 108(a)).

an application for immigration relief, or an administrative request for public benefits. See, *e.g.*, *Balam-Chuc* v. *Mukasey*, 547 F.3d 1044, 1049 (9th Cir. 2008); *Iacono* v. *Office of Pers. Mgmt.*, 974 F.2d 1326, 1328 (Fed. Cir. 1992). Compliance with such a deadline may sometimes be a legal prerequisite to the subsequent vindication of a party's rights in court. The existence of such a link between the deadline and the lawsuit does not mean, however, that the filing of suit must itself be accomplished within the specified time frame.

When Congress wishes to limit the time for filing suit by means of a statute of repose, it does so expressly. The Securities Exchange Act of 1934, for example, provides that "[n]o action shall be maintained to enforce any liability created under this section, unless brought * * * within three years after such violation." 15 U.S.C. 78i(f); see *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350, 360 & n.6 (1991). Similarly, an ERISA provision states that "[n]o action may be commenced" more than six years from the date of a breach of fiduciary duty. 29 U.S.C. 1113; see *Radford* v. *General Dynamics Corp.*, 151 F.3d 396, 399-400 (5th Cir. 1998), cert. denied, 525 U.S. 1105 (1999). As explained above, Section 1635(f) differs markedly from those provisions, both because it does not refer to the filing of suit, and because the time limit it imposes does not run from the date of a creditor's alleged violation.

b. This Court's decision in *Beach* bolsters, rather than undermines, the conclusion that petitioners satisfied Section 1635(f)'s requirements. The borrowers in *Beach* had neither sent a notice of rescission nor filed any rescission-related suit within the three-year peri-

od after the relevant transaction was consummated. See 523 U.S. at 413, 415. They attempted, however, to assert a "right to rescind as an affirmative defense in a collection action" that was "brought by the lender" after the three-year period expired. *Id.* at 411-412. This Court held that such a defense was precluded because Section 1635(f) "completely extinguishes the right of rescission at the end of the 3-year period." *Id.* at 412. The Court explained that Section 1635(f) "says nothing in terms of bringing an action but instead provides that the 'right of rescission [under the Act] shall expire' at the end of the time period. It talks not of a suit's commencement but of a right's duration, which it addresses in terms so straightforward as to render any limitation on the time for seeking a remedy superfluous." *Id.* at 417 (alteration in original); see *id.* at 419 ("[T]he Act permits no federal right to rescind, defensively or otherwise, after the 3-year period of § 1635(f) has run.").

In holding that the "right of rescission" has a limited "duration," the Court in *Beach* did not attempt to define the precise steps an obligor must take in order to exercise that right. Any such discussion would have been superfluous in that case, since the borrowers in *Beach* had taken *no* step to exercise their right to rescind within the first three years after the transaction. And, far from holding that Section 1635(f) establishes a time limit for filing suit, the Court emphasized the absence of any language in Section 1635(f) that speaks "in terms of bringing an action" or "a suit's commencement." 523 U.S. at 417. To the extent that *Beach* is relevant here at all, the Court's repeated contrasts between Section 1635(f) and traditional statutes of limitations, see *id.* at 416, 417-418, support

petitioners' view that the provision does not define the time for filing suit.

3. Echoing *Keiran*, see 720 F.3d at 727-729, respondents have contended (Resp. to Pets. 27-30) that, if borrowers like petitioners are not required to sue before Section 1635(f)'s three-year time limit has passed, creditors in respondents' position will face open-ended liability. Even if such "practical problems" existed, they would provide no basis for rewriting TILA's plain text. *Lewis* v. *City of Chi.*, 560 U.S. 205, 216-217 (2010); see *Department of Revenue* v. *ACF Indus., Inc.*, 510 U.S. 332, 347 (1994). In any event, respondents' concerns are misplaced.

As discussed above (p. 19, *supra*), Section 1635(f)'s requirement that an obligor send a rescission notice within a three-year period provides an important measure of certainty. Once that period expires, a creditor is assured that the obligor cannot thereafter exercise the federal right of rescission by any means, including defensively in a foreclosure action. See *Beach*, 523 U.S. at 419.

If the creditor is sent a notice of rescission within the three-year period, but believes that the notice is legally ineffective (*e.g.*, because the creditor's initial disclosures were complete and the notice was sent more than three business days after the transaction), the creditor will not know immediately whether the transaction will ultimately be unwound. A creditor in that situation need not wait, however, to see whether or when the borrower will sue. Rather, the creditor can file its own suit under the Declaratory Judgment Act, requesting an order declaring the notice of rescission invalid. See *Keiran*, 720 F.3d at 734 (Murphy, J., concurring in part and dissenting in part). In such

a case, the borrower's transmittal of the rescission notice provides clear evidence of the requisite adversity. See *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118, 127 (2007). If the obligor sends the notice at the end of the three-year period and the creditor files suit in short order, the continuing validity of the underlying transaction can be resolved as quickly as if the obligor had filed suit immediately before the end of the Section 1635(f) period. See *Keiran*, 720 F.3d at 734 (Murphy, J., concurring in part and dissenting in part) (noting that "the obligor's initiation of a lawsuit would * * * 'unilaterally' create a cloud on the title that would not be resolved until a court order or a negotiated settlement").

The parties' dispute also could be resolved through a suit by the obligor like the one in this case, in which a court can determine retrospectively whether the notice was valid when sent. Respondents have objected that, if Section 1635(f) does not impose a time limit for the filing of such a suit, then no time limit at all applies. See Resp. to Pets. 27-28. That is not so. Where, as here, a federal statute does not specify a limitations period for a particular federal cause of action, courts "'borrow' the most suitable statute or other rule of timeliness from some other source." *DelCostello* v. *International Bhd. of Teamsters*, 462 U.S. 151, 158 (1983); see *Graham County*, 545 U.S. at 414-415.[7]

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[7] A number of possible sources for such borrowing exist here. One possibility would be to borrow the one-year limitations period that Section 1640 establishes for TILA damages actions. See *Agency Holding Corp.* v. *Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987); see also *In re Hunter*, 400 B.R. 651, 661 (Bankr. N.D. Ill. 2009). Such a limitations period would begin to run as

If a court ultimately concludes that a borrower's notice of rescission was valid when it was sent, the court must then determine how the parties' transaction should be unwound. Contrary to respondents' argument, the passage of time need not make the unwinding process "prohibitively difficult (or impossible)." Resp. to Pets. 29; see *Keiran*, 720 F.3d at 727-729. If Congress had shared respondents' view, presumably Section 1635(f) would specify a period shorter than three years as the deadline for exercising the "right of rescission." 15 U.S.C. 1635(f). In any event, a court can consider any case-specific difficulties—and any case-specific equitable considerations, such as whether any delay is due to a creditor's unjustified refusal to recognize the notice of rescission in the first instance—in deciding whether the procedures set forth in Section 1635(b) should apply or whether the court should order "otherwise." 15 U.S.C. 1635(b).

Congress has struck a reasonable balance between creditors' and obligors' interests by giving obligors the right to rescind simply by sending notice, while requiring that right to be exercised promptly after the creditor has made the disclosures mandated by TILA, and imposing a three-year outer limit for the exercise

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soon as it became apparent that the lender would not honor the notice of rescission within 20 days of receipt. See 15 U.S.C. 1635(b); cf. *Gilbert* v. *Residential Funding LLC*, 678 F.3d 271, 278-279 (4th Cir. 2012). Another possibility would be to borrow from state-law limitations periods for actions to enforce rescission. See *Graham County*, 545 U.S. at 422. A court could also apply the doctrine of laches to bar equitable relief if the obligor's delay sufficiently prejudiced the creditor. See Saif Alaqili, *Striking a Balance: How Equitable Doctrine Restores the Purposes of TILA's Rescission Right*, 2013 U. Chi. Legal F. 711, 740-744 (2013).

of the right.[8] Congress remains free to recalibrate that balance, either by shortening Section 1635(f)'s three-year window or by expressly limiting the time within which a borrower can sue, if it concludes that TILA creates unduly prolonged uncertainty as to the validity of covered transactions. Under the statute in its current form, however, there is no sound basis for construing Section 1635(f)'s three-year deadline as a limit on the time for filing suit.

C. Deference To The Agency's Views Is Warranted

For the reasons set forth above, the plain text of the provisions at issue in this case precludes respondents' view that Section 1635(f) specifies the time within which a suit like petitioners' must be filed. If the Court views those provisions as ambiguous, however, deference to the agency's views is warranted.

Congress entrusted first the Board, and then the Bureau, with implementing TILA, and it gave those agencies "broad" powers and responsibilities. *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 559, 566 (1980); see, *e.g.*, 15 U.S.C. 1604(a). Accordingly, the Court's "traditional acquiescence in administrative expertise is particularly apt under TILA." *Milhollin*,

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[8] Other rescission-related aspects of TILA reflect a similarly careful balancing of competing interests. TILA gives creditors various protections with respect to rescission, including "tolerances" for inaccurate disclosures, see 15 U.S.C. 1605(f), 1631, a safe harbor from liability for unintentional violations, see 15 U.S.C. 1640(c); see also 15 U.S.C. 1634, and the right to request that a court change the unwinding procedures under Section 1635(b). The statute also contains various measures that make obligors' rescission right strong and effective. See, *e.g.*, 15 U.S.C. 1635(d) (generally disapproving waiver of the right); 15 U.S.C. 1641(c) (making right applicable against creditor's assignees).

444 U.S. at 566; see *id.* at 565-568 (stating that "deference is especially appropriate in the process of interpreting [TILA] and Regulation Z," and that constructions of TILA by the Board or its staff "should be dispositive" unless "demonstrably irrational"); *Anderson Bros. Ford*, 452 U.S. at 222-223; *Mourning*, 411 U.S. at 365-366, 370.

The Board, and then the Bureau, adopted a regulation stating that an obligor exercises the statutory right of rescission by sending a written notice. See 12 C.F.R. 226.23(a)(2); 12 C.F.R. 1026.23(a)(2). Nothing in that regulation suggests that the procedure for exercising the rescission right is any different when the right is exercised at the end of the three-year period, rather than during the initial three-day period, or when the creditor disputes rather than accedes to the notice. The regulation thus represents a reasonable determination that the requirements set forth in Section 1635(a) and Section 1635(f) are uniform in all of these circumstances. See *Milhollin*, 444 U.S. at 566-567; *Mourning*, 411 U.S. at 369.

The Bureau has filed several amicus briefs taking that position, which reflect the agency's considered and consistent views about the proper interpretation of both Regulation Z and TILA. See, *e.g.*, CFPB Amicus Br., 2012 WL 1074082 (filed in *Rosenfield* v. *HSBC Bank, USA*, 681 F.3d 1172 (10th Cir. 2012)); cf. *Regulation Z; Truth in Lending*, 75 Fed. Reg. 58,610-58,611 (Sept. 24, 2010). Those views are entitled to deference. See *Chase Bank USA* v. *McCoy*, 131 S. Ct. 871, 878 (2011) (according *Auer* deference to agency's interpretation in an amicus brief of TILA-related regulation); see also *Riegel* v. *Medtronic, Inc.*, 552 U.S. 312, 338 n.8 (2008) (explaining that an amicus

brief interpreting a statute is entitled to *Skidmore* deference).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 15 U.S.C. 1635[*] provides:

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

[*] The Dodd-Frank Wall Street Reform and Consumer Protection Act replaced references to "the Board" in Section 1635 with references to "the Bureau." Those changes became effective on July 21, 2011. See Pub. L. No. 111-203, §§ 1061(b)(1), 1100A(2), 1100H, 124 Stat. 2036, 2107, 2113; *Designated Transfer Date*, 75 Fed. Reg. 57,252 (Sept. 20, 2010).

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

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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.

(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.

(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. 12 C.F.R. 226.23[*] provides:

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, 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

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[*] On December 22, 2011, the Bureau repromulgated this provision. See 12 C.F.R. 1026.23; *Truth in Lending (Regulation Z)*, 76 Fed. Reg. 79,768.

[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.

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:

(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.

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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).

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

(v) The date the rescission period expires.

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

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

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

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

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would

be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

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

(e) *Consumer's waiver of right to rescind.* (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. * * *

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

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt,

and amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under § 226.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under § 226.20(a)(5).

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

(i) is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

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

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 226.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered

accurate for purposes of this section if the disclosed finance charge:

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

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

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

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

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

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than $35; or

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