

THE TRUTH IN LENDING ACT (TILA)

1. PURPOSE

Economic stabilization and competition is strengthened by informed use of credit by consumers.

The Act is in Title I of the Consumer Credit Protection Act and is implemented by the Federal Reserve Board via Regulation Z (12 C.F.R. Part 226).

The Regulation has effect and force of federal law.

TILA is to be liberally construed in favor of consumers, with creditors who fail to comply with TILA in any respect becoming liable to consumer regardless of nature of violation or creditors' intent.

2. SCOPE.

TILA applies to:

Each individual or business that offers or extends credit when four conditions are met:

1. The credit is offered or extended to consumers
2. The offering or extension of credit is done "regularly" [extends credit more than 25 times (or more than 5 times for transactions secured by dwelling) per year],,
3. The credit is subject to a finance charge or is payable by written agreement in more than four installments, and
4. The credit is primarily for personal, family, or household purposes.

If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge or is not payable by agreement in more than four installments, or if the credit card is used for business purposes. Credit card holders are liable for unauthorized use of the card only up to \$50. 15 U.S.C. Sec. 1643. (see Fair Credit Billing Act).

Also, certain requirements apply to persons who are not creditors but who provide applications for home equity plans to consumers.

TILA does not apply to:

Creditors who extend credit primarily for business, commercial, agricultural, or organizational purposes or other purposes that are otherwise regulated, such as

securities brokers. But rules governing issuing credit cards and liability for unauthorized use apply to all credit cards.

Credit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, in which the total amount financed exceeds \$25,000.

3. MATERIAL DISCLOSURES REQUIRED.

Required disclosures must be made:

- "Clearly and conspicuously"
- In meaningful sequence,
- In writing, and
- In a form the consumer may keep.

The Federal Reserve Board promulgates model disclosure forms, but where they would be misleading, lenders should provide tailored notices consistent with TILA.

Closed-end Credit Transactions (includes both sales credit and loans):

Typical features:

- Credit is advanced for a specific time period.
- The amount financed, the finance charge, and the schedule of payments are agreed upon by the creditor and the consumer.

Disclosures:

- Identity of the creditor.
- Amount financed,
- Itemization of amount financed
- Annual percentage rate, including applicable variable-rate disclosures,
- Finance charge,
- Total of payments,
- Payment schedule,
- Prepayment/late payment penalties,
- If applicable to the transaction: (1) Total sales cost, (2) Demand feature, (3) Security interest, (4) Insurance, (5) Required deposit, and (6) Reference to contract.

4. VIOLATIONS OF TILA.

Creditors are liable for violation of the disclosure requirements, regardless of whether the consumer was harmed by the nondisclosure, UNLESS:

The creditor corrects the error within 60 days of discovery and prior to written suit or written notice from the consumer, or

The error is the result of bona fide error. The creditor bears the burden of proving by a preponderance of the evidence that:

- The violation was unintentional.
- The error occurred notwithstanding compliance with procedures reasonably adapted to avoid such error. (Error of legal judgment with respect to creditor's TILA obligations not a bona fide error.)

Civil remedies for failure to comply with TILA requirements:

Action may be brought in any U.S. district court or in any other competent court within one year from the date on which the violation occurred. This limitation does not apply when TILA violations are asserted as a defense, set-off, or counterclaim, except as otherwise provided by state law.

Private remedies - applicable to violations of provisions regarding credit transactions, credit billing, and consumer leases.

- Actual damages in all cases.
- Attorneys' fees and court costs for successful enforcement and rescission actions.
- Statutory damages.
- (1) For individual actions, double the correctly calculated finance charge but not less than \$100 or more than \$1,000 for individual actions.
- For class actions, an amount allowed by the court with no required minimum recovery per class member to a maximum of \$500,000 or 1% of the creditor's net worth, whichever is less.
- Can be imposed on creditors who fail to comply with specified TILA disclosure requirements, with the right of rescission, with the provisions concerning credit cards, or with the fair credit billing requirements.

Enforcement by administrative agencies.

The enforcement scheme for banks includes the Federal Reserve System, the Federal Deposit Insurance Corporation, and other agencies. The enforcement agency responsible for creditors not subject to the authority of any specific enforcement agency is the Federal Trade Commission. Nine separate agencies currently have enforcement responsibilities.

Enforcement agencies can:

Issue cease and desist orders or hold hearings pursuant to which creditors are required to adjust debtors' accounts to ensure that the debtor is not required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

If the FTC determines in a cease and desist proceeding against a particular individual or firm that a given practice is "unfair or deceptive," it may proceed against any other individual or firm for knowingly engaging in the forbidden practice, even if that entity was not involved in the previous proceeding.

Criminal penalties - Willful and knowing violations of TILA permit imposition of a fine of \$5,000, imprisonment for up to one year, or both.