No. 07-1326

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SUSAN and BRYAN ANDREWS,
and a class of persons similarly situated,

Plaintiffs-Appellees,

v.

CHEVY CHASE BANK, F.S.B.,

Defendant-Appellant.

Appeal From
The United States District Court
for the Eastern District of Wisconsin
Case No. 05-C-0454-LA
The Honorable Lynn Adelman, District Judge

BRIEF F0R *AMICI CURIAE* AARP, CENTER FOR RESPONSIBLE LENDING, NATIONAL CONSUMER LAW CENTER, PUBLIC CITIZEN, AND HARRIET HOLDER, STEVEN BOURASSA, SCOTT VENTOLA AND LYNN GAY IN SUPPORT OF PLAINTIFFS-APPELLEES AND ARGUING FOR AFFIRMANCE

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 07-1326

Short Caption: Andrews v. Chevy Chase Bank

To enable the judges to determine whether recusal is necessary o r appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):
AARP

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
None

(3) If the party or amicus is a corporation:

I) Identify all its parent corporations, if any; and
None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:
None

Attorney's Signature: _____ Date: May 8, 2007

Attorney's Printed Name: Nina F. Simon

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Center for Responsible Lending

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

N/A

(3) If the party or amicus is a corporation:

I) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

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Attorney's Printed Name: Kathleen Keest

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Attorney's Printed Name: Melissa Briggs

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ____ No __X_____

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E-Mail Address: melissa.briggs@responsiblelending.org

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 07-1326

Short Caption: Andrews v. Chevy Chase Bank

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

The National Consumer Law Center ("NCLC") is a Massachusetts non-profit corporation established in 1969 and incorporated in 1971. NCLC operates as a tax-exempt organization under the provisions of §501(c)(3) of the Internal Revenue Code. It has no parent corporations and no publicly held company owns 10% or more of its stock.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

NCLC seeks the permission of the court to file an amicus brief in the above referenced appeal. No law firms will appear for NCLC in the case or are expected to appear for NCLC in this court. In the interests of full disclosure, NCLC wishes to advise the court that it has filed appearances on behalf of Barbara Desrosiers in the case of Bowe v. Americquest Mortgage Co., 1:06C2471; Henry Owen and Joan Owen in the case of Belval v. Ameriquest Mortgage Co., 1:06C2469; and Lucinda Milardo in the case of Bailey v. Ameriquest Mortgage Co., 1:06C1733, all of which have been made part of the related action, Multidistrict Litigation Case No. 1715, In re Ameriquest Mortgage Co., currently pending in the United State District Court for the Northern District of Illinois before Chief Judge Aspen.

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

NCLC has no parent corporations.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

No publicly held company owns 10% or more of NCLC's stock.

Attorney's Signature: Date: May 8, 2007
Attorney's Printed Name: Stuart T. Rossman

Please indicate if you are Counsel for the above listed parties pursuant to Circuit Rule 3(d) Yes No X

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: _07-1326_____

Short Caption:__*Andrews v. Chevy Chase Bank*_____

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):
__Public Citizen_____
_____
_____

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
__Deepak Gupta and Brian Wolfman (Public Citizen Litigation Group)_____
_____

(3) If the party or amicus is a corporation:

I) Identify all its parent corporations, if any; and
_____

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:
_____

Attorney's Signature: _____ Date: __May 8, 2007 _____

Attorney's Printed Name:_ Deepak Gupta _____

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No__X__

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E-Mail Address: __dgupta@citizen.org_____

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Harriet Holder, Steven Bourassa, Scott Ventola, Lynn Gay

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Roddy Klein & Ryan, Gary Klein and Shennen Kavanagh

(3) If the party or amicus is a corporation:

I) Identify all its parent corporations, if any; and

NONE

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

NONE

Attorney's Signature: _____ Date: May 8, 2007

Attorney's Printed Name: GARY KLEIN

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes __ No X

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

Public Laws

Congressional Record Cites

Federal Rules

Federal Regulations

Other Authorities

INTERESTS OF *AMICI CURIAE*

This brief is filed with the consent of both parties.

The individual *amici* Harriet Holder, Steven Bourassa, Scott Ventola and Lynn Gay are plaintiffs in a Multidistrict Litigation proceeding pending in the Northern District of Illinois (No. 05-cv-7097) in which they represent a putative class pursuing a declaratory judgment concerning their right to rescind under the Truth in Lending Act ("TILA"), 15 U.S.C. § 1635. Judge Aspen denied the defendants' motion to dismiss the class claims under TILA in that proceeding, holding that there is "nothing in TILA precluding declaratory relief authorizing class members to individually request rescission where they are legally entitled to do so." *In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.*, 2007 WL 1202544 at *3 (N.D. Ill. 2007). *Amici* and the class they seek to represent have a direct interest in preserving the benefit of that ruling, and thus, have a direct interest in the outcome of this appeal.

The Ameriquest MDL demonstrates the need for class actions under TILA's rescission provision. More than 750 federal cases have been filed against Ameriquest, virtually all alleging identical TILA violations. The plaintiffs allege that Ameriquest's failure to provide information required by TILA was part of a broader scheme. Absent the possibility of class treatment, the case would be unmanageable.

The organizational *amici*: AARP, Center for Responsible Lending, Public Citizen and National Consumer Law Center, are non-profit public interest organizations that advocate on behalf of low and moderate-income families regarding homeownership, seeking to expose and eliminate abusive lending practices in the mortgage market and

to preserve the availability of the class action device to vindicate fundamental consumer protections.

SUMMARY OF ARGUMENT

Nothing in the text of TILA (or its history or structure) precludes class certification under Rule 23 in actions seeking a declaration of a right to rescind. That issue is thoroughly addressed by the Court below and by the Andrews brief. *Amici* do not repeat those well-reasoned arguments here. Instead, we supplement their reasoning. *First*, we discuss the plain language of 15 U.S.C. § 1635 and show why it in no way prohibits class actions. *Second*, we examine the legislative history of the 1995 Amendments to TILA and show that Congress, when given the opportunity, declined to insert the prohibition on class actions that Chevy Chase seeks here. *Third*, we address Chevy Chase's novel contention that declaratory relief is unavailable under TILA.

Finally, we respond to Chevy Chase and its *amici*'s doomsday scenarios, which are without support in the record or in reality and which ignore the importance of TILA's rescission remedy for consumers such as the individual *amici* and the plaintiffs in *Andrews*. TILA's fundamental purpose—combating deception in the credit marketplace by giving consumers clear and accurate information about the terms of their loans—is accomplished by providing consumers with tools to combat misleading and inaccurate disclosures, including the right to seek a declaratory judgment giving class members the right to rescind their inaccurately disclosed loans. Here, by using its Truth in Lending Disclosure Statement ("TILDS") to create confusion and foster

misinformation about its loan product, Chevy Chase's actions pierce the very heart of TILA's statutory scheme and cause significant harm to class members.

Given the seriousness of these violations and the importance of TILA's consumer protections, this Court should not erect a barrier to the efficient class-wide vindication of these Congressionally established-rights based on speculative fears about the economic impact of liability. Such policy arguments are best directed to the elected members of Congress, not to the federal judiciary.

ARGUMENT

I. CONGRESS HAS NOT EXPRESSLY OR IMPLICITLY RESTRICTED THE RIGHT TO OBTAIN A DECLARATION OF A RIGHT TO RESCIND ON A CLASS BASIS.

A. The Plain Language of TILA Does Not Prohibit Rule 23 Class Actions.

"Though the [TILA] clearly contemplates class actions, there are no provisions within the law that create a right to bring them . . . The 'right' to proceed to a class action, insofar as the TILA is concerned, is a procedural one that arises from the Federal Rules of Civil Procedure." *See Johnson v. West Suburban Bank*, 225 F.3d 366, 369 (3d Cir. 2000); *see also Califano v. Yamisaki*, 442 U.S. 682, 700 (1979)("In absence of direct expression by Congress of intent to depart from usual course of trying all suits of civil nature under Rules of Civil Procedure established for such purpose, class relief is appropriate in civil actions brought in federal court. . . ."). Chevy Chase, however—using the flawed reasoning of the First Circuit in *McKenna v. First Horizon Home Loan Corp.*, 475 F.3d 418 (1st Cir. 2007)—attempts to transform Congressional

silence into a scheme that allows some class actions but forecloses other class actions vindicating rights under the same statute.

At bottom, the statutory argument championed by Chevy Chase and *McKenna*, rests entirely on a comparison between 15 U.S.C. §§ 1635 and 1640. In those provisions, Congress did two very different things: in § 1640(a)(2), it limited statutory damages for individuals and classes and, in § 1635, it created a right to rescind exercisable by the borrower for up to three years and judicially enforced through "any action." The absence of a parallel liability cap in § 1635, according to Chevy Chase, suggests that Congress intended to bar all class actions premised on § 1635. These provisions simply cannot bear the weight that Chevy Chase places upon them.

Contrary to Chevy Chase's contention (Brief for Defendant-Appellant Chevy Chase Bank ("Chevy Chase Br.") at 18), § 1635 is not primarily a remedy provision. Its main purpose is to confer substantive rights, (*See* Ralph J. Rohner & Fred H. Miller, The Law of Truth in Lending, 8.01[2], at 598 (2d ed. 2000)), not to spell out the forms of civil actions under which those rights might be vindicated. The comparison with the limitations on remedies in § 1640, therefore, is strained at best. Section 1635 first creates a right to rescind certain transactions during the first three business days for any reason—or no reason at all. 15 U.S.C. § 1635(a). Rescission during this three-day time period cannot fairly be called a "remedy" because it need not be justified by creditor wrongdoing. It is simply an absolute, no-fault cancellation right that, when exercised, prevents full consummation of the transaction. The extended right to rescind is just

that: an extension of the three-day right that "expire[s]" after three years; it is premised on the notion that the three-day right does not begin to run until the borrower has been provided accurate, material disclosures.[1] 15 U.S.C. § 1635(f). It is the extension of this right in the specified circumstances, that can be judicially enforced—without qualification—through "any action." 15 U.S.C. § 1635(f),(g). As a practical matter, a remedy emerges only when the creditor has violated the material disclosure or notice rights, extending the three-day unconditional right out to three years.

Neither the First Circuit, nor Chevy Chase, nor its *amici*, has located a single line of TILA to support the proposition that TILA denies borrowers access to the class action mechanism to determine liability for rescission. There is thus no reason to depart from Supreme Court precedent and settled practice under Rule 23, which makes class relief generally available in federal actions. Ultimately, what Chevy Chase asks this Court to do—and what the First Circuit did in *McKenna*—is to elevate one view of what Congress should have intended above the intent that Congress actually expressed in the words of the statute. *See McKenna,* 475 F.3d at 426 n.3 (acknowledging that the class action prohibition created by the court "is not memorialized in the text of the statute.") That is a step the federal courts are forbidden to take. *See Pavelic & LeFlore v. Marvel*

[1] As Chevy Chase admits, creditors can choose to cure a violation by providing new correct disclosures and a new three-day right to rescind during the three-year extended period to all affected borrowers or assume the business risk that a class action will impose the same result.

Entertainment Group, 493 U.S. 120, 126 (1989)("Our task is to apply the text, not to improve upon it."); *Matter of Sinclair*, 870 F.2d 1340, 1344 (7th Cir. 1989).

B. Congress Deliberately Left Class Rescission Intact In The 1995 TILA Amendments.

In the absence of any direct statutory support, Chevy Chase and its industry *amici* rely heavily on quotations from individual legislators to make their case that Congress has long sought to limit the potential financial threat of TILA class rescissions. *See* Chevy Chase Br. at 27-28; Brief of Financial Services *Amici* ("Fin. Serv. Br.") at 5-9. However, when these quotations are set in historical context, they directly contradict *amici*'s assertion and establish that Congress rejected proposals to preclude class actions under TILA's rescission provision.

Most of these Congressional quotations comment on a 1994 decision from the Eleventh Circuit, *Rodash v. AIB Mortgage Co.,* 16 F.3d 1142 (11th Cir. 1994). See Fin. Serv. Br. at 5-9. *Rodash* held that two fees charged by the lender to Mrs. Rodash at settlement should have been, but were not, included in the TILA disclosure of the finance charge, entitling her to rescind. *Id.* at 1149. As it happened, lenders commonly excluded these two fees from finance charge disclosures and, although *Rodash* was not a class action, it gave rise to multiple class rescission actions against lenders.[2]

The mortgage industry reacted by appealing to Congress with many of the same dire predictions industry *amici* make in their brief to this Court. The Congressional

[2] The mortgage industry cited to "over 50 class action suits" that threatened the health of the U.S. economy with "potential liability that could reach into the billions," *See* Cong. Rec. S14567 (Sept. 28, 1995) (Statement of Sen. D'Amato).

Record establishes one thing clearly: Congress believed that the *Rodash* decision presented the possibility of substantial class action rescission liability for the mortgage industry. Congress responded, initially by enacting a six-month moratorium on certification of TILA class actions based on certain enumerated violations, including those identified in the *Rodash* decision. Pub. L. No. 104-12 (May 18, 1995).[3] Although not applicable solely to class actions seeking rescission, the moratorium specifically stayed class certifications based on home mortgage refinancings, which are rescindable under TILA. Significantly, the moratorium did not cover class actions—whether for rescission or for damages—that alleged other violations of TILA, such as those alleged here by the Andrews. Thus, the moratorium did not impose a blanket prohibition on the certification of rescission classes. Pub. L. No. 104-12 , § 2(i)(2)(B).

During the moratorium period, the mortgage industry lobbied heavily for the passage of legislation to prohibit class actions seeking the right to rescind. *See Cong. Qtrly,* April 9, 1995. [4] Congress did not enact the class action limitations Chevy Chase or its *amici* wish for here, but it did impose other deliberate but limited boundaries on the right to rescind. Congress created new tolerances that reduced the availability of rescission for finance charge violations and eliminated rescission for overstatement of

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[3] The moratorium addressed violations resulting from the incorrect allocation of fees, and violations based on a creditor's use of the incorrect model form disclosing notice of the consumer's right to cancel.

[4] This is discussed in greater depth in the Brief for Plaintiffs-Appellees Andrews at 42-3.

the finance charge and related disclosures.[5] 15 U.S.C. § 1605(f). Congress also granted retroactive, but not prospective, immunity for a limited group of violations in loans consummated prior to October 1, 1995. 15 U.S.C. § 1649.[6] Accordingly, the 1995 Amendments struck a careful balance in crafting narrowly drawn relief for creditors while retaining TILA's core purpose to provide accurate disclosures to consumers. None of these limitations restricted a plaintiff's ability to seek relief on behalf of a class and none impacted the violations alleged by the Andrews class.

As the legislative history makes abundantly clear, *Rodash* presented the perfect opportunity for Congress to eliminate class rescission. Congress did not choose that course. Its initial step in passing a moratorium on TILA class certifications was itself a clear statement that TILA rescission classes *are certifiable* and that only Congress could put such certifications on hold. In crafting the ultimate amendments to TILA to "fix" the *Rodash* problem, Congress was presented a clear opportunity to bar class rescissions and it did not. The 1995 Amendments did not curb the availability of class action rescission as a mechanism to enforce TILA's statutory provisions.

Contemporaneous court decisions provide further insight into this issue: if Congress had eliminated rescission class actions in the 1995 Amendments, surely those

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[5] The Amendments also created a smaller finance charge tolerance for rescission of a mortgage in foreclosure. § 1635(i)(2). TILA Amendments of 1995, Pub. L. No. 104-29 (Sept. 30, 1995).

[6] The Amendments created a retroactive tolerance for finance charge violations, excused failures to allocate *Rodash* fees, borrower paid broker fees and third party closing fees to the finance charge, and excused use of the incorrect model notice of right to cancel form for previously consummated loans. 15 U.S.C. § 1649.

courts responsible for the stayed class actions would have taken the opportunity to dismiss the rescission classes. They did not. Instead they engaged in careful and painstaking analysis to determine whether the Amendments eliminated the class violations, and if not, whether those violations were still considered material. *See e.g., O'Brien v. J.I. Kislak Mortgage Corp.,* 934 F. Supp. 1348, 1362 (W.D. Fla. 1996)(this court was responsible for a block of rescission and damages class actions subject to the temporary moratorium.); [7] *Cowen v. Bank United of Texas,* 1995 WL 38978 (N.D. Ill. 1995); *Curtis v. Secor Bank,* 896 F. Supp. 1115 (M.D. Ala. 1995).

C. Declaratory Relief Is Available Under TILA

Chevy Chase also urges this Court to accept its thoroughly novel argument that declaratory relief is not available under TILA at all. The argument is meritless. Federal courts have the power to grant declaratory relief under federal laws in their sound discretion exercised in the public interest. 28 U.S.C. §§ 2201, 2202. *See Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). "The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in clarifying and settling legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to

[7] The 1995 Amendments did eliminate class certification where class representatives were unable to meet the newly established and retroactively applicable tolerances. *See id.,*1363-1364 ("After applying the 1995 Amendments, the Snyders and the O'Briens have largely been deprived of the necessary *standing* to represent a class seeking damages and rescission on mortgage loans for the relevant time periods.")

proceeding." Edwin Borchard, *Declaratory Judgments* at 299 (2d ed. 1941). These criteria are easily met here.

Because rescission is intended to be self-enforcing, the typical means of "clarifying and settling legal relations" is a declaratory judgment that the right was (or was not) properly exercised by the homeowner, thus confirming the creditor's obligations with respect to the rescission. 15 U.S.C. § 1635; *see, e.g. Williams v. Homestake Mortg. Co.*, 968 F.2d 1137 (11th Cir. 1992). Thus, courts in the Seventh Circuit have concluded that declaratory relief is also appropriate to resolve common questions of liability, clarifying whether or not homeowners retain the right to rescind their loans under TILA. *In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.*, 2007 WL 1202544, at *3; *see also Latham v. Residential Loan Centers of America, Inc.*, No. 03C7094, 2004 WL 1093315, at *5 (N.D. Ill. 2004); *Hickey v. Great Western Mortgage Corp.*, 158 F.R.D. 603, 613-614 (N.D. Ill. 1994); *Mount v. LaSalle Bank Lake View*, No. 92C5645 1994 WL 731006, at *9 (N.D. Ill. 1994). These TILA decisions are consistent with courts' common practice of entering declaratory relief in a wide range of class actions.[8] Accordingly, there is no principled basis for distinguishing TILA's rescission provision from any other federal

[8] *See, e.g Borcherding-Dittloff v. Transworld Systems, Inc.*, 185 F.R.D. 558, 566 (W.D.Wis.1999); *Swanson v. Mid Am, Inc.*, 186 F.R.D. 665, 669 (M.D.Fla.1999)(Rule 23(b)(2) certification under FDCPA; plaintiff's damages "flow directly from the notice . . .[and so] monetary damages do not predominate over declaratory relief"); *Young v. Meyer & Njus, P.A.*, 183 F.R.D. 231, 234-235 (N.D. Ill.1998); *Gammon v. GC Services Ltd. Partnership*, 162 F.R.D. 313, 321 (N.D. Ill. 1995); *Blum v. Fisher and Fisher*,1997 WL 433630 (N.D. Ill. 1997).

statute in which Congress was silent about the availability of declaratory relief.[9]

II. CHEVY CHASE AND ITS *AMICI* OVERSTATE THE POTENTIAL IMPACT OF ALLOWING CLASS RESCISSION AND IGNORE THE IMPACT ON CONSUMERS.

The record before this Court establishes limited and circumscribed liability for Chevy Chase for rescission of 7000 mortgages. *See* R.81, 17. The cost of rescission is no more or less than that for which Chevy Chase would be liable if each of these homeowners individually rescinded their mortgages. Moreover, there is no record evidence that other mortgage lenders have violated TILA in the same manner and, thus, no basis for this Court to conclude that industry's doomsday predictions have any basis in fact. *Amici*'s predictions of dire consequences should this Court uphold the district court decision are less than candid assessments by self-interested groups who have sounded this same alarm repeatedly to excuse their own failures to comply with the law. Such speculation—whatever its merit as a matter of legislative policy—does not provide an appropriate basis for a federal court to categorically foreclose class actions seeking a remedy provided by Congress.

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[9] Given that the Court plainly had discretion to enter a declaratory judgment, Chevy Chase appears to be focused on preventing borrowers from receiving notice of the continued existence of their rescission rights. Withholding information from its borrowers about Chevy Chase's violations of the Act is not a legitimate concern under either TILA or Rule 23. Indeed, as Chevy Chase admits, had it sought to extinguish its potential liabilities following improper disclosures, it was required to issue a corrected notice and offer its borrowers a new three-day period in which to rescind. 15 U.S.C. § 1640(b)(correction of errors by the creditor requires notice to all affected consumers).

Industry *amici,* moreover, are not the only ones who will feel the impact of the decision of this Court. Homeowners, for whose benefit the statutory right of rescission was created and whose ability to assess the terms of their credit has been undermined by Chevy Chase's confusing and misleading disclosures, will be most directly impacted. Without access to the declaratory relief offered by the class action mechanism, these affected Chevy Chase home borrowers will have no means to discover the violation and will lose the opportunity to use rescission to save their homes from foreclosures or to rescind their mortgages and refinance into affordable ones. Homeowners, not Chevy Chase, will unfairly bear the financial burden caused by Chevy Chase's misinformation about the actual cost of their home loans.

A. TILA Provides Essential Protections—Including The Right To Rescind—To Consumers In The Credit Marketplace.

TILA gives consumers "the right to be informed—to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, or other practices and to be given the facts he needs to make an informed choice." *See* 109 Cong. Rec. 2029 (1963) (remarks of Sen. Douglas). In guaranteeing disclosure of accurate and meaningful credit costs to consumers, TILA was intended to balance the scales thought to be weighted heavily in favor of lenders. *See Bizier v. Globe Fin. Servs., Inc.*, 654 F.2d 1, 3 (1st Cir. 1981). Though TILA is a consumer protection law, it also protects the integrity of the market by supporting honest competition, serving to "invigorate competition" by protecting the "ethical and efficient lender. . ." *See* 109 Cong. Rec. 2029 (1963)(remarks of Sen. Douglas.)

TILA standardized the format and terminology used to describe the terms of a credit transaction, and mandated that required disclosures be "clear," creating a system of disclosure that improves the bargaining posture of all borrowers, and requires strict technical compliance, regardless of actual injury, benefiting all consumers. *See Handy v. Anchor Mortgage Corp.,* 464 F.3d 760 (7th Cir. 2006); *Parker v. DeKalb Chrysler Plymouth*, 673 F.2d 1178 (11th Cir. 1982). Congress intended that disclosure of "accurate information from creditors in a precise and uniform manner" would enable consumers "to compare the cost of credit." *See Williams v. Chartwell Fin. Servs., Ltd.,* 204 F.3d 748, 751 (7th Cir. 2000). Indeed, this Court has recently reiterated that consumer protection statutes that mandate the clear and accurate disclosure of information to consumers require just that—not only correct information, but correct information in a format that a consumer can understand. *See Gillespie v. Equifax Information Servs., L.L.C.,* -- F.3d --, No. 06-1952, 2007 WL 1287649, at *3 (7th Cir. May 3, 2007).

TILA disclosures are intended to translate the legalese of loan documents to plain and comprehensible terms that enable consumers to understand the obligations imposed by their mortgages. *See Mills v. Home Equity Group*, 871 F. Supp. 1482, 1485 (D.D.C 1994). The importance of these disclosures has grown in recent years because of the emergence of "non-traditional" or exotic mortgage products whose complexity cannot be overstated. The once dominant 30-year, fixed rate mortgage, thought to be complex enough for an average consumer, has been replaced by interest-only adjustable rate mortgages, payment option ARMs, 2/28 and 3/27 ("hybrid-ARMs"),

simultaneous first and second lien loans ("piggybacks") to name just a few. In the adjustable rate categories, consumers are called upon to understand:

- their interest rate and how often it changes;
- if the rate is a "teaser,"and how long the "teaser" is effective;
- how the changing rate affects their payments;
- how and when their payments adjust;
- what limits are placed on payment adjustments and when limits cease to apply;
- if and when loans will negatively amortize;
- if they will be charged for early repayment; and
- the size of any prepayment penalty.

It is little wonder that ARM borrowers have substantial difficulties understanding the terms of their contracts, or the potential rate and payment shocks they face. *See, e.g.* Elizabeth Razzi, *Mortgage Ignorance Rampant* (March 26, 2007), *available at* http://www.bankrate.com/brm/news/Financial_Literacy/March07_mortgage_poll_ _a4.asp?caret=18a. Particularly troubling is evidence that lower- and moderate-income borrowers are less likely to understand the terms of their ARMs, placing them at greater risk, relative to their income, when payments reset. *See,* Brian Bucks and Karen Pence, *Do Homeowners Know Their House Values and Mortgage Terms?* Federal Reserve Board at 20, 24 (January 2006), *available at* http://www.federalreserve.gov/pubs/feds/2006/200603/200603pap.pdf.

While perhaps an imperfect tool to adequately disclose the hazards of non-traditional products, TILA's mandate to distill material information from the note and mortgage and provide borrowers with a clear and comprehensible disclosure is more important today than ever; TILA disclosures are the only vehicle through which borrowers can begin to understand the terms of these new mortgages.

1. TILA's Protections Are Particularly Important For Consumers In Complex Mortgage Products Such As Payment Option ARMS.

The Andrews' loan is a fairly typical example of the Payment Option Adjustable Rate Mortgage ("POARM") product, which one industry observer has termed, "the most complicated mortgage product ever marketed to consumers." *See* Marketplace Money, *The Straight Story* (October 20, 2006), *available at* http://www.marketplacemoney.publicradio.org/display/web/2006/10/20/straight_story_trickle_down. The Andrews' (and other class members') POARMs serve as an example of the importance of clear and unambiguous compliance with the law. *See e.g.* Affidavit of Luisa Cordova-Holmes, a tax accountant and putative class member, R.27, Ex. 1, ¶¶ 2, 6-11, 15. ("Due to the information contained in the TILDS, we believed that we were getting a loan that would be fixed for the first five years at a loan interest rate of 2.235%.").

2. Actual Interest Rates Are Hidden in POARMs.

Chevy Chase's POARM prominently featured a low 1.95% "teaser rate" in advertising, in discussions with borrowers **(***See* R.57, 25-8, 32, 34-5 & R.58, 41, 45-6, 48-9, 53, 58, 60**)** and in the critical part of the promissory note. *See* R.29, Ex. 16 ¶2(A) ("I will

pay interest at the yearly rate of 1.950%. The interest rate I will pay may change."). However, that 1.95% rate was only in effect for 53 days, from the Andrews's closing date (June 8, 2004), until the *first* payment was due (August 1, 2004). The interest rate *does* change–*every month*, beginning on the date the first payment is due. Since the interest rate applied to the Andrews' loan is calculated by adding a margin of 2.9% to the index—"one month London Interbank Offered Rate (LIBOR)"—after the first payment the interest rate will always be significantly greater than 1.95%. (*See* R.29, Ex. 16, ¶ 2(B,D,E) The first month the Andrews' rate changed to 4.375% (*See* R.29, Ex. 21); the next month to 4.50%, and by the 12th month, the rate was 6%. The index rose steadily each month for 26 months and as of May 2007 the rate is 8.25%. (*See* Spreadsheet, Appendix 1).

3. The Payments Due Under POARMS Remain Fixed For Limited Periods, While the Interest Rates Fluctuate More Frequently, Creating Negative Amortization.

The so-called "payment option" in the Andrews' Chevy Chase POARM is that, for the first 5 years, they had the "option" of paying a "minimum payment" (here $701.21) or a higher payment sufficient to fully amortize the loan balance. The critical difference for a POARM is that, unlike a typical mortgage in which the minimum monthly payment covers interest and principal owing each month, the minimum payment in a POARM, while sufficient to avoid default, is insufficient to cover the interest accruing each month or to pay down principal. Paying the POARM payment

accomplishes the reverse of the borrower's expectation—instead of amortizing the loan, it causes the mortgage balance to increase.

Thus, as the Andrews POARM interest rate changes each month, the minimum monthly payment remains the same, making negative amortization certain. After five years of $701.21 payments, the Andrews' payment adjusts dramatically upward as the payment is recalibrated to account for both interest rate changes and the higher principal balance resulting from negative amortization. Moreover, despite Chevy Chase's "guarantee" of five years of fixed minimum payments, (*See* R.81-2) the Andrews' Chevy Chase loan will reach its 110% negative amortization cap of $210,000, after only 3 ½ years, and their payment will more than double to $1,628.32 based on projected LIBOR rates. *See* Appendix 1; R.29, Ex. 16,¶ 3(F).

Clearly, the Note and Rider which focus on the 1.95% rate and $701 payment are of little help to the ordinary reader. It is *only* the TILA disclosure that could have given the Andrews some insight into the actual APR on the loan—could have, that is, if the additional "5-Year fixed Note Interest Rate 1.95%" had not *also* appeared on Chevy Chase's TILA disclosure to them.

D. The TILA Disclosures Made By Chevy Chase Fundamentally Misrepresent the Cost of the Loan.

The express purpose of TILA is to provide consumers with accurate information about the cost of credit. Here, the TILA violations fundamentally misrepresent the terms of the loan—they are not, as Chevy Chase repeatedly asserts mere "picky and inconsequential errors". *See* Chevy Chase Br. at 25.

The interest rate disclosure on the TILDS—here disclosed as a 4.047% APR—is the only place in the loan documents where the impact of the rising interest rate applicable for 358 of the 360 months of the mortgage, is visible to the consumer.[10] That APR disclosure, however, was contradicted by Chevy Chase's unique addition of the confusing and misleading reference to "Note Interest Rate: 1.95%" on the TILDS. Chevy Chase's notation reinforced the 1.95% teaser rate and the impression that this rate was effective for five years. *See* R.81-2; *see also* Note, *Truth-In-Lending: The Judicial Modification of The Right of Rescission*, 1974 Duke L. J. 1227, 1235, n.37 ("A recurring theme in the Congressional debates was that the consumer has historically been subjected to the unscrupulous tactics of creditors who would engage in practices which, if not fraudulent, were calculated to confuse consumers.")

As the district court determined, Chevy Chase's addition to the TILDS violated TILA and Regulation Z's mandate that required disclosures be made "clearly and conspicuously." 15 U.S.C. § 1632(a); Reg. Z § 226.17(a); R. 81, 11. Because the surplus language rendered the disclosed APR consistent with more than one plausible interpretation, this APR disclosure was not "clear." *See Handy v. Anchor Mortgage,* 464 F.3d 760 (7th Cir. 2006); *see also Porter v. Mid-Penn Disc. Co,* 961 F.2d 1066, 1077 (3rd Cir. 1992). Far from being a mere technical glitch, as Chevy Chase repeatedly asserts, this violation goes to the very heart of the TIL document—the crucial cost information. *The*

[10] The APR for an adjustable rate loan with a teaser is a "blended rate." Official Staff Commentary to Regulation Z, § 226.17(c)(1)-10, 12. *See* Rohner & Miller, ¶ 6.05[2] (variable rate disclosures) and ¶ 4.03[2] (explaining formulas for APR calculation).

cost disclosures—the APR and the finance charge—are held to a higher standard of conspicuousness than any other disclosures. 15 U.S.C. § 1632(a). Accordingly, Chevy Chase's confusing and improper "mixing and matching" of the APR with a fire-sale teaser rate in effect for only 53 days violates that most fundamental mandate in the statute. Chevy Chase's violation pierces the very heart of TILA's disclosure regime.

Chevy Chase and its *amici*'s portrayal of TILA as highly complex and the violation at issue as minor, are simply diversionary tactics. Criticisms of TILA, in any event, should be directed at Congress, not the courts.

E. Rescission Provides Consumers the Opportunity to "Undo" Loans Tainted By the Most Critical TILA Violations.

1. TILA Provides Consumers Rescission Relief Only for the Most Significant TILA Violations.

Under TILA, the remedy of rescission is only available in one special context where a non-purchase money mortgage is secured by the borrower's principal dwelling. 15 U.S.C. § 1635(a). *See* Renuart & Keest, National Consumer Law Center, Truth in Lending § 6.1 (5th ed. 2003 & 2006 Suppl.)(reflecting "Congress' desire to keep homeowners from placing their homes in jeopardy without a clear understanding of the risks and benefits of the transaction.") In creating the right to rescind, Congress recognized that full, accurate and clear information is most important when potential borrowers are putting their families' homes at risk. Thus, the rescission remedy is an expression of the overarching importance Congress placed on preserving home ownership. S. Rep. No. 368, 96th Cong, 2d Sess. 28, *reprinted in* 1980 U.S.C.C.A.N. 236,

264. But even in that context, Congress did not choose to make rescission available for "minor" violations of TILA, nor indeed even to all of the violations which it deemed important enough to justify statutory damages. Instead, rescission is only allowed for violations of six[11] of the most "material" violations of TILA. 15 U.S.C. §§ 1602(u), 1635(a); 12 C.F.R. § 226.23(a)(3) n.48. Thus, Congress has been explicit about distinguishing "minor" violations from the critical ones. And Congress determined an accurate, clear APR price tag is critical.

2. Rescission Seeks to Undo the Wrong to the Consumer; It is Not a Penalty to the Lender.

Contrary to Chevy Chase and its *amici*'s assertions that rescission would unduly penalize them**,** rescission is not a penalty—it simply seeks to return homeowners to the status quo ante.[12] *See FDIC v. Hughes Development Co., Inc.* 684 F.Supp. 616, 625 (D. Minn. 1988). By mandating a release of the security interest in the property and return of any money the consumer has paid as finance charges or other fees, Congress's rescission remedy restores borrowers to the position they would have been in if they

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[11] Incorrect notices of the right to cancel also give rise to the extended right to rescind. *See Handy v. Anchor Mort. Corp.* at 761 and discussion *supra* at 8 and n.5.

[12] In contrast to rescission, statutory damages are a penalty. *See e.g.* Note, 1974 Duke L. J. 1226, 1227-28, n.4. (discussing early line of cases on election of remedies. Issue arose because rescission is *remedial*, and so whether election would be required turned on whether civil *damages* were penalty or remedy.); *see also* 114 Cong.Rec. 1611 (1968) (remarks of Cong. Cahill), quoted in *Eby v. Reb Realty Inc.*, 495 F.2d 646, 651 (9th Cir. 1974)("The purpose of according borrowers a right of rescission is broader[than civil liability]; not only is it designed to compel disclosure, but it also serves to blunt unscrupulous sales tactics by giving homeowners a means to unburden themselves of security interests exacted by such tactics.").

had never undertaken the mortgage. 15 U.S.C. § 1635(b); *see also Williams v. Homestake Mort.,* 968 F.2d 1137, 1141 (11th Cir. 1992); 17 Am. Jur. 2d Consumer Protection § 135 (1990). ("[T]he word "rescission" is used in its legal sense . . . as a remedy restoring the status quo."). A creditor that complies with its obligations to honor the rescission is entitled to a return of the amounts it advanced. 15 U.S.C. §1635(b); Reg. Z, § 226.24(d)(3).[13]

The Andrews provide a case in point. In order to effectuate their rescission they will be required to obtain financing for a new 30 year loan with a principal balance of approximately $168,000. [14] They cannot simply revive their former 5.75%, 30 year mortgage or obtain a new loan at their prior interest rate, as that low rate is no longer available in the marketplace. Prime mortgage interest rates are now in the 6 - 6.5% range for borrowers with good credit, like the Andrews. *See* Freddie Mac Primary Mortgage Market Survey, 5/3/07 Release, *supra.* Even applying the best available rate

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[13] Contrary to Chevy Chase and *amici*'s assertions (*See* Chevy Chase Br. at 16 (citing *James v. Home Const. Co. Mobile, Inc.*, 621 F.2d 727 (5th Cir. 1980)) & at 31 (citing *McKenna*, 475 F.3d 418) rescission creates rights in consumers, not creditors. The only right Chevy Chase has is to the return of loan principal after it honors rescission and terminates its mortgage. Courts can modify this process to assure that both parties receive their due. This is no more or less than allowing repayment of principal to occur simultaneously with termination of the mortgage; it is not highly individualized. Indeed judicial modification is simply an exercise of declaratory authority consistent with TILA and is perfectly amenable to class as well as individual proceedings.

[14] This principal balance is based on a conservative addition of approximately $1,500 in closing costs and an average 0.5 discount point to the rescission tender of $165,525. *See* Freddie Mac Primary Mortgage Market Survey 5/3/07 Release, *available at* http://www.freddiemac.com/dlink/html/PMMS/display/PMMSOutputWk.jsp?week=18&ending=20070503.

to the Andrews' new principal balance, rescission will impose additional costs on the Andrews that exceed the costs of their old mortgage by over $10,000 over the life of the loan.[15] Thus, Chevy Chase and its *amici*'s alarmist claims that rescission confers a windfall are simply wrong. Moreover, despite TILA's mandate that "'rescinding a loan transaction . . . requires returning the borrowers to the position they occupied prior to the loan agreement,'" *Handy,* 464 F.3d at 765 (internal citations omitted), the Andrews will not be made whole. Even with the principal reduction on the new loan that reflects TILA's mandate that all interest and charges be returned to the borrowers, the Andrews will suffer a loss. That is no windfall.

3. Because Rescission Is Not Penal, *Amici*'s Due Process Arguments Fail.

As we have shown—contrary to Chevy Chase and its industry *amici*'s assertions—rescission is not a penalty. The members of the class have suffered actual harm. Those who rescind will not receive a "windfall," but rather only be restored to the status quo. Accordingly, *amici*'s specter of due process concerns because of potential excessive penalties is groundless. The Supreme Court's due process jurisprudence cited by industry *amici* (*See* Fin. Serv. Br. at 9-13) makes clear that punitive damages raise due process concerns when they are "grossly excessive" or seek to punish a defendant for speculative harm to a plaintiff not before the court. *See Phillip Morris USA v. Williams*, 127 S.Ct. 1057, 1063 (2007). Critical to the Court's analysis is the fundamental difference between compensatory damages—which seek to redress the

[15] This calculation takes into account repayment of the Andrews' small home equity loan of $17,000, that was refinanced into the Chevy Chase loan.

defendant's wrongful conduct—and punitive damages—which serve as "the jury's moral condemnation" with the purpose of punishment and deterrence. *See State Farm Mut. Auto Ins. Co.*, 538 U.S. 408, 416 (2003); *Cooper Indus., Inc. v. Leatherman Tool Group*, 532 U.S. 424, 432 (2001); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 568 (1996). Because the purpose of rescission is to undo as much of the actual harm as possible, the fundamental conceptual underpinnings of those cases do not apply. Indeed, one of the Court's key inquiries in each of the cases is the proportionality of the relationship between the nature and extent of actual harm caused by the defendant and the punishment levied through punitive damages. *See BMW*, 517 U.S. at 574-575; 581-583. No such analysis can even be undertaken here because what Chevy Chase views as punishment is, in fact, only the undoing of the unlawful mortgage transaction. No "penalty" is imposed.[16]

CONCLUSION

Because TILA does not prohibit class actions that seek a declaration of the right to rescind, this Court should affirm and remand for further proceedings.

Date: May 8, 2007

[16] That the aggregated cost of rescission may be substantial does not in any way change the fundamental non-punitive nature of the remedy—the relief is not punitive in nature. As *Parker v. Time Warner*, 331 F.3d 13 (2d Cir. 2003), the case relied on by industry *amici*, makes clear, even if due process concerns were raised in a class action because of aggregation of statutory penalties—the court should not refuse to certify the class but rather may reduce the penalties. *See Parker*, 331 F.3d at 22. Because this case addresses only the undoing of a transaction and the harm done to the borrower, there is no additional penalty for the court to reduce.

Respectfully Submitted,

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FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)(B)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6418 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Book Antiqua 12-point font.

3. The text of the electronic brief and the hard copies are identical.

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I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 8, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2007 an original and fourteen copies of the foregoing Brief *Amici Curiae* in Support of Appellees and Affirmance were sent via Overnight courier service to the Clerk of the Court for the Seventh Circuit and two copies to counsel listed below:

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APPENDIX 1

Loan Amt	**$191,000.00**
Pmt Rate	**1.95%**
Fixed-Payment Period (mos)	**60**
Term in mos	**360**
Monthly Payment	**$701.21**
ARM Margin	**2.90%**
Neg. Am. Cap	**110.00%**
Neg. Am. Cap - $ amt	**$210,100.00**

Origination Date	**6/8/2004**
1st Pmt Due Date	**8/1/2004**
Date Neg Am Cap Reached	**2/1/2008**
Months to Neg Am Cap	**43**

MONTHLY INTEREST RATE ADJUSTMENT CALCULATIONS

Pmt Month	Payment Due Date	Rate Change Date	BBA Release Date*	Index Rate (1-mo LIBOR)	Margin	Index Rate plus Margin	**ADJUSTED NOTE RATE ROUNDED TO NEAREST .125%**	Minimum Payment	30-year Amortizing Payment	Interest Due	Min. Payment less Interest Due	Principal Balance
												$191,000.00
1	8/1/2004					1.95%	**1.95%**	$701.21	$701.21	$310.38	$390.83	$190,609.17
2	9/1/2004	8/1/2004	7/23/2004	1.450%	2.90%	4.350%	**4.375%**	$701.21	$952.97	$694.93	$6.28	$190,602.89
3	10/1/2004	9/1/2004	8/25/2004	1.630%	2.90%	4.530%	**4.500%**	$701.21	$968.31	$714.76	($13.55)	$190,616.44
4	11/1/2004	10/1/2004	9/24/2004	1.840%	2.90%	4.740%	**4.750%**	$701.21	$998.13	$754.52	($53.32)	$190,669.76
5	12/1/2004	11/1/2004	10/25/2004	1.951%	2.90%	4.851%	**4.875%**	$701.21	$1,014.06	$774.60	($73.39)	$190,743.15
6	1/1/2005	12/1/2004	11/25/2004	2.194%	2.90%	5.094%	**5.125%**	$701.21	$1,044.76	$814.63	($113.43)	$190,856.57
7	2/1/2005	1/1/2005	12/24/2004	2.420%	2.90%	5.320%	**5.375%**	$701.21	$1,076.06	$854.88	($153.67)	$191,010.25
8	3/1/2005	2/1/2005	1/25/2005	2.550%	2.90%	5.450%	**5.500%**	$701.21	$1,093.03	$875.46	($174.26)	$191,184.50
9	4/1/2005	3/1/2005	2/25/2005	2.690%	2.90%	5.590%	**5.500%**	$701.21	$1,095.27	$876.26	($175.06)	$191,359.56
10	5/1/2005	4/1/2005	3/24/2005	2.850%	2.90%	5.750%	**5.750%**	$701.21	$1,127.52	$916.93	($215.72)	$191,575.28
11	6/1/2005	5/1/2005	4/25/2005	3.040%	2.90%	5.940%	**6.000%**	$701.21	$1,160.41	$957.88	($256.67)	$191,831.95
12	7/1/2005	6/1/2005	5/25/2005	3.091%	2.90%	5.991%	**6.000%**	$701.21	$1,163.19	$959.16	($257.95)	$192,089.90
13	8/1/2005	7/1/2005	6/24/2005	3.320%	2.90%	6.220%	**6.250%**	$701.21	$1,196.75	$1,000.47	($299.26)	$192,389.16
14	9/1/2005	8/1/2005	7/25/2005	3.480%	2.90%	6.380%	**6.375%**	$701.21	$1,215.37	$1,022.07	($320.86)	$192,710.02
15	10/1/2005	9/1/2005	8/25/2005	3.669%	2.90%	6.569%	**6.625%**	$701.21	$1,249.95	$1,063.92	($362.71)	$193,072.74
16	11/1/2005	10/1/2005	9/23/2005	3.830%	2.90%	6.730%	**6.750%**	$701.21	$1,269.32	$1,086.03	($384.83)	$193,457.56
17	12/1/2005	11/1/2005	10/25/2005	4.060%	2.90%	6.960%	**7.000%**	$701.21	$1,304.96	$1,128.50	($427.30)	$193,884.86
18	1/1/2006	12/1/2005	11/25/2005	4.210%	2.90%	7.110%	**7.125%**	$701.21	$1,325.13	$1,151.19	($449.98)	$194,334.84
19	2/1/2006	1/1/2006	12/23/2005	4.380%	2.90%	7.280%	**7.250%**	$701.21	$1,345.60	$1,174.11	($472.90)	$194,807.74
20	3/1/2006	2/1/2006	1/25/2006	4.540%	2.90%	7.440%	**7.500%**	$701.21	$1,382.76	$1,217.55	($516.34)	$195,324.08
21	4/1/2006	3/1/2006	2/24/2006	4.605%	2.90%	7.505%	**7.500%**	$701.21	$1,387.60	$1,220.78	($519.57)	$195,843.65
22	5/1/2006	4/1/2006	3/24/2006	4.821%	2.90%	7.721%	**7.250%**	$701.21	$1,359.67	$1,183.22	($482.01)	$196,325.67
23	6/1/2006	5/1/2006	4/25/2006	4.989%	2.90%	7.889%	**7.875%**	$701.21	$1,446.98	$1,288.39	($587.18)	$196,912.85
24	7/1/2006	6/1/2006	5/25/2006	5.091%	2.90%	7.991%	**7.875%**	$701.21	$1,452.48	$1,292.24	($591.03)	$197,503.88
25	8/1/2006	7/1/2006	6/23/2006	5.335%	2.90%	8.235%	**8.250%**	$701.21	$1,508.79	$1,357.84	($656.63)	$198,160.51
26	9/1/2006	8/1/2006	7/25/2006	5.398%	2.90%	8.298%	**8.250%**	$701.21	$1,514.97	$1,362.35	($661.15)	$198,821.66
27	10/1/2006	9/1/2006	8/25/2006	5.330%	2.90%	8.230%	**8.250%**	$701.21	$1,521.19	$1,366.90	($665.69)	$199,487.35
28	11/1/2006	10/1/2006	9/25/2006	5.326%	2.90%	8.226%	**8.250%**	$701.21	$1,527.47	$1,371.48	($670.27)	$200,157.62
29	12/1/2006	11/1/2006	10/25/2006	5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,533.80	$1,376.08	($674.88)	$200,832.50
30	1/1/2007	12/1/2006	11/24/2006	5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,540.19	$1,380.72	($679.52)	$201,512.01
31	2/1/2007	1/1/2007	12/22/2006	5.350%	2.90%	8.250%	**8.250%**	$701.21	$1,546.63	$1,385.40	($684.19)	$202,196.20
32	3/1/2007	2/1/2007	1/25/2007	5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,553.12	$1,390.10	($688.89)	$202,885.09
33	4/1/2007	3/1/2007	2/23/2007	5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,559.67	$1,394.84	($693.63)	$203,578.72
34	5/1/2007	4/1/2007	3/23/2007	5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,566.27	$1,399.60	($698.40)	$204,277.12
35	6/1/2007	5/1/2007	4/25/2007	5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,572.94	$1,404.41	($703.20)	$204,980.31
36	7/1/2007			5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,579.65	$1,409.24	($708.03)	$205,688.35
37	8/1/2007			5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,586.43	$1,414.11	($712.90)	$206,401.25
38	9/1/2007			5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,593.26	$1,419.01	($717.80)	$207,119.05
39	10/1/2007	***PROJECTED RATES - DATA NOT***		5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,600.15	$1,423.94	($722.74)	$207,841.79
40	11/1/2007	***AVAILABLE AS OF 5/3/07***		5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,607.11	$1,428.91	($727.71)	$208,569.49
41	12/1/2007			5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,614.12	$1,433.92	($732.71)	$209,302.20
42	1/1/2008			5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,621.19	$1,438.95	($737.75)	$210,039.94
43	2/1/2008			5.320%	2.90%	8.220%	**8.250%**	$701.21	$1,628.32	$1,444.02	($742.82)	**$210,782.76**

*British Bankers Association Historic BBA LIBOR Rates at
http://www.bba.org.uk/bba/jsp/polopoly.jsp?d=141&a=627

554067397

TRUTH IN LENDING DISCLOSURE STATEMENT
(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

LENDER: Chevy Chase Bank, F.S.B.
7501 Wisconsin Avenue
Bethesda, MD 20814

☐ Preliminary ☒ Final

BORROWERS BRYAN M. ANDREWS and SUSAN R. ANDREWS

DATE 06/08/2004
LOAN NO. 554067397
Type of Loan WS Cashflow 5-Year Fixed
Note Interest Rate: 1.950%

ADDRESS 6610 KINGSWOOD DR.
CITY STATE / ZIP CEDARBURG, WI 53012
PROPERTY 6610 KINGSWOOD DR., CEDARBURG, WI 53012

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate, which is subject to change.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
4.047 %	$ 147,597.14	$ 189,521.10	$ 337,118.24

PAYMENT SCHEDULE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE BEGINNING	NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE BEGINNING
60	701.21	08/01/2004			
300	983.49	08/01/2009			

This loan program allows you to select the type of payment you make each month, in accordance with disclosures provided to you earlier.

DEMAND FEATURE: ☒ This loan does not have a Demand Feature. ☐ This loan has a Demand Feature as follows:

VARIABLE RATE FEATURE:
☒ This Loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at:
6610 KINGSWOOD DR., CEDARBURG, WI 53012

ASSUMPTION: Someone buying this property ☐ cannot assume the remaining balance due under original mortgage terms
☒ may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

FILING / RECORDING FEES: $ 50.00

PROPERTY INSURANCE: ☒ Property hazard insurance in the amount of $ replacement cost with a loss payable clause to the lender is a required condition of this loan. Borrower may purchase this insurance from any insurance company acceptable to the lender.
Hazard insurance ☐ is ☒ is not available through the lender at an estimated cost of for a year term.

LATE CHARGES: If your payment is more than 15 days late, you will be charged a late charge of 5.000 % of the overdue payment.

PREPAYMENT: If you pay off your loan early, you
☒ may ☐ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.
e means estimate

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

BRYAN M. ANDREWS BORROWER / DATE

SUSAN R. ANDREWS BORROWER / DATE

BORROWER / DATE

BORROWER / DATE

VMP-788 (9208) 10872606 VMP MORTGAGE FORMS - (313)293-8100 - (800)521-7291 06:07:04:17:20 8/92

Blumberg No. 5116 EXHIBIT 17

DEFINITION OF TRUTH-IN-LENDING TERMS

ANNUAL PERCENTAGE RATE

This is not the Note rate for which the borrower applied. The Annual Percentage Rate (APR) is the cost of the loan in percentage terms taking into account various loan charges of which interest is only one such charge. Other charges which are used in calculation of the Annual Percentage Rate are Private Mortgage Insurance or FHA Mortgage Insurance Premium (when applicable) and Prepaid Finance Charges (loan discount, origination fees, prepaid interest and other credit costs). The APR is calculated by spreading these charges over the life of the loan which results in a rate higher than the interest rate shown on your Mortgage/Deed of Trust Note. If interest was the only Finance Charge, then the interest rate and the Annual Percentage Rate would be the same.

PREPAID FINANCE CHARGES

Prepaid Finance Charges are certain charges made in connection with the loan and which must be paid upon the close of the loan. These charges are defined by the Federal Reserve Board in Regulation Z and the charges must be paid by the borrower. Non-Inclusive examples of such charges are: Loan origination fee, "Points" or Discount, Private Mortgage Insurance or FHA Mortgage Insurance, Tax Service Fee. Some loan charges are specifically excluded from the Prepaid Finance Charge such as appraisal fees and credit report fees.

Prepaid Finance Charges are totaled and then subtracted from the Loan Amount (the face amount of the Deed of Trust/Mortgage Note). The net figure is the Amount Financed as explained below.

FINANCE CHARGE

The amount of interest, prepaid finance charge and certain insurance premiums (if any) which the borrower will be expected to pay over the life of the loan.

AMOUNT FINANCED

The Amount Financed is the loan amount applied for less the prepaid finance charges. Prepaid finance charges can be found on the Good Faith Estimate. For example if the borrower's note is for $100,000 and the Prepaid Finance Charges total $5,000, the Amount Financed would be $95,000. The Amount Financed is the figure on which the Annual Percentage Rate is based.

TOTAL OF PAYMENTS

This figure represents the total of all payments made toward principal, interest and mortgage insurance (if applicable) over the life of the loan.

PAYMENT SCHEDULE

The dollar figures in the Payment Schedule represent principal, interest, plus Private Mortgage Insurance (if applicable) over the life of the loan. These figures will not reflect taxes and insurance escrows or any temporary buydown payments contributed by the seller.