



# Truth in Lending Act 101

by: Suzanne Garwood  
Venable

[sfgarwood@venable.com](mailto:sfgarwood@venable.com)

202-344-8046

# Truth in Lending Act 101

- Overview of TILA and Regulation Z
  - Key terms
  - Disclosures
  - Substantive Restrictions
- Amendments Made by Mortgage Disclosure Improvement Act (“MDIA”)
  - New disclosure timeframes
  - Relation to RESPA
- Proposed Changes to Closed- and Open-End Mortgage Loan Regulation

# Overview of TILA

- Legal Authority
  - Truth in Lending Act: 15 U.S.C. §§ 1601 *et seq.*
  - Regulation Z: 12 C.F.R. §§ 226.1 *et seq.*
  - Divided into two regimes:
    - Closed-end and
    - Open-end
- Purpose

The primary purpose of TILA and Regulation Z is to protect consumers in credit transactions by requiring clear disclosure of key terms of the lending arrangement and the cost of credit.

# Overview of TILA

- Key Terms
  - **Consumer Credit:** Credit offered or extended to a consumer primarily for a personal, family or household purpose.
  - **Finance Charge:** The dollar amount that represents the cost of the credit.
  - **Annual Percentage Rate:** Represents the cost of credit, as a percentage instead of a dollar amount.
  - **Amount Financed:** Amount of credit that the creditor provides to the consumer on the consumer's behalf.

# Overview of TILA

- Examples of Finance Charge
  - Origination Fees
  - Points
  - Interest
  - Processing Fees
  - Underwriting Fees
- Examples of Exempt Fees
  - Application Fees (if always charged)
  - Late Fees
  - Overdraft Fees
  - Seller's Points
  - Real Estate-Related Fees
  - Insurance
  - Taxes and Fees Paid to Public Officials

# Overview of TILA

- Key Terms

- Business Day (general)

Means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.

- Business Day (rescission)

Means all calendar days except Sundays and legal public holidays specified in 5 U.S.C. 6103, New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day

# Overview of TILA

- Key Terms
  - **HOEPA/Section 32 Loans**
    - Secured by the consumer's principal dwelling
    - Excludes open-end, reverse, and "residential mortgage transactions"
    - APR is 8 points above comparable Treasury securities for first-lien/10 points for junior-lien
    - Points and fees exceed greater of 8 percent of total loan amount or \$579 (floating)

# Overview of TILA

- Key Terms

- Residential Mortgage Transaction:

A transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

# Overview of TILA

- Key Terms

- **Higher Priced Mortgage Loan**

- Secured by principal dwelling
    - Excludes bridge loans and open-end loans
    - APR exceeds Average Prime Offer Rate by 1.5 percent for first-liens or 3.5 percent for junior liens
      - Average Prime Offer Rate published by FFIEC
      - Calculator is available at:  
<http://www.ffiec.gov/ratespread/newcalc.aspx>

# Overview of TILA

- Disclosure Requirements
  - Closed End
    - Form of Disclosures: Clear and conspicuous and in a form that the borrower can keep; Must be segregated
    - Timing Requirements: Early and final disclosure timeframes modified by MDIA
    - Model Form: H-2
  - Open End
    - Form of Disclosures: Clear and conspicuous and in form that the borrower can keep
    - Timing Requirements: Application and initial
  - Notice of Right to Rescind: H-8/H-9 or G-5/G-7

## Closed-End Disclosure: Required Content

- Creditor
- Amount Financed
- Itemization of Amount Financed\*
- Finance Charge
- Annual Percentage Rate
- Variable Rate
- Payment Schedule
- Total of Payments
- Demand Feature
- Prepayment
- Late Payment
- Security Interest
- Insurance and Debt Collection
- Certain Security Interest Charges
- Contract Reference
- Assumption Policy
- Required Deposit

\* Do not include in segregated disclosure

## Open-End Disclosures: Application Disclosures

- Retention of Information
- Conditions for Disclosed Terms
- Security Interest and Risk to Home
- Possible Actions
- Payment Terms
- Annual Percentage Rate
- Fees Imposed by Creditor
- Fees Imposed by Third Party
- Negative Amortization
- Transaction Requirements
- Tax Implications
- Disclosures for Variable Rate Plans
- Home Equity Brochure

- Open-End Disclosures: Initial Disclosures
  - Finance Charge
  - Other Charges
  - Security Interest
  - Statement of Billing Rights
  - Home Equity Plan Information
    - Statement of conditions under which a creditor can take action
    - Payment information
    - Statement regarding transaction requirements
    - Statement regarding tax implications
    - Statement that APR does not include costs other than interest
    - Variable rate disclosures

# Overview of TILA

- Substantive Restrictions
  - HOEPA Loans
    - Required Notice
    - Balloon Payments
    - Negative Amortization
    - Advance Payments
    - Increased Interest Rate
    - Prepayment Fees
    - Due on Demand Clause
    - Home Improvement Contracts
    - Notice to Assignees
    - Ability to Repay

# Overview of TILA

- Substantive Restrictions
  - Higher Priced Mortgage Loans
    - Ability to Repay
    - Prepayment Fees
    - Required Escrow Accounts
      - For first-lien loans
      - For 12 months
      - Not required for condos or coops

# Overview of TILA

- Substantive Restrictions

- HELOC Prohibitions:

- Changing the APR
    - Terminating a plan
    - Changing any term
      - Additional extensions of credit
      - Index and Margin
      - Fees

**EXCEPT:** if agreed to in writing, unequivocally benefit the consumer, or is insignificant

## Mortgage Disclosure Improvement Act

- Established new disclosure timeframes for “early” TILA disclosures
- Effective date - July 30, 2009
- Applies to loans applied for on or after that date
- Applies to RESPA mortgage loans secured by a dwelling
- Timeshare secured loans are excluded

- Early Disclosures
  - Must be sent no later than three business days after creditor receives the application
    - Use the general definition of “business day”
  - Provide before the consumer pays a fee other than for a credit history
    - Compare to RESPA’s “credit report”
  - Provide at least seven business days prior to consummation
    - Use the “rescission” definition of business day
  - New Disclosure Requirement:
    - “You are not required to complete this agreement merely because you have received this disclosure or signed a loan application.”

- Redisclose within three business days prior to consummation for APR change outside of tolerance (this is the “three business day waiting period”)
  - 1/8 of one percent for regular transactions; 1/4 of one percent for irregular transactions
  - Use the “rescission” definition of business day
- If mailed, assumed received three business days after mailing
- All other changes, redisclose by consummation

## PROPOSED AMENDMENTS TO CLOSED- AND OPEN-END

# Proposed Regulations

- On July 23, 2009, Board announced proposed changes to closed- and open-end disclosure requirements
- Comments were due by December 24, 2009
- Final Rules have not yet been issued

# Proposed Regulations

- Closed-End Disclosures
  - **At Application**
    - “Key Questions to Ask About Your Mortgage”
    - “Fixed v. Adjustable Rate Mortgages”
    - Revising the ARM disclosure – tabular format
  - **Three Day Package**
    - Revise calculation of the APR/Finance Charge
    - Graph comparisons of APR
    - Potential changes to interest rate and monthly payments
    - Total settlement charges

# Proposed Regulations

- Closed-End Disclosures
  - **Three Days Prior to Consummation**
    - Final Disclosure Required
      - *Alternative One*: If any terms change after “final” is provided, provide another final TILA disclosure
      - *Alternative Two*: If the APR exceeds a certain tolerance or an adjustable rate feature is added, provide another final TILA disclosure
  - **After Consummation**
    - For ARMs increase the advance notice of payment change from 25 to 60 days and revise format
    - Monthly statements for negatively amortizing loans
    - Notice of cost and coverage of creditor-placed insurance 45 days prior to charge

# Proposed Regulations

- Loan Originator Compensation
  - Prohibiting certain payments to a mortgage broker or a loan officer that are based on the loan's terms and conditions
  - Prohibiting a mortgage broker or loan officer from “steering” consumers to transactions that are not in their interest in order to increase the mortgage broker's or loan officer's compensation

# Proposed Regulations

## Creates an “All-In” Finance Charge and APR

- Eliminates exemptions for real estate related charges for calculation of the finance charge and APR for closed-end mortgage loans
- May affect pricing/origination strategies designed to avoid HOEPA loans and Higher Priced Mortgage Loans

# Proposed Regulations

- Open-End Disclosures
  - **Application**
    - Eliminate generic disclosure and Board brochure
    - “Key Questions to Ask about Home Equity Lines of Credit”
  - **Three Days After Application**
    - Provide information about rates, fees, payment and risks in tabular format
    - Highlighting whether there is a balloon payment
    - Payment examples on current rate and maximum

# Proposed Regulations

- Open-End Disclosures
  - **At Account Opening**
    - Format the information the same as three-day package
  - **Periodic Statement**
    - Eliminate disclosure of effective APR
    - Group interest charges and fees separately and require disclosure of separate totals of interest and fees for the period and year to date
  - **Change in Terms**
    - Increase advance notice in a contract term from 15 days to 45