1 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE

**Go to the United States Code Service Archive Directory**

*15 USCS prec § 1601*

Preceding § 1601

**NOTES:**

Related Statutes & Rules:
This subchapter is referred to in *12 USCS §§ 1715z-16, 2199, 2610, 3806, 4803, 4905*; *15 USCS § 5721*; *20 USCS § 1083*.

2 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1601*

§ 1601. Congressional findings and declaration of purpose

(a) Informed use of credit. The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this *title [15 USCS §§ 1601* et seq.] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

(b) Terms of personal property leases. The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this *title [15 USCS §§ 1601* et seq.] to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 102, 82 Stat. 146; Oct. 28, 1974, P.L. 93-495, Title III, § 302, 88 Stat. 1511; March 23, 1976, P.L. 94-240, § 2, 90 Stat. 257.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:

For the effective date of this section, see § 504(a) of Act May 29, 1968, P.L. 90-321, which appears as a note to this section.

Amendments:

1974. Act Oct. 28, 1974 (effective one year after enactment, as provided by § 308 of such Act, which appears as *15 USCS § 1666* note) added ", and to protect the consumer against inaccurate and unfair credit billing and credit card practices".

1976. Act March 23, 1976, (effective one year after enactment, as provided by § 6 of such Act which appears as *15 USCS § 1667* note) inserted "(a)" and added subsec. (b).

Short titles:

Act May 29, 1968, P.L. 90-321, § 1, 82 Stat. 146, provides: "This Act may be cited as the 'Consumer Credit Protection Act'.". For full classification of such Act, consult USCS Tables volumes.

Act May 29, 1968, P.L. 90-321, Title I, § 101, 82 Stat. 146, provides: "This title may be cited as the 'Truth in Lending Act'.". For full classification of such Title, consult USCS Tables volumes.

Act May 29, 1968, P.L. 90-321, Title IV, § 401, as added Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle D, Ch 2, § 2451, 110 Stat. 3009-455, provides: "This *title [15 USCS §§ 1679* et seq.] may be cited as the 'Credit Repair Organizations Act'.".

Act May 29, 1968, P.L. 90-321, Title VI, § 601, as added by Oct. 26, 1970, P.L. 91-508, Title VI, § 601, 84 Stat. 1128; Dec. 4, 2003, P.L. 108-159, Title VIII, § 811(a), 117 Stat. 2011, provides: "This title may be cited as the 'Fair Credit Reporting Act'.". For full classification of such Title, consult USCS Tables volumes.

Act May 29, 1968, P.L. 90-321, Title VII, § 709, as added March 23, 1976, P.L. 94-239, § 1(b), 90 Stat. 251, provides: "This title may be cited as the 'Equal Credit Opportunity Act'.". For full classification of such Title, consult USCS Tables volumes.

Act May 29, 1968, P.L. 90-321, Title VIII, § 801, as added Sept. 20, 1977, P.L. 95-109, 91 Stat. 874, provides: "This *title [15 USCS §§ 1692* et seq.] may be cited as the 'Fair Debt Collection Practices Act'.". For full classification of such Title, consult USCS Tables volumes.

Act May 29, 1968, P.L. 90-321, Title IX, § 901, as added Nov. 10, 1978, P.L. 95-630, Title XX, § 2001, 92 Stat. 3728, provides: "This title may be cited as the 'Electronic Fund Transfer Act'.". For full classification of such Title, consult USCS Tables volumes.

Act Oct. 28, 1974, P.L. 93-495, Title III, §§ 301, 308, 88 Stat. 1511, 1517, provides, effective "upon the expiration of one year after" Oct. 28, 1974, "This title may be cited as the 'Fair Credit Billing Act'.". For full classification of such Title, consult USCS Tables volumes. Act Oct. 28, 1974, P.L. 93-495, Title V, § 501, 88 Stat. 1521, which formerly appeared as a note to this section, was repealed by § 1(c) of Act March 23, 1976, P.L. 94-239. Such section provided for a short title.

Act March 23, 1976, P.L. 94-239, § 1(a), 90 Stat. 251, provides: 'This Act may be cited as the 'Equal Credit Opportunity Act Amendments of 1976'.".

Act March 23, 1976, P.L. 94-240, § 1, 90 Stat. 257, provides: "This Act may be cited as the 'Consumer Leasing Act of 1976'.". For full classification of such Act, consult USCS Tables volumes.

Act March 31, 1980, P.L. 96-221, Title VI, § 601, 94 Stat. 168, provides: "This title may be cited as the 'Truth in Lending Simplification and Reform Act'.". For full classification of such Title, consult USCS Tables volumes.

Act July 27, 1981, P.L. 97-25, § 1, 95 Stat. 144, provides: "This Act may be cited as the 'Cash Discount Act'.". For full classification of such Act, consult USCS Tables volumes.

Act Nov. 3, 1988, P.L. 100-583, § 1, 102 Stat. 2960, provides: "This Act may be cited as the 'Fair Credit and Charge Card Disclosure Act of 1988'.". For full classification of such Act, consult USCS Tables volumes.

Act Nov. 23, 1988, P.L. 100-709, § 1, 102 Stat. 4725, applicable as provided by § 7 of such Act, which appears as *15 USCS § 1637a* note, provides: "This Act may be cited as the 'Home Equity Loan Consumer Protection Act of 1988'.". For full classification of such Act, consult USCS Tables volumes.

Act Oct. 27, 1992, P.L. 102-537, § 1, 106 Stat. 3531, provides: "This Act may be cited as the 'Ted Weiss Child Support Enforcement Act of 1992'.". For full classification of such Act, consult USCS Tables volumes.

Act Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 151, 108 Stat. 2190, provides: "This subtitle may be cited as the 'Home Ownership and Equity Protection Act of 1994'.". For full classification of such Subtitle, consult USCS Tables volumes.

Act May 18, 1995, P.L. 104-12, § 1, 109 Stat. 161, provides: "This Act [*15 USCS § 1640(i)*] may be cited as the 'Truth in Lending Class Action Relief Act of 1995'.".

Act Sept. 30, 1995, P.L. 104-29, § 1, 109 Stat. 271, provides: "This Act may be cited as the 'Truth in Lending Act Amendments of 1995'. For full classification of such Act, consult USCS Tables volumes.

Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle D, Ch 1, § 2401, 1104 Stat. 3009-426, provides: "This chapter may be cited as the 'Consumer Credit Reporting Reform Act of 1996'.". For full classification of such Chapter, consult USCS Tables volumes.

Act Nov. 2, 1998, P.L. 105-347, § 1, 112 Stat. 3208, provides: "This Act may be cited as the 'Consumer Reporting Employment Clarification Act of 1998'." For full classification of such Act, consult USCS Tables volumes.

Act Nov. 12, 1999, P.L. 106-102, Title VII, Subtitle A, § 701, 113 Stat. 1463, provides: "This subtitle [in part amending *15 USCS §§ 1693b*, *1693c*, and *1693h*, and in part unclassified] may be cited as the 'ATM Fee Reform Act of 1999'.".

Act Dec. 4, 2003, P.L. 108-159, § 1(a), 117 Stat. 1952, provides: "This Act may be cited as the 'Fair and Accurate Credit Transactions Act of 2003'.". For full classification of such Act, consult USCS Tables volumes.

Act June 3, 2008, P.L. 110-241, § 1, 122 Stat. 1565, provides: "This Act [adding *15 USCS § 1681n(d)* and appearing in part as notes to such section] may be cited as the 'Credit and Debit Card Receipt Clarification Act of 2007'.".

Act July 30, 2008, P.L. 110-289, Div B, Title V, § 2501, 122 Stat. 2855, provides: "This title [amending *12 USCS §§ 24* and *338a*, *15 USCS §§ 1638* and *1640*, and appearing in part as *15 USCS § 1638* note] may be cited as the 'Mortgage Disclosure Improvement Act of 2008'.".

Act Aug. 14, 2008, P.L. 110-315, Title X, § 1001, 122 Stat. 3478, provides: "This title may be cited as the 'Private Student Loan Transparency and Improvement Act of 2008'.". For full classification of such Title, consult USCS Tables volumes.

Act May 22, 2009, P.L. 111-24, § 1(a), 123 Stat. 1734, provides: "This Act may be cited as the 'Credit Card Accountability Responsibility and Disclosure Act of 2009' or the 'Credit CARD Act of 2009'.". For full classification of such Act, consult USCS Tables volumes.

Act Nov. 6, 2009, P.L. 111-93, § 1, 123 Stat. 2998, provides: "This Act [amending *15 USCS § 1666b(a)*] may be cited as the 'Credit CARD Technical Corrections Act of 2009'.".

Act July 21, 2010, P.L. 111-203, Title XIV, § 1400(a), 124 Stat. 2136, provides: "This title may be cited as the 'Mortgage Reform and Anti-Predatory Lending Act'.". For full classification of such Title, consult USCS Tables volumes.

Other provisions:

**National Commission on Consumer Finance.** Act May 29, 1968, P.L. 90-321, Title IV, §§ 401-407, 82 Stat. 164-166; July 20, 1970, P.L. 91-344, 84 Stat. 440; June 30, 1972, P.L. 92-321, § 1, 86 Stat. 382, provided for the creation of a bipartisan National Commission on Consumer Finance, consisting of certain members of Congress and others, to study and appraise the functioning and structure of the consumer finance industry and consumer credit transactions generally, and to make a report and recommendations to the President and to the Congress by December 31, 1972, regarding (1) the adequacy of existing arrangements to provide consumer credit at reasonable rates, (2) the

adequacy of existing mechanisms to protect the public from unfair credit practices and to insure the informed use of credit, and (3) the desirability of Federal chartering of consumer finance companies, or other regulatory measures. The Commission was to cease existence after the submission of its final report.

**Act May 29, 1968; severability of provisions.** Act May 29, 1968, P.L. 90-321, Title V, § 501, 82 Stat. 167, provides: "If a provision enacted by this Act [*15 USCS §§ 1601* et seq.; *18 USCS §§ 891* et seq.] is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act [*15 USCS §§ 1601* et seq.; *18 USCS §§ 891* et seq.] is held invalid in one or more of its applications, the provision remains in effect in all invalid applications that are severable from the invalid application or applications.".

**Inferences as to legislative intent from captions and catchlines.** Act May 29, 1968, P.L. 90-321, Title V, § 502, 82 Stat. 167, provides: "Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act [*15 USCS §§ 1601* et seq.; *18 USCS §§ 891* et seq.] may be drawn from them.".

**Act May 29, 1968; grammatical usages.** Act May 29, 1968, P.L. 90-321, Title V, § 503, 82 Stat. 167, provides: "In this Act [*15 USCS §§ 1601* et seq.; *18 USCS §§ 891* et seq.]:

"(1) The word 'may' is used to indicate that an action either is authorized or is permitted.

"(2) The word 'shall' is used to indicate that an action is both authorized and required.

"(3) The phrase 'may not' is used to indicate that an action is both unauthorized and forbidden.

"(4) Rules of law are stated in the indicative mood.".

**Effective date of Act May 29, 1968.** Act May 29, 1968, P.L. 90-321, Title V, § 504(a), provides: "Except as otherwise specified, the provisions of this Act [*15 USCS §§ 1601-1613, 1631-1641, 1661-1665, 1666-1666j, 1671-1677, 1681-1681t, 1691-1691e*, and *1601* notes; *18 USCS §§ 891-896* and *891* notes] take effect upon enactment.".

**Study of effect of charge card transactions.** Act July 27, 1981, P.L. 97-25, Title II, § 202, 95 Stat. 145, provides: "Not later than two years after the date of enactment of this Act [enacted July 27, 1981], the Board of Governors of the Federal Reserve System shall prepare a study, on the basis of a review and analysis of such data and studies as it finds appropriate, and shall submit its findings to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on the effect of charge card transactions upon card issuers, merchants, and consumers, including to the extent possible--

"(1) the effects of charge card transactions on retail sales;

"(2) the effect of charge card usage on consumers and on merchants, including the effects on merchant cost; and

"(3) the effect of charge card usage on the pricing of goods and services, with a comparison of the costs resulting from payment by (A) currency and coin, (B) by personal check or similar instrument, (C) by in-house credit plans, and (D) by charge card.".

**Federal Reserve study.** Act Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 157, 108 Stat. 2197, provides: "During the period beginning 180 days after the date of enactment of this Act and ending 2 years after that date of enactment, the Board of Governors of the Federal Reserve System shall conduct a study and submit to the Congress a report, including recommendations for any appropriate legislation, regarding--

"(1) whether a consumer engaging in an open end credit transaction (as defined in section 103 of the Truth in Lending Act [*15 USCS § 1602*]) secured by the consumer's principal dwelling is provided adequate protections under Federal law, including section 127A of the Truth in Lending Act [*15 USCS § 1637a*]; and

"(2) whether a more appropriate interest rate index exists for purposes of subparagraph (A) of section 103(aa)(1) of the Truth in Lending Act [*15 USCS § 1602(aa)(1)*] (as added by section 152(a) of this Act) than the yield on Treasury securities referred to in that subparagraph.".

**Hearings on home equity lending.** Act Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 158, 108 Stat. 2197; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1096, 124 Stat. 2102, provides: "(a) Hearings. Not less than once during the 3-year period beginning on the date of enactment of this Act, and regularly thereafter, the Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board, shall conduct a public hearing to examine the home equity loan market and the adequacy of existing regulatory and legislative provisions and the provisions of this subtitle [for full classification, consult USCS Tables volumes] in protecting the interests of consumers, and low-income consumers in particular.

"(b) Participation. In conducting hearings required by subsection (a), the Board of Governors of the Federal Reserve System shall solicit participation from consumers, representatives of consumers, lenders, and other interested parties.".

[*Amendment of § 158 of Act Sept. 23, 1994, P.L. 103-325 (note above), effective on designated transfer date.* Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1096, 124 Stat. 2102 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides:

"The Home Ownership and Equity Protection Act of 1994 (*15 U.S.C. 1601* note) is amended--

"(1) in section 158(a), by striking 'Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board' and inserting 'Bureau, in consultation with the Advisory Board to the Bureau'; and

"(2) in section 158(b), by striking 'Board of Governors of the Federal Reserve System' and inserting 'Bureau'.".]

**Analysis of further restrictions on offers of credit or insurance.** Act Dec. 4, 2003, P.L. 108-159, Title II, § 213(e), 117 Stat. 1979, provides:

"(1) In general. The Board shall conduct a study of--

"(A) the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer; and

"(B) the potential impact that any further restrictions on providing consumers with such written offers of credit or insurance would have on consumers.

"(2) Report. The Board shall submit a report summarizing the results of the study required under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act, together with such recommendations for legislative or administrative action as the Board may determine to be appropriate.

"(3) Content of report. The report described in paragraph (2) shall address the following issues:

"(A) The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive written offers of credit or insurance.

"(B) The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving offers of credit or insurance.

"(C) The benefits provided to consumers as a result of receiving written offers of credit or insurance.

"(D) Whether consumers incur significant costs or are otherwise adversely affected by the receipt of written offers of credit or insurance.

"(E) Whether further restricting the ability of lenders and insurers to provide written offers of credit or insurance to consumers would affect--

"(i) the cost consumers pay to obtain credit or insurance;

"(ii) the availability of credit or insurance;

"(iii) consumers' knowledge about new or alternative products and services;

"(iv) the ability of lenders or insurers to compete with one another; and

"(v) the ability to offer credit or insurance products to consumers who have been traditionally underserved.".

**Mortgage Reform and Anti-Predatory Lending Act; regulations; effective date.** Act July 21, 2010, P.L. 111-203, Title XIV, § 1400(c), 124 Stat. 2136, provides:

"(1) Regulations. The regulations required to be prescribed under this title or the amendments made by this title [for full classification, consult USCS Tables volumes] shall--

"(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date [as defined by § 1062 of Act July 21, 2010, P.L. 111-203, which appears as *12 USCS § 5582*]; and

"(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

"(2) Effective date established by rule. Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

"(3) Effective date. A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.".

**Disclosures.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle A, § 1405(b), 124 Stat. 2142 (effective as provided by § 1400(c) of such Act, which appears as a note to this section), provides: "Notwithstanding any other provision of this title [for full classification, consult USCS Tables volumes], in order to improve consumer awareness and

understanding of transactions involving residential mortgage loans through the use of disclosures, the Board may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Board determines that such exemption or modification is in the interest of consumers and in the public interest.".

**Designated transfer date defined.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle H, § 1495, 124 Stat. 2207, provides: "For purposes of this title [for full classification, consult USCS Tables volumes], the term 'designated transfer date' means the date established under section 1062 of this Act [*12 USCS § 5582*].".

**NOTES:**

Code of Federal Regulations:

Federal Deposit Insurance Corporation--Filing procedures, *12 CFR 303.0* et seq.

National Credit Union Administration--Organization and operation of Federal credit unions, *12 CFR 701.1* et seq.

Office of the Secretary, Department of Transportation (Aviation Proceedings)--Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers, *14 CFR 374.1* et seq.

Federal Trade Commission--Administrative interpretations, general policy statements, and enforcement policy statements, *16 CFR 14.9* et seq.

Department of the Army--Regulations affecting military reservations, *32 CFR 552.16* et seq.

Research Guide:

Federal Procedure:

3 Moore's Federal Practice (Matthew Bender 3d ed.), ch 13, Counterclaim and Crossclaim §§ 13.12, 13.30.

5 Moore's Federal Practice (Matthew Bender 3d ed.), ch 23, Class Actions § 23.45.

2 Civil Rights Actions (Matthew Bender), ch 7, Deprivation of Rights Under Color of State Law--General Principles (Civil Rights Act of 1871, *42 U.S.C. § 1983*) P 7.06.

1 Administrative Law (Matthew Bender), ch 4, Organization and Functions of Federal Administrative Agencies § 4.04.

4A Fed Proc L Ed, Banking and Financing § 8:320.

4B Fed Proc L Ed, Banking and Financing §§ 8:1542, 1569, 1571, 1572, 1577.

5 Fed Proc L Ed, Bankruptcy § 9:1787.

5B Fed Proc L Ed, Bankruptcy § 9:1787.

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:1, 64.

15 Fed Proc L Ed, Freedom of Information §§ 38:15, 249.

20 Fed Proc L Ed, Internal Revenue § 48:435.

32 Fed Proc L Ed, Trade Regulation and Unfair Trade Practices § 75:3.

Am Jur:

*9C Am Jur 2d, Bankruptcy § 2773.*

*9D Am Jur 2d, Bankruptcy § 3727.*

*11 Am Jur 2d, Banks and Financial Institutions § 1007.*

*11 Am Jur 2d, Bills and Notes § 44.*

*15A Am Jur 2d, Commerce § 48.*

*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 3, 117, 122, 167.*

*20 Am Jur 2d, Credit Cards and Charge Accounts § 4.*

*35 Am Jur 2d, Federal Tax Enforcement § 62.*

*37A Am Jur 2d, Freedom of Information Acts § 353.*
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1.*
*67 Am Jur 2d, Sales § 283.*
*68A Am Jur 2d, Secured Transactions §§ 174, 217, 702.*
*69 Am Jur 2d, Securities Regulation--Federal § 288.*

Am Jur Trials:
16 Am Jur Trials, Action for Harassment of Debtor, p. 619.
21 Am Jur Trials, Preparation and Trial of Federal Class Actions, p. 625.
86 Am Jur Trials, Arbitration Highways to the Courthouse--A Litigator's Roadmap, p. 111.

Am Jur Proof of Facts:
73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.
76 Am Jur Proof of Facts 3d, Class Action for Failure to Disclose Under the Truth-in-Lending Act and Regulation Z, p. 193.
81 Am Jur Proof of Facts 3d, Identity Theft and Other Misuses of Credit and Debit Cards, p. 113.

Forms:
1 *Bender's Federal Practice Forms, Form 8(II):100,* Federal Rules of Civil Procedure.
25 *Rabkin & Johnson, Current Legal Forms, § 21.30,* Sales and Exchanges.
33 *Rabkin & Johnson, Current Legal Forms, Forms 25.108, 25.109, 25.113, 25.123,* Environmental Considerations in Real Estate Transactions.
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:25, 31-36, 44-48, 69-72, 74, 93, 95-99, 108, 162, 163.
15 Fed Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits (2010) § 61:48.
16 Fed Procedural Forms L Ed, Trade Regulation and Unfair Trade Practices §§ 65:136, 264, 266.
10 Am Jur Legal Forms 2d, Interest and Usury §§ 150:7-42.
18 Am Jur Legal Forms 2d, Article 2 Sales §§ 253:450, 494.
19A Am Jur Legal Forms 2d, Article 9 Secured Transactions §§ 253:1966, 2028.
2A Am Jur Pl & Pr Forms (2010), Architects, § 60.
7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards §§ 41, 68, 71, 72.
17C Am Jur Pl & Pr Forms (2006), Moneylenders and Pawnbrokers, §§ 6-12.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection § 125.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.01, 1.05.
1A Debtor-Creditor Law (Matthew Bender), ch 10, Repossessions § 10.01.
3 Debtor-Creditor Law (Matthew Bender), ch 26, Confession of Judgment § 26.03.
3A Debtor-Creditor Law (Matthew Bender), ch 33, Bankruptcy Law § 33.05.

Criminal Law and Practice:
6 Business Crime (Matthew Bender), ch 33, Consumer Fraud P 33.06.

Bankruptcy:

4 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 502, Allowance of Claims or Interests P 502.03.

4 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 523, Exceptions to Discharge P 523.08.

4 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 524, Effect of Discharge P 524.04.

Corporate and Business Law:

1 Antitrust Laws and Trade Regulation, 2nd Edition (Matthew Bender), ch 5, Overview and Jurisdictional Elements of the Federal Trade Commission Act § 5.01.

5 Antitrust Laws and Trade Regulation, 2nd Edition (Matthew Bender), ch 76, Enforcement by the Federal Trade Commission: An Overview § 76.02.

5 Antitrust Laws and Trade Regulation, 2nd Edition (Matthew Bender), ch 78, Unfair or Deceptive Acts and Practices §§ 78.02, 78.09.

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 44, The Federal Trade Commission Organization §§ 44.5, 44.25, 44.119, 44.126.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.1, 62.2, 62.9, 62.10, 62.19.

9 Kintner, Federal Antitrust Law (Matthew Bender), ch 70, Exemptions for Insurance Industry § 70.8.

1 Liability of Corporate Officers and Directors (Matthew Bender), ch 11, Depository Institutions: Directors and Officers § 11.12.

Annotations:

Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141*.

Comment Note: Enforceability Under Federal Arbitration Act of Arbitration Clause Not Within Collective Bargaining Agreement With Respect to Claims Under Federal Civil Rights Statutes. *39 ALR Fed 2d 253.*

Application of Equitable Estoppel Against Nonsignatory to Compel Arbitration Under Federal Law. *43 ALR Fed 2d 275.*

Civil remedies of consumer for violations of Truth In Lending Act (*15 USCS §§ 1601-1665*). *11 ALR Fed 815.*

Financing of insurance premiums as constituting "business of insurance" within § 2 of Mc Carran-Ferguson Act (*15 USCS § 1012*), excluding application of Truth in Lending Act (*15 USCS §§ 1601* et seq.) to such financing. *51 ALR Fed 743.*

Application of Truth in Lending Act (*15 USCS §§ 1601* et seq.) to loans which are void under state laws. *54 ALR Fed 822.*

Propriety, under *Rule 23 of the Federal Rules of Civil Procedure*, of class action for violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *61 ALR Fed 603.*

Obligations of the parties under sec. 125(b) of Truth in Lending Act (*15 USCS § 1635(b)*) upon rescission of credit transaction involving real estate. *61 ALR Fed 839.*

Notification of adverse action on credit application under Equal Credit Opportunity Act (*15 USCS §§ 1691* et seq.) and regulations promulgated thereunder (12 CFR Part 202). *65 ALR Fed 906.*

Right to Private Action Under State Consumer Protection Act--Preconditions to Action. *117 ALR5th 155.*

Validity and construction of state fair credit reporting acts. *12 ALR4th 294.*

What constitutes "fraudulent" or "unconscionable" agreement or conduct within meaning of state consumer credit protection act. *42 ALR4th 293.*

Construction and effect of "future advances" clauses under UCC Article 9. *90 ALR4th 859.*

Construction and effect of disclosure statutes requiring one extending credit or making loan to give statement showing terms as to amounts involved and charges made. *14 ALR3d 330.*

Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or instalment sale contract. *63 ALR3d 50.*

Creditor's failure to disclose correct amount due as affecting sufficiency of debtor's tender of amount which debtor believes to be due, but which is less than amount actually due. *82 ALR3d 1178.*

Validity, construction, and application of state statutes prohibiting abusive or coercive debt collection practices. *87 ALR3d 786.*

Texts:

*3B-IX Benedict on Admiralty, Maritime Bankruptcy, Dischargeability of Debts § 16.*

2 The Law of Advertising (Matthew Bender), ch 15, Federal Remedies Available to Consumers §§ 15.01, 15.04.

2 The Law of Advertising (Matthew Bender), ch 17, The Jurisdiction of the Federal Trade Commission in Advertising §§ 17.02, 17.03.

3 The Law of Advertising (Matthew Bender), ch 37, Enforcement § 37.03.

3 The Law of Advertising (Matthew Bender), ch 44, Liabilities of Advertising Agencies § 44.02.

3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

4 The Law of Advertising (Matthew Bender), ch 58, Telemarketing § 58.04.

Law Review Articles:

Landers. The Scope of Coverage of the Truth-in-Lending Act. 1976 ABA Research Journal 565.

Clontz. Evolution in Truth-In-Lending and Regulation Z. *87 Banking LJ 963, 1970.*

Rubin. The Award of Attorneys' Fees Under the Federal Consumer Credit Protection Act. *99 Banking LJ 512,* June/July 1982.

Greenfield. Credit Advertising Under Truth in Lending Simplification and Revised Regulation Z. *100 Banking LJ 388,* May-June 1983.

Goodall; Murray. Complying with the Fair Credit and Charge Card Disclosure Act of 1988. *107 Banking LJ 110, 1990.*

Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377,* May 1994.

Morris. Judicial Deference to the Federal Reserve Board in Construing Regulation Z and the Truth-In-Lending Act. *88 Com L J 141,* March 1983.

Consumer Credit For the General Practitioner: A Symposium. *52 Conn BJ 85,* April 1978.

Rubin. Legislative methodology: some lessons from the Truth-in-Lending Act. *80 Geo L J 233,* December 1991.

Griffith. The truth and nothing but the truth: confronting the challenge in the Truth in Lending Act and Regulation Z. *40 Hous L Rev 345,* Summer 2003.

Methven. Consumer Credit and Consumer Protection. 14 J Soc Pub TL 31, March 1976.

Lindgren. Consumer Credit Act of 1974: Its Scope. *40 Modern L Rev 159,* March 1977.

Boyd. The Federal Consumer Credit Protection Act--A Consumer Perspective. *45 Notre Dame Law 171, 1970.*

Warren; Larmore. Truth in Lending: Problems of Coverage. *24 Stan L R 793, 1972.*

Warren. Consumer Credit Law: Rates, Costs, and Benefits. *27 Stan L Rev 951, 1975.*

Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

Griffith. Recent Developments in the Effort to Simplify Truth in Lending. *19 Tulsa L J 30,* Fall 1983.

Landers. Some Reflections on Truth in Lending. *1977 U Ill L F 669.*

Landers; Rohner. Functional Analysis of Truth in Lending. *26 UCLA L Rev 711,* April 1979.

Whitford. The Functions of Disclosure Regulation in Consumer Transactions. *1973 Wis L Rev 400.*

**Emerging Issues Analysis**

1. *New Disclosures for Subprime Mortgages Under the Truth in Lending Act*

As the national economic crisis has worsened throughout 2008 and into 2009, many homeowners have faced the prospect of foreclosure. Some of these homeowners entered into subprime mortgages that carried higher than average interest rates. These borrowers found themselves unable to keep up with their relatively high monthly mortgage payments, very little of which went toward the loan principal as opposed to interest.

2. *Fisher and Khandwala on Attacking Foreclosure Rescue Scams*

There is more than one way to lose a house. Foreclosure rescue scammers can steal the title and equity from your client's home. What are you going to do about it? Linda E. Fisher and Leena Khandwala discuss available legal rights and remedies.

3. *Robert M. Jaworski on Back to the Future with the Mortgage Reform and Anti-Predatory Lending Act (Part of Dodd-Frank)*

Robert M. Jaworski analyzes the Mortgage Reform and Anti-Predatory Lending Act (in Dodd-Frank Act), including the significant changes that it makes to the Truth in Lending Act (e.g., incentives for qualified mortgages, anti-steering prohibitions, defenses to foreclosure, disclosure & servicing requirements, & appraisal-related rules) and RESPA (e.g., changes to rules re: qualified written requests); and what this reform suggests about the future.

Interpretive Notes and Decisions:
1. Generally 2. Purpose 3. Construction 4.--Federal Reserve Board opinions 5. Relationship with other laws 6.--Bankruptcy laws 7.--State laws 8. Application 9.--Disclosures 10.--Rent-to-own agreements 11. Strict enforcement 12. Arbitration 13. Miscellaneous

**1. Generally**

Truth in Lending Act (*15 USCS §§ 1601* et seq.), is within power granted to Congress under commerce clause. *Mourning v Family Publications Serv. (1973) 411 US 356, 36 L Ed 2d 318, 93 S Ct 1652.*

Obligation of lender under Truth in Lending Act is to properly disclose; Act does not concern itself with subsequent performance. *Fenton v Citizens Sav. Asso. (1975, WD Mo) 400 F Supp 874.*

**2. Purpose**

Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) is designed to remedy problems which had developed from consumer's ignorance of nature of their credit obligations and of costs of deferring payment, and divergent and sometimes fraudulent practices by which consumers were informed of terms of credit extended to them, as result of which many consumers were prevented from shopping for best terms available and, at times, were prompted to assume liabilities they could not meet. *Mourning v Family Publications Serv. (1973) 411 US 356, 36 L Ed 2d 318, 93 S Ct 1652.*

Crucial objective of Truth in Lending Act is to insure consumers access to information enabling them to compare cost of credit. *Zeltzer v Carte Blanche Corp. (1975, CA3 Pa) 514 F2d 1156.*

Avowed purpose of Truth In Lending Act (*15 USCS §§ 1601* et seq.) is to assure credit customers meaningful disclosure of credit terms, thus enabling these consumers to compare more readily various available credit terms and thereby to avoid uninformed use of credit, and Act should be construed liberally to insure achievement of these goals. *Johnson v McCrackin-Sturman Ford (1975, CA3 Pa) 527 F2d 257, 34 ALR Fed 450.*

Fundamental purpose of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) is to require creditors to disclose "true" cost of consumer credit, so that consumers can make informed choices among available methods of payment. *Joseph v Norman's Health Club, Inc. (1976, CA8 Mo) 532 F2d 86.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) was enacted in order to promote full disclosure of cost of consumer credit so that buyers could make informed choices in credit transactions. *Hickman v Cliff Peck Chevrolet, Inc. (1977, CA8 Ark) 566 F2d 44.*

Purpose of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is to help correct what Congress perceived as widespread consumer confusion about nature and cost of credit obligations. *Gennuso v Commercial Bank & Trust Co. (1977, CA3 Pa) 566 F2d 437.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) requires disclosure of creditor terms to consumers so that potential borrowers will be able to compare available costs of credit. *Dixey v Idaho First Nat'l Bank (1982, CA9 Idaho) 677 F2d 749.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) was passed to prevent unsophisticated consumer from being misled as to total cost of financing; it mandates disclosure of certain information in financing agreements and enforces that mandate by system of strict liability in favor of consumers who have secured financing when standards are not met. *Griggs v Provident Consumer Discount Co. (1982, CA3 Pa) 680 F2d 927, 34 FR Serv 2d 219,* vacated on other grounds, remanded *(1982) 459 US 56, 74 L Ed 2d 225, 103 S Ct 400, 35 FR Serv 2d 365* (superseded by statute as stated in *Burt v Ware (1994, CA5 La) 14 F3d 256, 28 FR Serv 3d 204)* and (superseded by statute as stated in *Woodard v Hardenfelder (1994, ED NY) 845 F Supp 960)* and (superseded by statute as stated in *Leader Nat'l Ins. Co. v Industrial Indem. Ins. Co. (1994, CA9 Wash) 19 F3d 444, 94 CDOS 1866, 94 Daily Journal DAR 3435, 28 FR Serv 3d 488)* and (superseded by statute as stated in *Wallis v J.R. Simplot Co. (1994, CA9 Idaho) 28 FR Serv 3d 1464)* and (superseded by statute as stated in *Hatfield v Board of County Comm'rs (1995, CA10 Wyo) 52 F3d 858, 31 FR Serv 3d 1258)* and (superseded by statute as stated in *Schroeder v McDonald (1995, CA9 Hawaii) 55 F3d 454, 95 CDOS 3701, 32 FR Serv 3d 196).*

Underlying policy of TILA is to protect credit card holders against losses due to theft or fraudulent use of credit cards on theory that card issuer is in better position to prevent such losses. *Minskoff v American Express Travel Related Servs. Co. (1996, CA2 NY) 98 F3d 703, 30 UCCRS2d 999.*

Purposes of Truth in Lending Act (*15 USCS §§ 1601* et seq.) are to avoid uninformed use of credit through disclosures and to enable borrowers to shop effectively for credit by comparing information found in creditors' disclosures. *Starks v Orleans Motors (1974, ED La) 372 F Supp 928,* affd without op (1974, CA5 La) *500 F2d 1182.*

Purpose behind Truth in Lending Act (*15 USCS §§ 1601* et seq.) is to inform consumer not only of true cost of credit, but also of nature of terms of credit offered to him, including description of components of finance charge. *Meyers v Clearview Dodge Sales, Inc. (1974, ED La) 384 F Supp 722,* affd in part and revd in part on other grounds (1976, CA5 La) *539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Purpose of Truth In Lending Act (*15 USCS §§ 1601* et seq.) is to assure meaningful disclosure of credit terms so that consumers will be able to compare readily various credit terms available to them and avoid uninformed use of credit. *Agostine v Sidcon Corp. (1975, ED Pa) 69 FRD 437, 21 FR Serv 2d 329.*

Purpose of Truth in Lending Act is to require uniform, mandatory disclosure of credit information so that consumer

can make best informed decision on use of credit. *In re Warren (1975, SD Ohio) 387 F Supp 1395.*

Truth in Lending Act reflects transition in congressional policy from philosophy of "let buyer beware" to one of "let seller disclose"; Act is protective, serving to slice through tangle of hidden costs encountered by borrower, and Act imposes standard of "meaningful disclosure" upon lenders. *Woods v Beneficial Fin. Co. (1975, DC Or) 395 F Supp 9.*

Purpose of Truth in Lending Act is to create conditions for full dissemination of credit information to consumers so that they will have facts with which to make rational and informed credit judgments; Congress, operating under assumption that malfunctioning of consumer credit market could be attributable to widespread consumer ignorance and misinformation concerning consumer credit alternatives, sought to legislate environment which would enhance and strengthen free competition in consumer credit industry. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Itemized provisions of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z were enacted to accomplish basic purpose of Act--to assure meaningful disclosure of credit terms enabling consumer to compare more readily various credit terms available and avoid uninformed use of credit; provisions insure that all costs of credit will be revealed to consumer and minimize possibility that such costs may be hidden in group of seemingly legitimate noncredit charges which have been massed together under single dollar figure. *Desselles v Mossy Motors, Inc. (1978, ED La) 442 F Supp 897.*

Purpose of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is to prevent uninformed use of credit. *Trist v First Federal Sav. & Loan Asso. (1979, ED Pa) 466 F Supp 578, 1979-2 CCH Trade Cases P 62849.*

Purpose of Truth in Lending Act, *15 USCS §§ 1601* et seq., is to promote informed use of credit by consumers. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Congress enacted Truth in Lending Act to regulate disclosure of terms of consumer credit transactions in order to aid unsophisticated consumers and to prevent creditors from misleading consumers as to actual cost of financing, and under *15 USCS § 1601(a),* disclosure allowed consumers to compare different financing options and their costs. *Jones v Novastar Mortg., Inc. (In re Jones) (2003, BC DC Kan) 298 BR 451.*

Truth in Lending Act, *15 USCS §§ 1601* et seq., is federal statute governing terms and conditions of consumer credit, and its purpose is to aid unsophisticated consumers lest they be easily misled as to costs of financing; to that end, it and regulations promulgated thereunder require, under *15 USCS § 1601(a),* certain disclosure of credit terms so that consumer will be able to compare more readily various credit terms available to him and avoid uniformed use of credit. *Sheppard v GMAC Mortg. Corp. (In re Sheppard) (2003, BC ED Pa) 299 BR 753.*

One purpose of Truth in Lending Act, *15 USCS §§ 1601* et seq., is to require lenders to disclose cost of credit; Act does not regulate relationship between brokers and lenders to prevent brokers from referring loans to related entities. *In re Schweizer (2006, BC DC Idaho) 2006 Bankr LEXIS 2124,* objection granted, in part, objection denied, in part, relief from stay denied, confirmation denied (2006, BC DC Idaho) *354 BR 272.*

Truth In Lending Act (*15 USCS §§ 1601* et seq.) was enacted to supply measure of uniformity to divergent, and at times fraudulent, practices by which consumers were informed of terms of credit extended to them. *Glaire v La Lanne-Paris Health Spa, Inc. (1974) 12 Cal 3d 915, 117 Cal Rptr 541, 528 P2d 357.*

Intent of legislature in enacting Truth in Lending Statutes (*15 USCS §§ 1601* et seq.) is to provide consumer with legal protection when applying for credit. *Carrier Employees' Federal Credit Union v McCullough (1977) 93 Misc 2d 353, 400 NYS2d 713.*

**3. Construction**

Truth in Lending Act (*15 USCS §§ 1601* et seq.) is remedial statute designed as much as possible to permit borrowers to make informed judgments about use of credit; to effectuate this congressional purpose requires that Act's terms be liberally construed; Act appears to except only those lenders whose extensions of credit are occasional, isolated, and incidental portion of their business. *Eby v Reb Realty (1974, CA9 Ariz) 495 F2d 646, 28 ALR Fed 539.*

Truth in Lending Act is remedial statute which should be construed liberally to insure achievement of goals stated in statute, namely, to assure credit customers meaningful disclosure of credit terms, thus enabling them to compare more readily various available credit terms and thereby to avoid uninformed use of credit; Act provides for full disclosure of credit terms rather than regulation of terms or conditions under which credit may be extended. Johnson v McCrackin-Sturman Ford, Inc. (1975, CA3 Pa) CCH CCG P 98499.

Truth in Lending Act is to be construed liberally in favor of consumer. *Sellers v Wollman (1975, CA5 La) 510 F2d 119, 29 ALR Fed 899.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) is remedial act which must be liberally construed to effect intent of Congress; purpose of act is to assure that consumer debtor is fully aware of cost of his credit so that Act is basically disclosure act; it would not serve cause of justice to enforce Act so as to achieve means of harassment, oppression, or unjust enrichment. *Redhouse v Quality Ford Sales, Inc. (1975, CA10 Utah) 511 F2d 230, 19 FR Serv 2d 1309.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) is remedial statute which should be construed broadly in light of its purposes. *White v Arlen Realty & Dev. Corp. (1975, CA4 Md) 540 F2d 645.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) is remedial in nature, and substance rather than form of credit transactions should be examined in cases arising under it. *Hickman v Cliff Peck Chevrolet, Inc. (1977, CA8 Ark) 566 F2d 44.*

In financing agreement containing condition precedent, where condition of obtaining financing is within exclusive control of seller and third-party lender, consummation occurs when consumer signs contract; in vehicle purchaser's suit against dealer alleging violations of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., even assuming that retail installment contracts, which were signed by purchaser but not by dealer, contained condition precedent regarding dealer's ability to obtain financing, district court was incorrect in finding that consummation occurred only upon assignment of loan; purchaser's signature on those documents rendered purchaser contractually obligated to purchase of credit and, thus, constituted consummation for purposes of TILA disclosures. *Bragg v Bill Heard Chevrolet, Inc. (2004, CA11 Fla) 374 F3d 1060, 17 FLW Fed C 727,* cert den (2005, US) *160 L Ed 2d 898, 125 S Ct 963.*

Court of appeals found that consumer and motor vehicle dealer consummated series of agreements dealer prepared so consumer could finance purchase of two trucks when consumer signed agreements, not when dealer found third party to finance purchases, and it affirmed district court's judgment that dealer violated Truth in Lending Act (TILA) when it included after market charge in one agreement and improperly charged dealer's business license tax in another agreement, even though those mistakes were corrected before dealer found third parties to finance purchases and final contracts were signed; however, because court of appeals also found that dealer committed third violation of TILA when it included charge for guaranteed auto protection insurance in one of agreements, it vacated district court's judgment awarding consumer $ 53,627 in attorney fees and remanded case so district court could determine if that award was appropriate. *Gibson v LTD, Inc. (2006, CA4 Va) 434 F3d 275.*

Although disclosure requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) should be liberally construed to effectuate Congressional purpose and applied in manner which results in justice and fairness to both lender and borrower, Act is construed strongly against borrowers who are not misled by lender's disclosure but merely seek penalty for finding technical problem with loan form which could not conceivably have influenced choice of credits; disclosure requirements are liberally construed in favor of borrowers who were misled or might have been misled by confusing or incomplete loan form. *Sanders v Auto Associates, Inc. (1978, DC SC) 450 F Supp 900.*

Bank's motion to stay proceedings and refer customer's claim for violations of Truth in Lending Act, *15 USCS § 1601*, et seq., was granted because, while customer claimed that issuing bank never presented her with copy of credit card agreement, her own deposition showed that she was actually sent application. *Taylor v First N. Am. Nat'l Bank (2004, MD Ala) 325 F Supp 2d 1304.*

District court holds that last sentence of *15 USCS § 1602(f)* does not create independent definition of "creditor" under Truth-In-Lending Act, *15 USCS § 1601* et seq. *Viernes v Exec. Mortg., Inc. (2004, DC Hawaii) 372 F Supp 2d 576.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) is to be liberally construed in favor of consumer and strictly enforced. *Irvin v Public Fin. Co. (1976, Ala Civ App) 340 So 2d 811, 21 UCCRS 305,* cert den (1976, Ala) *340 So 2d 815.*

Terms of Truth in Lending Act are necessarily broad and reflect Congress' recognition of fact that whatever legislation was passed had to deal not only with myriad forms in which credit transactions then occurred, but also with those which would be devised in future. *Glaire v La Lanne-Paris Health Spa, Inc. (1974) 12 Cal 3d 915, 117 Cal Rptr 541, 528 P2d 357.*

**4.--Federal Reserve Board opinions**

In interpreting Truth in Lending Act (*15 USCS §§ 1601* et seq.) and implementing Regulation Z of Federal Reserve Board, opinions by Board staff construing Act or Regulation should be dispositive unless demonstrably irrational, Act being best construed by those who give it substance in promulgating regulations under it, and Congress having specifically designated Board and staff as primary source for interpretation and application of truth in lending law. *Ford Motor Credit Co. v Milhollin (1980) 444 US 555, 63 L Ed 2d 22, 100 S Ct 790.*

Official staff opinions of Federal Reserve Board construing TILA and Regulation Z are binding on courts unless they are demonstrably irrational. *Walker v Wallace Auto Sales (1998, CA7 Ill) 155 F3d 927.*

There was no competent evidence in record challenging reasonableness of lender's $ 120 document preparation fee vis-a-vis other lenders; therefore, denial of motion for leave to file fourth amended complaint under Truth in Lending Act was proper. *Inge v Rock Fin. Corp. (2004, CA6 Mich) 388 F3d 930, 60 FR Serv 3d 42, 2004 FED App 394P, 2004 FED App 3944P,* reh den (2004, CA6) *2004 US App LEXIS 26842.*

Defendant's arbitration clause did not limit any of substantive remedies that would have otherwise been available to plaintiff under *15 USCS § 1640*; only procedural limitation defendant imposed was ban on class actions, however, Court of Appeals for Eleventh Circuit has held that such prohibition was enforceable even if it precluded plaintiff from utilizing class action procedures in vindicating statutory rights under Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., and, therefore, defendant's arbitration provision did not prohibit plaintiff from vindicating her statutory rights under either TILA or Fair Credit Billing Act, *15 USCS §§ 1666* et seq. *Gipson v Cross Country Bank (2003, MD Ala) 294 F Supp 2d 1251,* motion gr, injunction gr, stay gr (2005, MD Ala) *354 F Supp 2d 1278.*

Bank's motions to dismiss were granted because Truth in Lending Act, *15 USCS § 1601* e. seq., did not govern credit denial or racially discriminatory lending; Equal Credit Opportunity Act, *15 USCS § 1691* et seq., claim failed because race of loan officers did not support inference of discriminatory intent. *Powell v Am. Gen. Fin., Inc. (2004, ND NY) 310 F Supp 2d 481.*

Court dismissed fair credit reporting claims in widow's suit arising from decedent's suicide after defendants, including casino, Indian tribe, attorney, collection agency, financial company, and check acceptance company, attempted to collect on dishonored checks used for gambling, because defendants were not credit reporting agencies. *Burdett v Harrah's Kan. Casino Corp. (2004, DC Kan) 311 F Supp 2d 1166.*

Beneficiaries of estate of deceased mortgage company president were not entitled to dismissal of Federal Trade Commission's claim that constructive trust should be imposed on funds that passed to beneficiaries; complaint stated valid constructive trust claim because it alleged that wrongful acts were committed, that specific property acquired by wrongdoer was traceable to wrongful acts, and that each beneficiary was unjustly enriched by receiving money that was obtained unlawfully by mortgage company and its president through violations of Federal Trade Commission Act, *15 USCS §§ 41-48*, and Truth in Lending Act, *15 USCS §§ 1601-1666(f)*. *FTC v Capital City Mortg. Corp. (2004, DC Dist Col) 321 F Supp 2d 16.*

Bank's motion to stay proceedings and refer customer's claim for violations of Truth in Lending Act, *15 USCS § 1601*, et seq., was granted because, while customer claimed that issuing bank never presented her with copy of credit card agreement, her own deposition showed that she was actually sent application. *Taylor v First N. Am. Nat'l Bank (2004, MD Ala) 325 F Supp 2d 1304.*

Where Federal Reserve Board had determined that non-written-agreement overdraft programs such as overdraft limit program of bank's were not covered by Truth in Lending Act, *16 USCS §§ 1601* et seq., and Regulation Z even if those programs routinely paid overdrafts, court granted summary judgment in favor of bank on *TILA claim. In re Wash. Mut. Overdraft Prot. Litig. (2008, CD Cal) 539 F Supp 2d 1136.*

Courts that had considered question of notice had generally agreed that because Cardmember Agreement provided notice to card holder that default rate would take effect as of first day of billing cycle in which default occurred, and would apply to purchase balance from previous billing cycle for which periodic finance charges had not been already billed, *12 C.F.R. § 226.9(c)(1)*, cmt. 1 was germane and no notice of change prior to its implementation was necessary; staff to Federal Reserve Board regarded company practice complained of by credit card holder, giving her first notice of rate increase in periodic statement for cycle, to be permitted under existing regulations; court adopted that interpretation and found that claim for violation of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., failed to state claim upon which relief could have been granted; moreover, because credit card holder's claim under Mass. Gen. Laws Ch. 93A was based on putative violation of TILA, her Ch. 93A claim failed as TILA claim failed. *Shaner v Chase Bank, USA, N.A. (2008, DC Mass) 570 F Supp 2d 195.*

In Chapter 13 case, trustee's counterclaim relating to violation of Truth in Lending Act, *15 USCS § 1601* et seq., was core proceeding and, as such, bankruptcy court had discretion to refuse to enforce arbitration agreement in loan document; however, such discretion was not exercised where arbitration clause was contained in unenforceable adhesion contract under state law because creditor did not prove that debtor received "plain and clear notification" of provision before signing contract or that debtor gave "understanding consent" to arbitrate any claims under contract. *McDonald v Cash N Advance, Inc. (In re Lucas) (2004, BC DC Nev) 312 BR 407.*

**5. Relationship with other laws**

With respect to order by Federal District Court to compel arbitration pursuant to arbitration agreement between financial institutional lenders and borrower and dismiss borrower's underlying claims under Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Equal Credit Opportunity Act (*15 USCS §§ 1691-1691f*), the order is a "final decision with respect to an arbitration" within the meaning of provision of the Federal Arbitration Act (FAA) (*9 USCS § 16(a)(3)*) and thus is immediately appealable pursuant to FAA, as such order disposes of the entire case on the merits and leaves no part of the case pending before the court for purposes of finality. Green Tree Fin. Corporation *-Alabama v Randolph (2000) 531 US 79, 148 L Ed 2d 373, 121 S Ct 513, 2000 CDOS 9799, 84 BNA FEP Cas 769, 2000 Colo J C A R 6596, 14 FLW Fed S 21* (criticized in *Lytle v CitiFinancial Servs. (2002) 2002 PA Super 327, 810 A2d 643)* and (criticized in *Lovey v Regence Blueshield of Idaho (2003) 139 Idaho 37, 72 P3d 877).*

Equal Credit Opportunity Act (*15 USCS §§ 1691* et seq.) applies to both Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Consumer Leasing Act (*15 USCS §§ 1667* et seq.); although Congress did not explicitly include specific reference to leases in amendments to Equal Credit Opportunity Act (*15 USCS §§ 1691* et seq.), failure does not indicate

congressional intent not to include leases within its scope. *Brothers v First Leasing (1984, CA9 Cal) 724 F2d 789,* cert den *(1984) 469 US 832, 83 L Ed 2d 63, 105 S Ct 121* and (criticized in *Laramore v Ritchie Realty Mgmt. Co. (2005, CA7 Ill) 397 F3d 544).*

Statutorily prescribed damages (*42 USCS § 254o*) awarded to United States in action brought for breach of scholarship agreement under National Health Service Corps Scholarship Program do not violate Truth in Lending Act, since damages provision is not credit provision because it only establishes damages due upon default, and charges for default are not finance charges under Act. *United States v Citrin (1992, CA9 Ariz) 972 F2d 1044, 92 CDOS 6880, 92* Daily Journal DAR 11075.

Though consumer argued that mailer was sent to him by financial corporation in violation of Fair Credit Reporting Act (FCRA), *15 USCS §§ 1681* et seq., because it did not represent firm offer of credit, his theory, that mailer was improper pursuant to *15 USCS § 1681a(l)* because it contained no terms and was not common law offer immediately acceptable by him, failed; explicit definition within FCRA of "firm offer of credit"--which could be conditioned on consumer meeting lender's internal criteria--precluded operation of common law definition of offer; moreover, FCRA's detailed requirements in some areas, such as pursuant to *15 USCS § 1681m(d)(1)(A)*-(E), accompanied by silence on whether specific loan terms were required, indicated that disclosure of such terms was not required by FCRA; in addition, specificity of Truth in Lending Act, *15 USCS §§ 1601* et seq., concerning how lenders were required to communicate specific loan terms to consumers, coupled with FCRA's countervailing silence on same, led to conclusion that failure to include specific terms in firm offer of credit did not violate *FCRA. Dixon v Shamrock Fin. Corp. (2008, CA1 Mass) 522 F3d 76.*

There is nothing in Truth in Lending Act (*15 USCS §§ 1601* et seq.) relating to disclosure of information by government agencies under Freedom of Information Act (*5 USCS § 552*); thus, consumer organization is not entitled to disclosure of documents relating to Comptroller's investigation of banks' noncompliance with regulations promulgated pursuant to Truth in Lending Act, since such documents are exempted by § 552(b)(8), which protects from disclosure documents relating to examinations by agency responsible for regulation or supervision of financial institutions. *Consumers Union of United States, Inc. v Heimann (1978, App DC) 191 US App DC 8, 589 F2d 531, 4 Media L R 1394, 48 ALR Fed 798.*

District Court will not consider debtors' Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) violation objection to proof of claim under *11 USCS § 502* where debtors failed to raise issue before Bankruptcy Court; debtors may assert recoupment claim as defense. *Abele v Mid-Penn Consumer Discount (1987, ED Pa) 77 BR 460,* affd without op (1988, CA3 Pa) *845 F2d 1009.*

Because ruling that filing of borrowers' class action tolled statute of limitations/repose served purposes of *Fed. R. Civ. P. 23* and did not compromise purposes of three year period of rescission, and because nothing in Truth in Lending Act, *15 USCS § 1601* et seq., suggested that Congress intended to bar tolling in such circumstances, borrowers' motion for declaration of effect of tolling on right to rescind was granted. *Andrews v Chevy Chase Bank (2007, ED Wis) 243 FRD 313.*

When consumers alleged bank violated *15 USCS §§ 1601* et seq., based on *12 CFR § 226.10(b),* due to imposing certain fees and charges when consumers made credit card payments on date payments were due, claim was dismissed because payment crediting provision of parties' credit card agreement required bank to credit payment on date received if four conditions, which consumers did not satisfy, were met and gave bank discretion about when to credit nonconforming payments without affecting conditions' mandatory nature. *Trombley v Bank of Am. Corp. (2009, DC RI) 675 F Supp 2d 266.*

Debtor-borrower was entitled to rescission, damages, costs, and attorney's fees, pending evidentiary hearing, where lender failed to provide second copy of consumer right of rescission under Regulation Z, 12 C.F.R. part 226, and other disclosures required by law. *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602.*

Truth in Lending Act did not address nature or extent of security interests held by creditors under state or federal law, but merely provided disclosure mechanism so that borrowers were able to see what items were added to their financing agreements. *In re Hayes (2007, BC MD Tenn) 376 BR 655* (criticized in *In re Mitchell (2007, BC MD Tenn) 2007 Bankr LEXIS 3809).*

Neither statutory language nor legislative history of Truth in Lending Act (*15 USCS §§ 1601* et seq.) supports conclusion that general concern of Congress with unfair and misleading credit advertising practices in Act amounts to determination that violation of Act constitutes unfair or deceptive act or practice under *15 USCS § 45* of Federal Trade Commission Act; thus, FTC order, which found that company had violated Truth in Lending Act by advertising certain credit terms without disclosing other required terms, would not be modified to include finding that company's actions also constituted unfair practice under § 45. *In re Seekonk Freezer Meats (1990) 113 FTC 812.*

Neither express language nor legislative history of Truth in Lending Act (*15 USCS §§ 1601* et seq.) demonstrates that Congress determined that violation of Act by advertising finance charge without stating annual percentage rate constitutes unfair or deceptive act or practice under *15 USCS § 45* of Federal Trade Commission Act; thus, FTC order, which found that company had violated Truth in Lending Act by advertising finance charge without stating annual percentage rate, would not be modified to include finding that company's actions also constituted unfair practice under § 45. *In re Reliable Mortgage Corp. (1990) 113 FTC 816.*

Court overruled magistrate judge's imposition of sanctions on ground that plaintiffs' claims under Truth in Lending Act (TILA), *15 USCS § 1601* et seq., were not well-grounded because it was objectively reasonable for plaintiffs' counsel to conclude that defendant's failure to make disclosures percent--including total amount of principal and interest owed--violated TILA and, because plaintiff's TILA claim was well-grounded in law, magistrate judge's determination that this claim was filed for improper purpose was clearly erroneous and contrary to law. *Joseph Giganti Veritas Media Group, Inc. v Gen-X Strategies, Inc. (2004, ED Va) 222 FRD 299, 2004-2 CCH Trade Cases P 74500.*

**6.--Bankruptcy laws**

In mortgagor's Truth in Lending Act, *15 USCS §§ 1601* et seq., action against defendants, mortgage brokerage firm, original lender, and assignee of loans, court reversed district court's judgment dismissing mortgagor's federal claims because further development of record concerning removal of action to federal court was required where several months after mortgagor filed suit and after assignee had participated in action, assignee determined that it had never been assigned mortgage and, next day, second assignee sued mortgagor to foreclose on one property and then assigned loan to third assignee, who moved to remove mortgagor's action to federal court; court held that further development of record was required to determine whether assignment to third assignee was innocent one in ordinary course of business or one designed to make removal possible and, therefore, it was premature to try to decide whether third assignee was entitled to remove when it did so outside original 30-day window. *Boyd v Phoenix Funding Corp. (2004, CA7 Ill) 366 F3d 524.*

Assignee's motion, pursuant to *Fed. R. Civ. P. 12(b)(6),* to dismiss plaintiff purchaser's complaint against defendant seller and assignee alleging violations of Federal Odometer Act, *49 USCS §§ 32701* et seq., Illinois Motor Vehicle Code, 325 Ill. Comp. Stat. 5/3-112.1, and Illinois Consumer Fraud and Deceptive Business Practices Act (IFCA), *815 Ill. Comp. Stat. 505/1* et seq., was granted because there were no allegations that alleged wrongdoing was apparent on face of car sales contract or that assignee otherwise failed to fulfill its obligations under Truth in Lending Act, *15 USCS §§ 1601* et seq.; thus, Federal Trade Commission Holder Rule, *16 C.F.R. § 433.2*, was trumped and purchaser could not use it to recover from assignee under *IFCA. Eromon v Grand Auto Sales, Inc. (2004, ND Ill) 333 F Supp 2d 702.*

Where plain language of *15 USCS § 1635(b)* and Regulation Z demonstrated that rescission was not automatic upon giving notice, but required affirmative acts by bankruptcy debtors; creditor's mortgage lien was not automatically void upon giving of notice, but secured creditor's loan, less adjustments for TILA violations. *Ramirez v Household Fin. Corp. III (In re Ramirez) (2005, DC Kan) 329 BR 727.*

Debtor was not entitled to withdrawal of reference, pursuant to *28 USCS § 157(d)*, to bankruptcy court of her action against trustee for subrogation of creditor's claim because debtor failed to articulate how her waiver of subrogation rights was invalidated by creditor's violation of Equal Credit Opportunity Act (ECOA) in requiring debtor to serve as guarantor and ECOA and *12 C.F.R. § 202.7(d)(4)* did not prohibit conduct of which debtor complained. *Duhamel v Turner (2005, DC Me) 334 BR 483.*

Bankruptcy court improperly ruled that negative equity on trade-in vehicle was not part of purchase money security interest (PMSI) under hanging paragraph of *11 USCS § 1325(a)* that was retained by creditor who financed new vehicle sale to debtor who subsequently filed Chapter 13 bankruptcy petition; pre-existing laws such as Truth-in-Lending Act, *15 USCS § 1601* et seq., Mich. Comp. Laws Serv. §§ 440.9103, 492.102(12), which allowed for inclusion of negative equity in motor vehicle retail installment sale contracts, informed Congressional understanding of undefined PMSI term in hanging paragraph of § 1325(a). *Nuvell Credit Co., LLC v Muldrew (In re Muldrew) (2008, ED Mich) 396 BR 915.*

Bankruptcy court suggested that requiring tender as condition for rescission under Truth in Lending Act, *15 USCS § 1601* to *1667*, and Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D, would unfairly discriminate among unsecured claims in violation of *11 USCS § 1322(a)(3)*; however, this rationale was premised upon refuted notion that notice of rescission automatically voided creditor's security interest. *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449.*

Bank was entitled to dismissal of pro se borrower's action alleging violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership Equity Protection Act, *15 USCS § 1639*; because borrower had filed for Chapter 7 bankruptcy, causes of action were property of bankruptcy estate under *11 USCS § 541* and bankruptcy trustee was real party in interest under *Fed. R. Civ. P. 17*. *Runaj v Wells Fargo Bank (2009, SD Cal) 667 F Supp 2d 1199.*

Chapter 13 debtor may not bring adversary proceeding under Bankruptcy Rule 7001 to recover against lender for violations of Truth in Lending Act (*15 USCS §§ 1601* et seq.) where contract claims are barred by debtor's previous successful federal action against lender; claims based on rescission are not barred. *In re Laubach (1987, BC ED Pa) 77 BR 483.*

Simply because it was trustee, and not debtor, who sought to invoke protections afforded by Consumer Protection Act, court saw no reason, on this basis alone, to deviate from rule that limitations on garnishment contained in Consumer Protection Act, *15 USCS §§ 1601* et seq., were not applicable in bankruptcy proceeding. *In re Wiener (2001, BC ND Ohio) 276 BR 810.*

Although claims in debtor's action against mortgage creditor, alleging in part violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., and state Consumer Protection Act, and asserting that loan was unconscionable, that mortgage was invalid, and objecting to creditor's secured status, were arbitrable, since they arose out of court's "related to" jurisdiction under *28 USCS § 1334(b)* or "arising in" jurisdiction under *28 USCS § 157(b)*, presumption in favor of arbitration under Federal Arbitration Act, *9 USCS §§ 1* et seq., was rejected and mortgage creditor's motion to compel arbitration was denied, since debtor's obligation to pay for arbitration could significantly impact bankruptcy estate and other creditors. *Hicks v Homeq Servicing Corp. (In re Hicks) (2002, BC WD Okla) 285 BR 317.*

Where debtor in adversary proceeding objecting to mortgage creditor's secured claim sought to enforce pre-petition rescission of debtor's mortgage under Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., and asserted claims under Home Owners Equity Protection Act, *15 USCS §§ 1601* et seq., Equal Credit Opportunity Act, *15 USCS §§ 1691* et seq., and Pennsylvania statutes, which would affect how debtor's Chapter 13 bankruptcy plan payments would be distributed among creditors, mortgage creditor's motion to compel arbitration under *9 USCS § 2* was denied. *Mintze v Am. Gen. Fin., Inc. (In re Mintze) (2003, BC ED Pa) 288 BR 95*, affd (2003, ED Pa) *51 CBC2d 300.*

In debtor's adversary proceeding, bankruptcy court lacked subject matter jurisdiction over claims of proposed unnamed class members because claims arising under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Racketeer

Influenced and Corrupt Organizations Act, *18 USCS §§ 1961* et seq., did not "arise under" Title 11, "arise in" bankruptcy case, or "relate to" bankruptcy case. *Porter v NationsCredit Consumer Disc. Co. (In re Porter) (2003, BC ED Pa) 295 BR 529.*

Bankruptcy Court agrees with cases finding that Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claims are non-core proceedings under *28 USCS § 157*; TILA actions do not depend on bankruptcy laws for their existence and can proceed in another court absent bankruptcy filing. *Rozell v CitiFinancial Auto Corp. (In re Rozell) (2006, BC ND Ala) 357 BR 638.*

Negative equity which Chapter 13 debtor had in pickup truck he traded for new truck one year before he declared bankruptcy was not part of creditor's purchase-money security interest in new truck, and debtor was allowed to cram down negative equity and premium he paid for gap insurance, pursuant to *11 USCS § 1325(a)* (hanging paragraph referencing paragraph 5); nothing in Pennsylvania Uniform Commercial Code, *13 Pa. Cons. Stat. § 9103*, Pennsylvania Motor Vehicle Sales Financing Act, *69 Pa. Cons. Stat. §§ 601* et seq., or Truth in Lending Act, *15 USCS §§ 1601* et seq., mandated conclusion that payment of antecedent debt, such as negative equity, had be included as part of creditor's purchase-money security interest. *GMAC v Mancini (In re Mancini) (2008, BC MD Pa) 2008 Bankr LEXIS 3739* (criticized in *Knepper v Capital One Auto Fin. (In re Knepper) (2009, BC WD Pa) 405 BR 568).*

Adversary proceeding Chapter 13 debtor filed against mortgage company, claiming that mortgage company violated Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS § 1639*, was not time-barred under one-year statute of limitations imposed by *15 USCS § 1640(e)* because mortgage company had filed secured claim against debtor's bankruptcy estate and debtor's claim was in nature of recoupment against mortgage company's claim; state law on recoupment also allowed debtor to seek payment of attorney fees and costs she incurred in suing mortgage company, but only to extent any recovery was limited to reducing company's allowed claim. *Wentz v Saxon Mortg. (In re Wentz) (2008, BC SD Ohio) 393 BR 545.*

Bankruptcy court exercised its discretion to permissively abstain from adjudicating trustee's adversary complaint against lender under *28 USCS § 1334(c)(1)* and in interest of judicial economy because matter, in which trustee stepped into debtor's shoes, pursuant to *11 USCS § 541*, to allege pre-petition Truth in Lending Act violations, presented non-core proceeding that was not founded on any substantive rights created by *Bankruptcy Code. Schwab v Beneficial Consumer Discount Co. (In re Bowler) (2008, BC MD Pa) 397 BR 737.*

Cost of reaffirmation of debt to finance company, discharged in bankruptcy, should in subsequent loan by company to bankrupt customer be included in amount financed rather than in finance charge, since its inclusion in finance charge would distort annual percentage rate and frustrate purpose of Truth in Lending Act (*15 USCS §§ 1601* et seq.), to promote well-informed comparison shopping for credit by consumers. *Re Household Finance Corp. (1981) 98 FTC 68.*

Debt validation provisions established in the Fair Debt Collection Practices Act, *15 USCS §§ 1601* et seq., clearly conflict with the claims processing procedures contemplated by the Bankruptcy Code, including *11 USCS § 502*, and the Federal Rules of Bankruptcy Procedure, including the requirements in *Fed. R. Bankr. P. 3001(f)* and *Fed. R. Bankr. P. 3007* that claims be filed in writing, and that objections to claims be in writing, filed with the bankruptcy court, and that a creditor receive at least 30 days notice of any hearing concerning the objection. *B-Real, LLC v Chausse (In re Chaussee) (2008, BAP9) 399 BR 225.*

**7.--State laws**

Although courts have at times referred to state law in applying Truth in Lending Act (*15 USCS §§ 1601* et seq.) to factual situations, state law should not be applied where to do so would require course of action in contravention of specific direction in federal statute. *Hickman v Cliff Peck Chevrolet, Inc. (1977, CA8 Ark) 566 F2d 44.*

Ultimate unenforceability of credit agreement under state law is no defense to action under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) for failure to disclose required information. *Dryden v Lou Budke's Arrow Fin. Co. (1980,*

*CA8 Mo) 630 F2d 641.*

Nothing in Truth in Lending Act or its legislative history suggests that Congress intended Act's disclosure regime to provide maximum protection to which borrowers are entitled nationwide; states remain free to impose greater protections for borrowers. *Williams v First Gov't Mortg. & Investors Corp. (1999, App DC) 336 US App DC 71, 176 F3d 497.*

Where state occupied field of regulating activities of insurance companies in comprehensive manner, allegations of failure to make disclosures under Truth in Lending Act do not state claim upon which relief can be granted, since application of Truth in Lending Act is barred by McCarran Act. (*15 USCS §§ 1011, 1012*). *Ben v General Motors Acceptance Corp. (1974, DC Colo) 374 F Supp 1199.*

Effectuation of congressional purpose under *15 USCS § 1601* to assure meaningful disclosure of credit terms requires disclosure of all charges which lender asserts right to collect at time credit is extended, regardless of whether or not he can utilize enforcement mechanisms of state courts to collect charge; consumer has need to be informed of all charges which may be assessed against him whether or not he could prevail in any eventual litigation attacking validity of that charge; fact that note may ultimately be found to be usurious under applicable state law does not insulate its maker from liability for any violation of Truth in Lending Act. *Barrett v Vernie Jones Ford, Inc. (1975, ND Ga) 395 F Supp 904*, revd on other grounds (1976, CA5 Ga) *543 F2d 568.*

Question of survivability of action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) must be determined by application of state law. *Johnson v Household Finance Corp. (1978, SD Ill) 453 F Supp 1327.*

Violation of state law does not itself constitute violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) unless activities independently are proscribed by act; disclosure of late charge term, apparently in substantive violation of state law, is not violation of Truth in Lending Act. *Parry v Ford Motor Credit Co. (1983, SD Ohio) 575 F Supp 204.*

Lessees of automobiles are entitled to remand of action for lack of subject-matter jurisdiction under *28 USCS § 1441*, where lessees alleged in counterclaims that lessor violated Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) because TILA does not expressly or impliedly preempt state law. *General Electric Capital Auto Lease, Inc. v Mires (1992, ED Mich) 788 F Supp 948.*

In automobile buyer's action against automobile seller alleging violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., violation of implied warranty of merchantability under *Conn. Gen. Stat. § 42a-2-314*, and claiming actual damages under *Conn. Gen. Stat. § 42-110g(a)*, following entry of default judgment against seller, seller's motion to set aside judgment was granted in part where, under *Fed. R. Civ. P. 60(b)(1)*, part of judgment potentially subject to seller's offset defense was set aside to allow seller to present evidence that money was actually paid, but was denied in part where seller failed to show any fraud by buyer to justify relief under *Fed. R. Civ. P. 60(b)(3)*, and there was no extreme hardship to justify relief under *Fed. R. Civ. P. 60(b)(6). Speaks v Donato (2003, DC Conn) 214 FRD 69.*

In action by automobile buyers against automobile sellers alleging violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §§ 1345 et seq., and Ohio Retail Installment Sales Act, Ohio Rev. Code Ann. §§ 1317 et seq., and unjust enrichment, buyers' motions for class certification were granted where buyers satisfied prerequisites under *Fed. R. Civ. P. 23(a)* because buyers would incur substantial hardship if required to join all potential plaintiffs, common issues of fact and law predominated concerning sellers' policies and practices, buyers' claims for both equitable relief and for money damages were same types of claims asserted on behalf of various classes, and buyers would fairly and adequately protect interests of class, and certification under *Fed. R. Civ. P. 23(b)(3)* was appropriate because class action potentially allowed for recovery by individuals who otherwise would not have been compensated for sellers' alleged wrongdoings. *Violette v P. A. Days, Inc. (2003, SD Ohio) 214 FRD 207.*

In granting consumer's motion to remand, court rejected credit card company's argument that class action claim,

brought pursuant to Tennessee Consumer Protection Act (TCPA), Tenn. Code Ann. §§ 21 47-18-101 et seq. (2003), was based in Truth in Lending Act, *15 USCS §§ 1601* et seq., and that removal was proper under artful pleading doctrine; duty not to engage in deceptive trade practices was found in TCPA and complaint did not present federal question and removal was improper. *Cavette v Mastercard Int'l, Inc. (2003, WD Tenn) 282 F Supp 2d 813.*

Defamation claim and insulting words claim under *Va. Code Ann. § 8.01-45* were remanded to state court because mere mention of Fair Debt Collection Practices Act (FDCPA), *15 USCS §§ 1601, 1692-1692o*, in complaint that sought damages exclusively under state defamation and insulting words law was insufficient to vest court with federal question jurisdiction under *28 USCS § 1331* since violation of FDCPA was not necessary element of--and might not have been relevant to--state defamation or insulting words claim. *Martin v Lagualt (2004, ED Va) 315 F Supp 2d 811.*

Although action alleged misrepresentations and omissions in refinancing of mortgage loan, estate conservator clearly alleged only state law claims that permitted recovery independent of federal law and disclaimed any potential federal claims under Truth in Lending Act, *15 USCS § 1601* et seq., or other federal laws or regulations. Thus, removal was improper on basis of federal question jurisdiction under *28 USCS § 1331*. *King v Provident Bank (2006, MD Ala) 428 F Supp 2d 1226.*

When credit card company failed to reimburse cardholder for unauthorized charges, cardholder filed suit against credit card company for violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; district court determined that cardholder's state law torts claims for negligence, conversion, and misrepresentation were not preempted by TILA. *12 CFR § 226.12(c)*'s provision limiting state law tort claims does not apply where cardholder alleges unauthorized use of credit card, rather than dispute over products or services. *Permobil, Inc. v Am. Express Travel Related Servs. Co (2008, MD Tenn) 571 F Supp 2d 825.*

Borrower's *28 USCS § 1447* remand motion was granted because sued lender had improperly removed her suit to district court under *28 USCS § 1441(a)*: (1) lender claimed, in removing suit, that district court had federal question jurisdiction over it under *28 USCS § 1331*, even though borrower's complaint asserted claims under Wisconsin Consumer Act, Wis. Stat. chs. 421-427, other Wisconsin statutes, and state common law only; (2) lender contended that claims that borrower asserted under *Wis. Stat. §§ 422.202(2s)(a)(3)*, (3), 422.301, arising from fact that it had included cost of mandatory car club membership as part of borrower's loan principal, rather than as part of finance charge, really asserted claim arising under or substantially implicating Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; (3) existing legal precedent made clear that TILA did not completely preempt state law; (4) although *Wis. Stat. § 422.301* incorporated TILA disclosure requirements, court would not have to look to, or interpret, TILA in order to determine what disclosures were required by § 422.301; and (5) under well-pleaded complaint rule, borrower could avoid federal jurisdiction by exclusively relying on state law, and she had clearly eschewed any potential federal cause of action and had relied exclusively on state law in pleading her legal theories and claims. *Finch v Wis. Auto Title Loans, Inc. (2008, ED Wis) 586 F Supp 2d 1070.*

Mortgage company was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of action under California Unfair Competition Law, *Cal. Bus. & Prof. Code § 17200*; although company purchased adjustable rate mortgage loan from initial lender, borrowers sufficiently alleged that company aided and abetted fraudulent conduct and conduct that was unlawful under Truth in *Lending Act. Velazquez v GMAC Mortg. Corp. (2008, CD Cal) 605 F Supp 2d 1049.*

Lender's alleged violations of *15 USCS § 1601(a)* and *12 USCS § 2607(b)* were not enforceable under *73 Pa. Stat. Ann. § 201-3* (2008) because statutes of limitations for underlying TILA and RESPA claims had run. *Morilus v Countrywide Home Loans, Inc. (2008, ED Pa) 651 F Supp 2d 292.*

Because Board of Governors of Federal Reserve System has exempted credit transactions within Massachusetts subject to Massachusetts Consumer Credit Cost Disclosure Act ( MCCCDA), Mass. Gen. Laws ch. 140D from chapters two and four of Truth in Lending Act (TILA), *15 USCS § 1601* to *1667*, bankruptcy debtors' claim under TILA became claim under MCCCDA rather than additional one. *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR*

*449.*

Mortgagor's unfair competition claims under *Cal. Bus. & Prof. Code § 17200* were preempted to extent they were based on violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601* et seq., because: (1) TILA governed disclosures that were required for certain loans, and thus, unfair competition claim based on TILA was within preempted category of state laws regulating loan "disclosures" under step one of Office of Thrift Supervision's (OTS) framework; and (2) since RESPA governed fees that were prohibited in connection with certain loans, unfair competition claim based on RESPA was within preempted category of state laws regulating "loan-related fees" under step one of OTS framework; however, to extent that mortgagor's unfair competition claim was based on violations of California Translation Law (CTA), *Cal. Civ. Code § 1632*, mortgagor's claim was not preempted because CTA was generally applicable state law that only incidentally affected lending; therefore, unfair competition claim based on CTA was not preempted under *15 USCS § 1461*. *Reyes v Premier Home Funding, Inc. (2009, ND Cal) 640 F Supp 2d 1147.*

Borrowers' argument that lender's alleged violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2607(b)*, constituted per se violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law, *73 Pa. Stat. Ann. § 201-2(4)(xxi)*, was rejected by court because borrowers offered no legal authority to support their argument and borrowers' TILA and RESPA claims were time-barred. *Garczynski v Countrywide Home Loans, Inc. (2009, ED Pa) 656 F Supp 2d 505.*

Debtors' proposed amended claim alleging violations under *N.Y. Gen. Bus. Law § 349* was allowed as timely because claims were similar enough to debtors' original claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Credit Repair Organization Act, *15 USCS §§ 1679* et seq., and new claims could be deemed to relate back so that three year limitations period did not bar claim. *Thrane v Franklin First Fin., Ltd. (2010, ED NY) 266 FRD 51.*

When debtor claimed that disclosures debtor received pursuant to Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., violated Consumer Credit Cost Disclosure Act (CCCDA), *Mass. Gen. Laws ch. 140D, § 1* et seq., it was error for bankruptcy court to hold that language in Official Staff Commentary on TILA regulations (Commentary) on which debtor relied was not mandatory because, (1) unless demonstrably irrational, provisions of Commentary were dispositive statements of what TILA and its regulations required, (2) CCCDA was nearly identical to TILA and Commentary was incorporated as official state agency interpretation, so Commentary was highly persuasive, and, (3) where agency's statutory interpretation was reasonable, court was not to supplant agency's judgment. *DiVittorio v HSBC Bank USA, N.A. (2010, DC Mass) 423 BR 391.*

Arizona homestead exemption is not preempted by Equal Credit Opportunity Act, *15 USCS §§ 1601* et seq., because lender, whether lending to single or married person, can expect to reach all single or married borrower's equity except $ 50,000 and policy of *11 USCS § 522* is to give states control of bankruptcy exemption scheme. *In re Unkefer (1984, BC DC Ariz) 44 BR 55, 11 CBC2d 949.*

Chapter 13 debtors were not barred by doctrine of res judicata or Rooker-Feldman doctrine from claiming that bank that was assigned loan and mortgage on their residence was liable under *15 USCS § 1639* and other sections of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., for violations lender allegedly committed when it refinanced mortgage; although bank obtained judgment of foreclosure by default in state court against debtors, that judgment did not preclude debtors' claims because Pa. R. Civ. P. 1148 law did not allow debtors to raise their claims under TILA and HOEPA in foreclosure action. *Blythe v HSBC Bank USA, N.A. (In re Blythe) (2009, BC ED Pa) 413 BR 205*, motions ruled upon (2009, BC ED Pa) *2009 Bankr LEXIS 2776.*

State law which requires disclosure of final cash price balance, disclosure of finance charge and disclosure of time balance is inconsistent with and thus pre-empted by federal Truth-In-Lending Act (*15 USCS § 1601*). Memorandum T 45-27, FHLBB Journal, March 23, 1983, p 59.

Credit card solicitations by national bank were subject to monitoring, supervision, and regulation by federal agencies, including Office of Comptroller of Currency, which acted pursuant to Truth in Lending Act, *15 USCS §§ 1601-1667f*, and Federal Reserve Board, which acted pursuant to Regulation Z, 12 C.F.R. § 226; accordingly, such activities are exempt from and not subject to mandates of Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws tit. 6, ch. 13.1, based on exemption of *R.I. Gen. Laws § 6-13.1-4. Chavers v Fleet Bank (RI), N.A. (2004, RI) 844 A2d 666.*

**8. Application**

Small flat charge for bookkeeping cost of processing delayed payment not related to amount of bill did not implicate Truth in Lending Act and thus ambulance company which charged customers additional $ 5 when they did not pay by cash or check at time services were rendered was not subject to Act. *Hahn v Hank's Ambulance Service, Inc. (1986, CA11 Ala) 787 F2d 543*, reh den, en banc (1986, CA11 Ala) *792 F2d 1126.*

Truth in Lending Act (*15 USCS §§ 1601-1693*) applies to transaction in which creditor makes loan to commercial entity with knowledge that loan will be assumed by noncommercial entity with no changes in terms of loan, so that Act applied where commercial entity arranged mortgage financing with lender, but lender was aware that consumers sought credit for consumer purposes, lender required consumers to submit applications for loans and reserved right to disapprove their applications, and "change of ownership forms" executed by consumers showed them to be new borrowers, so that transactions constituted "refinancing." *Adiel v Chase Fed. Sav. & Loan Ass'n (1987, CA11 Fla) 810 F2d 1051.*

Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., did not apply to defendant because defendant was not creditor under TILA or Regulation Z's definitions where defendant did not extend credit; therefore, defendant was entitled to summary judgment. *Robey-Harcourt v Bencorp Fin. Co. (2003, CA10 Okla) 326 F3d 1140.*

Sellers failed to establish failure to comply with Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., because disputed transaction was absolute sale of their home, which did not create any debt needed to establish equitable mortgage, and TILA applied only to loans, not sales. *Johnson v Washington (2009, CA4 Va) 559 F3d 238.*

Loans primarily for agricultural purposes were not subject to protections of Truth in Lending Act, since Act pertains to consumer transactions, and credit transaction that is primarily for agricultural, commercial, or business purposes and is not for personal, family, or household purposes, is not consumer transaction. *Jonak v John Hancock Mut. Life Ins. Co. (1985, DC Neb) 629 F Supp 90.*

Claim is not stated under Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.), where buyer alleges engine was damaged before his receipt but fails to allege deceptive act by seller, pattern of misrepresentation or danger of repetition, multiple transactions, solicitation to purchase, or seller's superior bargaining position. *Veeder v NC Mach. Co. (1989, WD Wash) 720 F Supp 847, 1989 AMC 1988, 10 UCCRS2d 841.*

Summary judgment was granted in favor of mortgage broker with regard to Truth-In-Lending Act (TILA), *15 USCS § 1601* et seq., claims because broker was not "creditor" under TILA because broker did not extend credit or receive payments on loan and disclosure and other requirement of TILA were only applicable to creditors. *Viernes v Exec. Mortg., Inc. (2004, DC Hawaii) 372 F Supp 2d 576.*

Mortgage debtors did not have right to rescind mortgage contract under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., when mortgage loan was secured by property that was not debtors' principal dwelling, even when creditor provided debtors with written notice of right to rescind pursuant to terms of *TILA. Antanuos v First Nat'l Bank (2007, ED Va) 508 F Supp 2d 466.*

Applying language of regulatory provisions, and considering Truth in Lending Act's, *15 USCS §§ 1601* et seq., purpose and statutory scheme as whole, court concluded that trustee, natural person, was consumer whose ownership

interest was or would be subject to security interest under *12 CFR § 226.15(a)* and therefore should have right to rescind if applicable TILA disclosure provisions were violated. *Amonette v Indymac Bank, F.S.B. (2007, DC Hawaii) 515 F Supp 2d 1176.*

Conditions imposed in credit card agreement for crediting credit card payments on day received did not violate *15 USCS §§ 1601* et seq. by being unreasonable because, under agreement, only payments made in certain manner were conforming payments which had to be credited when received. *Trombley v Bank of Am. Corp. (2009, DC RI) 675 F Supp 2d 266.*

**9.--Disclosures**

Disclosure contemporaneously made with consummation of automobile transaction was sufficient under *15 USCS §§ 1601* et seq., and there was no meaningful distinction between tearing off copy before or after consumer signed document. *Spearman v Tom Wood Pontiac-GMC, Inc. (2002, CA7 Ind) 312 F3d 848.*

Summary judgment denying rescission under Truth in Lending Act, *15 USCS § 1601* et seq., was vacated on appeal and appeal was dismissed for want of subject matter jurisdiction under Rooker-Feldman doctrine, where federal claims were inextricably intertwined with completed state court foreclosure action. *Crutchfield v Countrywide Home Loans & Mortg. Elec. Registration Sys. (2004, CA10 Okla) 389 F3d 1144.*

Creditor's undisclosed intent to act inconsistent with its disclosures is irrelevant in determining sufficiency of those disclosures under *12 CFR §§ 226.5, 226.6,* and *226.9* of *Regulation Z. Hauk v JP Morgan Chase Bank United States (2009, CA9 Cal) 552 F3d 1114.*

Motion to dismiss was reversed because under *12 CFR § 226.9(c)(1)* consumer stated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claim if bank failed to give him notice of interest rate increase because of consumer's delinquency or default", or if his contract with bank allowed creditor to increase rate at its discretion but did not include specific terms for increase. *McCoy v Chase Manhattan Bank, USA (2009, CA9 Cal) 559 F3d 963.*

Under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., any disclosures in credit card agreement had to reflect terms of legal obligation between parties and consumers sufficiently stated claim that company violated *12 CFR § 226.6(a)(2)* because, as matter of law, company could not show that its agreement disclosed in clear and conspicuous manner annual percentage rates company was permitted to use. *Barrer v Chase Bank United States, N.A. (2009, CA9 Or) 566 F3d 883.*

Car lessees are entitled to summary judgment declaration that lessor violated Consumer Leasing Act (*15 USCS §§ 1667* et seq.), where lease simply notes that if lessee desires to terminate early, lessee should contact lessor, because total lack of disclosure of method for calculating charges for early termination is contrary to federal policy. *Candelaria v Nissan Motor Acceptance Corp. (1990, DC NM) 740 F Supp 806.*

Consumer creditor is denied summary dismissal of borrower's TILA (*15 USCS §§ 1601* et seq.) claim, where she complains that she was given written copy of disclosures required by federal law only after note and security agreement were signed evidencing her loan transaction, because, while creditor's failure to give copy of disclosures at proper time may be characterized as "technical," failure is not "de minimis" given TILA's purpose to promote "informed use of credit" by consumers. *Floyd v Sec. Fin. Corp. (2001, DC Nev) 181 F Supp 2d 1137.*

Car dealership was entitled to summary judgment in consumer's action alleging violation of *15 USCS § 1638(a)(2),* part of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., because TILA and its implementing regulation, 15 C.F.R. pt. 226, did not require amount of "negative equity" in vehicle traded in on another vehicle to be clearly and separately disclosed. *Slover-Becker v Pitre Chrysler Plymouth Jeep of Scottsdale, Inc. (2005, DC Ariz) 409 F Supp 2d 1158.*

Where bank financed dental work for consumer patients, its failure to disclose as separate fee administrative charge

paid by dentist to administrator of loan did not violate Truth in Lending Act, *15 USCS § 1601* et seq., and summary judgment was granted in favor of bank. *Jones v People's Heritage Bank (2006, SD Ga) 433 F Supp 2d 1328.*

Plaintiff auto purchasers were entitled to summary judgment because automobile dealership had violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., by use of purchase spot delivery agreement to vitiate terms of installment contract by rendering TILA disclosures in installment contract illusory. *Patton v Jeff Wyler Eastgate, Inc. (2007, SD Ohio) 608 F Supp 2d 907.*

Where homeowner conveyed title to her residence to another in exchange for set amount to avoid pending foreclosure, and transaction did not qualify as loan, disclosure provisions of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., Mortgage Lender and Broker Act, Va. Code Ann. § 6.1-408 et seq., did not apply. *Clemons v Home Savers, LLC (2008, ED Va) 530 F Supp 2d 803.*

Borrower alleged that lenders deceived him with respect to terms of refinance loan, but because lenders both provided borrower with required disclosures under truth-in-Lending Act, *15 USCS §§ 1601* et seq., and accurately represented disputed finance charge, borrower did not have extended right to rescind due to lack of notice, and his TILA claims were time-barred. *Chiles v Ameriquest Mortg. Co. (2008, ED Pa) 551 F Supp 2d 393.*

Where credit card agreement gave issuer discretion to decide whether to increase interest rate in event card holder defaulted, subsequent increase without notice did not violate Truth in Lending Act, *15 USCS § 1601(a)*, because issuer's ability to increase rate was tied to triggering events solely within holder's control. *Swanson v Bank of Am., N.A. (2008, ND Ill) 566 F Supp 2d 821.*

Mortgage company was entitled to dismissal of lawsuit filed by borrowers who alleged violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; differences in two disclosure statements did not violate TILA because second disclosure statement accurately set forth terms of loan, and written acknowledgement of receipt of second disclosure statement was conclusive proof of delivery under *15 USCS § 1641(b). Lynch v RKS Mortg., Inc. (2008, ED Cal) 588 F Supp 2d 1254.*

Disclosure of "face amount of contract" on same lien as disclosure of finance of charge and annual percentage rate are inconsistent state disclosures in violation of Truth-in Lending provisions of Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.). *In re Amey (1982, BC ND Ga) 16 BR 415.*

**Unpublished Opinions**

Unpublished: District court properly granted summary judgment in favor of mortgagee in mortgagor's action seeking to rescind refinancing transaction almost three years after closing; mortgagor failed to establish issue of material fact concerning her receipt of required notices of her right to rescind her loan under *15 USCS § 1635(a)*, part of Truth in Lending Act, and *12 CFR § 226.23* because district court did not abuse its discretion in denying mortgagor's *Fed. R. Civ. P. 36(b)* motion to withdraw her deemed admission, mortgagor's written acknowledgement that she received requisite two copies created rebuttable presumption of delivery under *15 USCS § 1635(c)*, and mortgagor's deposition testimony that she received only one copy was insufficient to rebut presumption. Sibby v Ownit Mortg. Solutions, Inc. (2007, CA6 Mich) 2007 FED App 484N.

Unpublished: Debtor's initial pawn was merely extended and not satisfied and replaced nor cancelled so that new disclosures under *15 USCS §§ 1601(a)* and *1638(b)*, and Regulation Z of TILA at *12 CFR § 226.20(a)* were not required in that Alabama Pawnshop Act did not prohibit extensions or renewals of initial maturity date, and pawn ticket and customer receipt both allowed for such extensions; therefore, pawnbroker's original lien remained valid under *Ala. Code § 5-19A-10. Gunn v Title Max of Ala., Inc. (In re Gunn) (2008, CA11 Ala) 2008 US App LEXIS 19734.*

Unpublished: Borrowers' *12 USCS § 2607* illegal fee claim, relating to loans that closed more than one year before complaint was filed, was not subject to dismissal for untimeliness because one-year limitation of *12 USCS § 2614* is

subject to equitable tolling and concealment was adequately pleaded; moreover, same analysis applied to timeliness under *15 USCS § 1640(e)* of borrowers' Truth in Lending claim under *15 USCS § 1601*. *Bassett v Ruggles (2009, ED Cal) 2009 US Dist LEXIS 83349.*

Unpublished: Complaint alleging truth in lending violation because of failure to disclose yield spread premium was sufficiently specific to state claim. *Bassett v Ruggles (2009, ED Cal) 2009 US Dist LEXIS 83349.*

Unpublished: Private lender and loan facilitator violated disclosure requirements of Truth-in-Lending Act, because they failed to provide to debtor required disclosures in connection with consumer mortgage loan, making them liable for damages and reasonable attorney fees pursuant to *15 USCS § 1640(a)*. Waldron v A+ *Plus Cash, LLC (In re Denney) (2007, BC WD Wash) 2007 Bankr LEXIS 4133.*

**10.--Rent-to-own agreements**

Rent-to-own agreements which were terminable, without penalty, at any time by renters, were specifically exempt from definition of "credit sale". *In re Hanley (1990, DC Ill) 135 BR 311* (criticized in *In re Crawford (1992, BC ED Ky) 1992 Bankr LEXIS 2515).*

Where Court of Appeals for Third Circuit, under Truth in Lending Act, *15 USCS §§ 1601* et seq., had found that where agreements provided renters of personal property with right to terminate at any time, contractual right to terminate precluded finding that rent-to-own agreements were truly sales with forfeiture of property upon termination of payments, and thus, where Chapter 13 debtor's rent-to-own agreement provided that at end of each month debtor could either return rented kitchen appliances or keep them and pay another month's rent, it was true lease and lessor was not unsecured creditor, debtor had to return appliances or file amended plan to provide for assumption and cure of lease. *KFJ Enters., LLC v Rembert (In re Rembert) (2003, BC MD Pa) 293 BR 664.*

**11. Strict enforcement**

First Circuit does not follow Seventh Circuit's view that Truth in Lending Act, *15 USCS §§ 1601* to *1667*, does not easily forgive "technical" errors. *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Since Truth in Lending Act is remedial in nature, its requirements must be strictly enforced in order to promote twin goals of disclosure and industry-wide standardization of credit terms to afford consumers expansive protection envisioned by Congress. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12*, affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Truth in Lending Act is remedial in nature and its requirements must be strictly enforced in order to promote congressional goal of full disclosure. *Mason v General Finance Corp. (1975, ED Va) 401 F Supp 782*, affd in part and revd in part on other grounds (1976, CA4) *542 F2d 1226, 37 ALR Fed 799.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) is to be liberally construed and requirements contained therein are to be strictly enforced so as to better effectuate Act's purpose of conveying information to potential debtors in manner that allows such potential debtors to make intelligent, informed decisions as to cost of available credit. *GAC Finance Corp. v Burgess (1977) 16 Wash App 758, 558 P2d 1386.*

**12. Arbitration**

On certiorari to review Federal Court of Appeals' judgment as to enforceability of arbitration agreement between financial institutional lenders and borrower, the Supreme Court need not decide whether the arbitration agreement is unenforceable on the alternative ground that agreement precludes borrower from bringing her claims under Truth in Lending Act (*15 USCS §§ 1601* et seq.) as a class action where Court of Appeals did not pass on this question. Green

Tree Fin. Corporation -*Alabama v Randolph (2000) 531 US 79, 148 L Ed 2d 373, 121 S Ct 513, 2000 CDOS 9799, 84 BNA FEP Cas 769, 2000 Colo J C A R 6596, 14 FLW Fed S 21* (criticized in *Lytle v CitiFinancial Servs. (2002) 2002 PA Super 327, 810 A2d 643)* and (criticized in *Lovey v Regence Blueshield of Idaho (2003) 139 Idaho 37, 72 P3d 877).*

Lender's practice of requiring customer to sign arbitration agreement before obtaining consumer loan does not violate *15 USCS § 1691(a)(3)*; for purposes of *15 USCS § 1691(a)(3)*, Congress did not create non-waivable right to pursue Truth in Lending Act (*15 USCS §§ 1601* et seq.) claims in judicial forum, either individually or through class action. *Bowen v First Family Fin. Servs. (2000, CA11 Ala) 233 F3d 1331, 14 FLW Fed C 174.*

Where plaintiff cardholders alleged conspiracy to fix currency conversion fees charged when they conducted foreign currency transaction on their credit cards, alleged fixed price fees appeared on cardholders' monthly billing statements, and their account terms were governed by cardholder agreements, which contained arbitration clauses, court found that antitrust claims were related to cardholder agreements, as were any Truth in Lending Act claims. *In re Currency Conversion Fee Antitrust Litig. (2003, SD NY) 265 F Supp 2d 385, 2003-2 CCH Trade Cases P 74099.*

Lender's motion to stay pending arbitration was granted because contracts subject to rescission under *15 USCS § 1635*, part of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., could not be deemed voidable for reasons related to arbitration clauses embedded in those contracts; furthermore, because homeowners did not dispute that arbitration provision facially encompassed issues raised in their complaint, Federal Arbitration Act (FAA), *9 USCS §§ 1* et seq., required enforcement of arbitration clause. *Bertram v Ben. Consumer Disc. Co. (2003, MD Pa) 286 F Supp 2d 453.*

Because two member banks engrafted arbitration agreements in their cardholder agreements after litigation had commenced, agreements were not enforceable; therefore, court certified antitrust injunctive relief class pursuant to *Fed. R. Civ. P. 23* that consisted of all cardholders of those banks' general purpose cards without enforceable arbitration clauses, as well as two subclasses for Truth in Lending Act, *15 USCS § 1601* et seq., violations of those same member banks. *In re Currency Conversion Fee Antitrust Litig. (2005, SD NY) 361 F Supp 2d 237, 2005-1 CCH Trade Cases P 74726.*

Although claims in debtor's action against mortgage creditor, alleging in part violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., and state Consumer Protection Act, and asserting that loan was unconscionable, that mortgage was invalid, and objecting to creditor's secured status, were arbitrable, since they arose out of court's "related to" jurisdiction under *28 USCS § 1334(b)* or "arising in" jurisdiction under *28 USCS § 157(b)*, presumption in favor of arbitration under Federal Arbitration Act, *9 USCS §§ 1* et seq., was rejected and mortgage creditor's motion to compel arbitration was denied, since debtor's obligation to pay for arbitration could significantly impact bankruptcy estate and other creditors. *Hicks v Homeq Servicing Corp. (In re Hicks) (2002, BC WD Okla) 285 BR 317.*

Where debtor in adversary proceeding objecting to mortgage creditor's secured claim sought to enforce pre-petition rescission of debtor's mortgage under Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., and asserted claims under Home Owners Equity Protection Act, *15 USCS §§ 1601* et seq., Equal Credit Opportunity Act, *15 USCS §§ 1691* et seq., and Pennsylvania statutes, which would affect how debtor's Chapter 13 bankruptcy plan payments would be distributed among creditors, mortgage creditor's motion to compel arbitration under *9 USCS § 2* was denied. *Mintze v Am. Gen. Fin., Inc. (In re Mintze) (2003, BC ED Pa) 288 BR 95*, affd (2003, ED Pa) *51 CBC2d 300.*

In adversary proceeding brought by debtor against creditor lender, regardless of whether debtor's claims under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., constituted core proceedings, as provided by *28 USCS § 157(b)(2)*, or non-core proceedings, arbitration of claims was required because there was no inherent conflict between enforcement of parties' arbitration agreement and underlying purposes of Bankruptcy Code; further, creditor's arbitration defense was not subject to debtor's motion to strike under *Fed. R. Civ. P. 12(f)* because arbitration defense was not redundant, immaterial, impertinent, or scandalous, and it had direct bearing on litigation. *Dixon v Household Realty Corp. (In re Dixon) (2010, BC ND Ga) 428 BR 911.*

**13. Miscellaneous**

Under Truth in Lending Act plaintiff does not need to show that he was in fact deceived by substandard disclosures; moreover, since Act provides for statutory damages in addition to actual damages, plaintiff need not even show actual harm. *Griggs v Provident Consumer Discount Co. (1982, CA3 Pa) 680 F2d 927, 34 FR Serv 2d 219,* vacated on other grounds, remanded *(1982) 459 US 56, 74 L Ed 2d 225, 103 S Ct 400, 35 FR Serv 2d 365* (superseded by statute as stated in *Burt v Ware (1994, CA5 La) 14 F3d 256, 28 FR Serv 3d 204)* and (superseded by statute as stated in *Woodard v Hardenfelder (1994, ED NY) 845 F Supp 960)* and (superseded by statute as stated in *Leader Nat'l Ins. Co. v Industrial Indem. Ins. Co. (1994, CA9 Wash) 19 F3d 444, 94 CDOS 1866, 94 Daily Journal DAR 3435, 28 FR Serv 3d 488)* and (superseded by statute as stated in *Wallis v J.R. Simplot Co. (1994, CA9 Idaho) 28 FR Serv 3d 1464)* and (superseded by statute as stated in *Hatfield v Board of County Comm'rs (1995, CA10 Wyo) 52 F3d 858, 31 FR Serv 3d 1258)* and (superseded by statute as stated in *Schroeder v McDonald (1995, CA9 Hawaii) 55 F3d 454, 95 CDOS 3701, 32 FR Serv 3d 196).*

Husband's argument that credit company violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., because it could not divine his actual address, rather than post office box wife set up, was rejected; wife had applied on-line without her husband's knowledge for three of company's credit cards in his name with her as authorized buyer. *MacDermid v Discover Fin. Servs. (2007, CA6 Tenn) 488 F3d 721, 2007 FED App 198P.*

District court's *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action brought under Truth in Lending Act, *15 USCS §§ 1601* et seq., was reversed because deed attached to defendants' *Fed. R. Civ. P. 12(b)(6)* motion was matter outside pleadings, and if district court had followed instructions in R. 12(d), then borrower would have had opportunity to present and support his assertion that deed was forgery, and district court would have seen that there were issues of material fact; district court also erred in thinking that deed was proper subject for judicial notice because although statements in documents affecting interest in property did fall within exception to hearsay rule, *Fed. R. Evid. 803(15),* it was unclear how district court could have found that deed was "not subject to reasonable dispute" under *Fed. R. Evid. 201(b)* once borrower filed his response. *Doss v Clearwater Title Co. (2008, CA7 Ill) 551 F3d 634.*

Truth in Lending disclosures supplemented note and apparent disparity occurred when there were upfront charges in loan transaction, which is basic reason why Truth in Lending disclosure statements are necessary, where disclosures and note contained apparently different interest rates. *Smith v United States Credit Corp. (1985, ED Va) 626 F Supp 102.*

Because Truth-In-Lending Act, *15 USCS §§ 1601* et seq., claims still applied to lender, court would not dismiss state law claims against mortgage broker and would exercise its supplemental jurisdiction pursuant to *28 USCS § 1367* because state law claims involved same nucleus facts and case or controversy; values of economy, convenience, and fairness all favored court's retention of jurisdiction in this circumstance. *Viernes v Exec. Mortg., Inc. (2004, DC Hawaii) 372 F Supp 2d 576.*

Superiority standard was not met because class action was not best method for ensuring fair and efficient adjudication of particular controversy under *Fed. R. Civ. P. 23(b)(3)* due to numerous individual issues of fact--it was clear that state law required demonstration of reliance to support cause of action under Pa. Unfair Trade Practices and Consumer Protection Law, Pa. Stat. Ann. tit. 75, § 201-1, and simple arithmetic compelled conclusion that proposed class members would be substantially better off litigating their Truth-in-Lending Act, *15 USCS § 1601,* actions individually. *Porter v NationsCredit Consumer Disc. Co. (2005, ED Pa) 229 FRD 497.*

Borrowers were not entitled to certification of national class in their suit against mortgage assignee alleging violations of Truth in Lending Act and other federal and state law violations arising from alleged kickback scheme involving fraudulent settlement charges; borrowers failed to satisfy requirements of *Fed. R. Civ. P. 23(b)(3)* given individualized questions concerning validity of fees paid to law firm for closing services. *Reiser v Residential Funding Corp. (2005, SD Ill) 236 FRD 425.*

Based on undisputed evidence, it was clear that charges homeowner incurred did not exceed eight percent of loan value; as result, *15 USCS § 1602(aa)(4)*, part of Homeowner's Equity Protection Act (HOEPA), which amended Truth in Lending Act, *15 USCS §§ 1601* et seq., was not triggered. *Morrison v Brookstone Mortg. Co. (2005, SD Ohio) 415 F Supp 2d 801.*

Credit card company's third-party complaint against plaintiffs' father was stricken because neither Fair Credit Reporting Act (FCRA), *15 USCS § 1681* et seq., nor Fair Credit Billing Act which was part of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., provided right to contribution or indemnity for credit card company, which was furnisher of information to consumer reporting agencies. *McSherry v Capital One FSB (2006, WD Wash) 236 FRD 516.*

Remand under *28 USCS § 1447(c)* was proper in claimants' tort action against finance companies and their employees because there was no federal question jurisdiction under *28 USCS § 1331* because contention that Truth in Lending Act issues were "surely" or "likely" to be disputed was insufficient to establish jurisdiction where such jurisdiction required that state law claims necessarily raise actually disputed and substantial federal issues. *McKinnes v Am. Int'l Group, Inc. (2006, MD Ala) 420 F Supp 2d 1254.*

Court denied defendants' motion to dismiss plaintiff's complaint as to two defendants in which plaintiff claimed that three defendants violated Consumer Credit Protection Act or Truth-In-Lending Act, by failing to provide information to borrower, by providing contradictory and confusing information to borrower, and by failing to provide correct itemization of amount financed and total monthly payments due. *Carr (2007, WD Tenn) 476 F Supp 2d 859.*

Credit card holder failed to state claim against bank under *15 USCS § 1601* for alleged violations of Truth in Lending Act because there was no evidence that bank failed to make proper initial disclosures and any claims under Act were barred by one year limitations period of *15 USCS § 1640(e)* as computed under *Fed. R. Civ. P. 6(a)*. *Gengo v Target Nat'l Bank (2007, SD Tex) 513 F Supp 2d 842.*

Although property owners allegations that company committed unspecified acts violating unspecified provisions of federal law, and that violations gave rise to defenses or remedies, they did not allege that any of company's actions violated Home Ownership and Equity Protection Act (HOEPA), *15 USCS § 1637*, Truth in Lending Act (TILA), *15 USCS § 1601*; or Federal Trade Commission Act (FTC Act), *15 USCS § 41* et seq; those allegations were not sufficient to state claim against company for violation of *TILA, HOEPA or FTC Act. Izenberg v ETS Servs., LLC (2008, CD Cal) 589 F Supp 2d 1193.*

Lender had not stated cognizable claim for violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., because when finance charges that were required to be disclosed was correctly calculated amount disclosed did not exceed one-half of one percent of total loan amount and thus did not exceed tolerance for accuracy. *Frazier v Accredited Home Lenders, Inc. (2009, MD Ala) 607 F Supp 2d 1254.*

In case in which borrower conceded that she had not sufficiently served bank and only issue before district court was whether to grant borrower and extension of time to effectuate proper service on bank or to dismiss claims without prejudice, borrower argued that district court should grant extension of time because dismissal, even if without prejudice, would bar her from stating claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., against bank because she filed her complaint two days before expiration of three-year statute of limitations; while running of statute of limitations was factor that could warrant permissive extension of time, it did not require district court to extend time for service of process; borrower was at all times represented by counsel, her counsel, by his own admission, knew that under *D.C. Code § 29-101.99(e)(2)* he had to serve Mayor to effect service of process on bank, and despite that knowledge, he never served Mayor, and counsel should have been aware that bank might contest sufficiency of service. *Colston v First Guar. Commer. Mortg. Corp. (2009, DC Dist Col) 665 F Supp 2d 5.*

Joinder of bank was appropriate in debtors' claims for violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., and Credit Repair Organization Act, *15 USCS §§ 1679* et seq., and state law because bank was assignee of at least one

of original loan documents and was interested party to proceedings. *Thrane v Franklin First Fin., Ltd. (2010, ED NY) 266 FRD 51*.

Technical violation of Truth in Lending Act imposes liability without regard to harm or significance of violation, and thus automobile dealer was liable for violation of Act where it failed to disclose in motor vehicle contract that it intended to take security interest in additional automobile thereby failing to comply with disclosure requirements of Act. *Kadlec Motors, Inc. v Knudson (1986, Minn App) 383 NW2d 342, 1 UCCRS2d 260.*

State appellate court review of federal statute and regulations should be governed by federal court's construction. *Holmes v Olson (1979, Tex) 587 SW2d 678.*

**Unpublished Opinions**

Unpublished: Appellate court agreed with district court's determination, and held that consumers had failed to plead facts that had established their right to rescind February 2000 transaction beyond three-day rescission period, and dismissal of Truth In Lending Act claim was proper. *Mills v Equicredit Corp. (2006, CA6 Mich) 2006 US App LEXIS 5023.*

Unpublished: Consumers' Truth in Lending Act (TILA), *15 USCS §§ 1601-1693r*, claims were properly dismissed because charges were not finance charges as they were incident to overdrawn accounts rather than to extensions of credit pursuant to *12 CFR § 226.4(a)*; other claims under TILA and *12 CFR § 226.12*, wherein consumers alleged that bank issued unsolicited credit cards and engaged in off-setting without agreement to do so, were improperly dismissed, however, because, as alleged, cards might have fallen within definition of credit cards. *Sola v Wash. Mut. Bank FA (In re Wash. Mut. Overdraft Prot. Litig.) (2006, CA9 Cal) 2006 US App LEXIS 22863.*

Unpublished: Because he failed to timely respond to it, credit card holder was deemed to have rejected *Fed. R. Civ. P. 68* offer of judgment made to him by bank, and denial of offer mooted holder's claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., because offer was for full amount that holder could recover from bank under *15 USCS § 1640*; holder could not recover attorney fees because he was proceeding pro se, and bank's offered $ 900 payment exceeded statutory damages potentially available to holder under § 1640(a)(2)(A)(i). *Goodmann v People's Bank (2006, CA3 NJ) 2006 US App LEXIS 31555.*

Unpublished: Dismissal without prejudice of plaintiffs' case under Truth in Lending Act, *15 USCS §§ 1601* et seq., and for common law fraud was warranted because it was least drastic means of obtaining effective solution to plaintiffs' failure to comply with discovery orders and plaintiffs would be required to comply with two conditions, including condition for payment of attorney's fees, if they elected to refile their claim. *Froman v JP Morgan Chase Bank, N.A. (2009, WD Va) 2009 US Dist LEXIS 71923.*

3 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1602*

§ 1602. Definitions and rules of construction [Caution: See prospective amendment note below.]

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this *title [15 USCS §§ 1601* et seq.].

(b) Bureau [Caution: This subsection takes effect on the designated transfer date (as such date is defined in § 1062 of Act July 21, 2010, P.L. 111-203, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note.]. The term "Bureau" means the Bureau of Consumer Financial Protection.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(e) The term "person" means a natural person or an organization.

(f) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(g) The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 [*15 USCS §§ 1666* et seq.]

and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this *title [15 USCS § 1637(a)(5)*, (a)(6), (a)(7), (b)(1), (b)(2), (b)(3), (b)(8), and (b)(10)], the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this *title [15 USCS §§ 1601* et seq.]. The term "creditor" includes a private educational lender (as that term is defined in section 140 [*15 USCS § 1650*]) for purposes of this *title [15 USCS §§ 1601* et seq.].

(h) The term "credit sale" refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(i) The adjective "consumer," used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(j) The terms "open end credit plan" and "open end consumer credit plan" mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

(k) The term "adequate notice," as used in section 133 [*15 USCS § 1643*], means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(l) The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(m) The term "accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(n) The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(o) The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

(p) The term "unauthorized use," as used in section 133 [*15 USCS § 1643*], means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(q) The term "discount" as used in section 167 [*15 USCS § 1666f*] means a reduction made from the regular price. The term "discount" as used in section 167 [*15 USCS § 1666f*] shall not mean a surcharge.

(r) The term "surcharge" as used in section 103 and section 167 [*15 USCS §§ 1602* and *1666f*] means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.

(s) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(t) The term "agricultural purposes" includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(u) The term "agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(v) The term "material disclosures" means the disclosure, as required by this *title [15 USCS §§ 1601* et seq.], of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number of and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 129(a) [*15 USCS § 1639(a)*].

(w) The term "dwelling" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(x) The term "residential mortgage transaction" means 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 against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

(y) As used in this section and section 167 [*15 USCS § 1666f*], the term "regular price" means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder's open-end account shall not be considered payment made by use of the plan or the account.

(z) Any reference to any requirement imposed under this *title [15 USCS §§ 1601* et seq.] or any provision thereof includes reference to the regulations of the board under this *title [15 USCS §§ 1601* et seq.] or the provision thereof in question.

(aa) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this *title [15 USCS §§ 1601* et seq.] does not in itself constitute a violation of this *title [15 USCS §§ 1601* et seq.].

(bb) (1) A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under

an open end credit plan, if--

(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) the total points and fees payable by the consumer at or before closing will exceed the greater of--

(i) 8 percent of the total loan amount; or

(ii) $ 400.

(2) (A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994 [*15 USCS § 1602* note], and no more frequently than biennially after the first increase or decrease under this subparagraph, the Board may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Board determines that the increase or decrease is--

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A) may not result in the number of percentage points referred to in subparagraph (A) being--

(i) less that 8 percentage points; or

(ii) greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Board shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include--

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid to mortgage brokers;

(C) each of the charges listed in section 106(e) [*15 USCS § 1605(e)*] (except an escrow for future payment of taxes), unless--

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation; and

(iii) the charge is paid to a third party unaffiliated with the creditor; and

(D) such other charges as the Board determines to be appropriate.

(5) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

(cc) The term "reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling--

(1) securing one or more advances; and

(2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after--

(A) the transfer of the dwelling;

(B) the consumer ceases to occupy the dwelling as a principal dwelling; or

(C) the death of the consumer.

[(dd)](cc) Definitions relating to mortgage origination and residential mortgage loans [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.].

(1) Commission. Unless otherwise specified, the term "Commission" means the Federal Trade Commission.

(2) Mortgage originator. The term "mortgage originator"--

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain--

(i) takes a residential mortgage loan application;

(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

(iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);

(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan--

(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

(ii) is fully amortizing;

(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

(v) meets any other criteria the Board may prescribe;

(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c) [*15 USCS § 1639b(c)*]; and

(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3) Nationwide Mortgage Licensing System and Registry. The term "Nationwide Mortgage Licensing System and Registry" has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [*12 USCS §§ 5101* et seq.].

(4) Other definitions relating to mortgage originator. For purposes of this subsection, a person "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(5) Residential mortgage loan. The term "residential mortgage loan" means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C [*15 USCS §§ 1639b* and *1639c*] and section 128(a) (16), (17), (18), and (19) [*15 USCS § 1638(a)(16)*-(19)], and sections 128(f) and 130(k) [*15 USCS §§ 1638(f)* and *1640(k)*], and any regulations promulgated thereunder, an extension of credit relating to a plan described in *section 101(53D) of title 11, United States Code*.

(6) Secretary. The term "Secretary", when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

(7) Servicer. The term "servicer" has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2605(i)(2)*).

[(ee)](dd) Bona fide discount points and prepayment penalties [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point--

(A) the average prime offer rate, as defined in section 129C [*15 USCS § 1639c*]; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (*12 U.S.C. 1702* et seq.).

(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points--

(A) the average prime offer rate, as defined in section 129C [*15 USCS § 1639c*]; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (*12 U.S.C. 1702* et seq.).

(3) For purposes of paragraph (1), the term "bona fide discount points" means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 103, 82 Stat. 147; Oct. 26, 1970, P.L. 91-508, Title V, § 501, 84 Stat. 1126; Oct. 28, 1974, P.L. 93-495, Title III, § 303, 88 Stat. 1511; Feb. 27, 1976, P.L. 94-222, § 3(a), 90 Stat. 197; July 27, 1981, P.L. 97-25, Title I, § 102, 95 Stat. 144; March 31, 1980, P.L. 96-221, Title VI, §§ 602, 603(a), (b), 604, 612(a)(2), (b), 94 Stat. 168, 169, 175, 176; July 27, 1981, P.L. 97-25, Title I, § 102, 95 Stat. 144; Oct. 15, 1982, P.L. 97-320, Title VII, § 702(a), 96 Stat. 1538; Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, §§ 152(a)-(c), 154(a), 108 Stat. 2190, 2196.)

(As amended Aug. 14, 2008, P.L. 110-315, Title X, Subtitle A, § 1011(b), 122 Stat. 3481; May 22, 2009, P.L. 111-24, Title I, § 108, 123 Stat. 1743; July 21, 2010, P.L. 111-203, Title X, § 1100A(1), (2), Title XIV, Subtitle A, § 1401, Subtitle C, § 1431, 124 Stat. 2107, 2137, 2157.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

The "Riegle Community Development and Regulatory Improvement Act of 1994", referred to in this section, is Act Sept. 23, 1994, P.L. 103-325, 108 Stat. 2160. For full classification of this Act, consult USCS Tables volumes.

"Subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994", referred to in this section, is Subtitle B of Title I of Act Sept. 23, 1994, P.L. 103-325, 108 Stat. 2190, which is popularly referred to as the Home Ownership and Equity Protection Act of 1994. For full classification of this Subtitle, consult USCS Tables volumes.

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act,

which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

**Amendment of subsec. (bb) (as redesignated), effective as provided by § 1400(c) of Act July 21, 2010, P. L, 111-203.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle C, § 1431(a)-(c), 124 Stat. 2157 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), provides:

"(a) High-cost Mortgage Defined. Section 103(aa) of the Truth in Lending Act (*15 U.S.C. 1602(aa)*) is amended by striking all that precedes paragraph (2) and inserting the following:

" '(aa) High-cost mortgage.

(1) Definition.

(A) In general. The term "high-cost mortgage", and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if--

" '(i) in the case of a credit transaction secured--

" '(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than $ 50,000) the average prime offer rate, as defined in section 129C(b)(2)(B) [*15 USCS § 1639c(b)(2)(B)*], for a comparable transaction; or

" '(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(b)(2)(B) [*15 USCS § 1639c(b)(2)(B)*], for a comparable transaction;

" '(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed--

" '(I) in the case of a transaction for $ 20,000 or more, 5 percent of the total transaction amount; or

" '(II) in the case of a transaction for less than $ 20,000, the lesser of 8 percent of the total transaction amount or $ 1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

" '(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

" '(B) Introductory rates taken into account. For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

" '(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

" '(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

" '(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

" '(C) Mortgage insurance. For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude--

" '(i) any premium provided by an agency of the Federal Government or an agency of a State;

" '(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (*12 U.S.C. 1709(c)(2)(A)*), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

" '(ii) any premium paid by the consumer after closing.'.

"(b) Adjustment of Percentage Points. Section 103(aa)(2) of the Truth in Lending Act (*15 U.S.C. 1602(aa)(2)*) is amended by striking subparagraph (B) and inserting the following new subparagraph:

" '(B) An increase or decrease under subparagraph (A)--

" '(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

" '(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8

percentage points or greater than 12 percentage points.'.

"(c) Points and Fees Defined.

"(1) In general. Section 103(aa)(4) of the Truth in Lending Act (*15 U.S.C. 1602(aa)(4)*) is amended--

"(A) by striking subparagraph (B) and inserting the following:

" '(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;";

"(B) by redesignating subparagraph (D) as subparagraph (G); and

"(C) by inserting after subparagraph (C) the following new subparagraphs:

" '(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

" '(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

" '(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and".

"(2) Calculation of points and fees for open-end consumer credit plans. Section 103(aa) of the Truth in Lending Act (*15 U.S.C. 1602(aa)*) is amended--

"(A) by redesignating paragraph (5) as paragraph (6); and

"(B) by inserting after paragraph (4) the following new paragraph:

" '(5) Calculation of points and fees for open-end consumer credit plans. In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129 [*15 USCS § 1639*], by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.'.".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1970. Act Oct. 26, 1970, added subsecs. (j)-(o) and redesignated former subsecs. (j), (k), and (l) as subsecs. (p), (q), and (r), respectively.

1974. Act Oct. 28, 1974 (effective "upon the expiration of one year after" 10/28/74, as provided by § 308 of such Act, which appears as *15 USCS § 1666* note), in subsec. (f), inserted "which is payable by agreement in more than four installments or" and "or may be", and inserted the sentence beginning "For the purposes . . .".

1976. Act Feb. 27, 1976 redesignated subsecs. (p), (q), and (r), as subsecs. (r), (s), and (t), respectively; and added subsecs. (p) and (q).

1980. Act March 31, 1980 (effective 2 years and 6 months from the date of enactment on March 31, 1980, as provided by § 625(a) of such Act, which appears as a note to this section), in subsec. (f), substituted the sentences beginning "The term 'creditor' refers only to a person . . .", and "Notwithstanding the previous sentence . . ." for one which read: "The term 'creditor' refers only to creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise.", and substituted "127(a)(5), 127(a)(6), 127(a)(7)", "127(b)(8)", and "127(b)(10)" for "127(a)(6), 127(a)(7), 127(a)(8)", "127(b)(9)", and "127(b)(11)", respectively; in subsec. (g), substituted the sentence beginning "The term 'credit sale' . . ." for one which read "The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller."; in subsec. (h), substituted "or household" for "household, or agricultural"; substituted subsec. (i) for former one which read: "The term 'open end credit plan' refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder."; redesignated subsecs. (s) and (t) as subsecs. (x) and (y), respectively, inserted new subsecs. (s) and (t), and added subsecs. (u), (v), (w).

1981. Act July 27, 1981 added subsec. (z).

Such Act further (effective 4/10/82, as provided by § 102(b) of such Act), redesignated subsecs. (x), (y), and (z) as subsecs. (y), (z), and (x).

1982. Act Oct. 15, 1982 (effective as provided by § 702(b) of such Act, which appears as a note to this section) substituted subsec. (f) for one which read: "The term 'creditor' refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required; and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the previous sentence, a person who regularly arranges for the extension of consumer credit, which is payable in more than four installments or for which the payment of a finance charge is or may be required, from persons who are not creditors is a creditor and in the case of an open end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purposes of the requirements imposed under Chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of Chapter 2 of this Title, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open end credit plans. The provisions of this title apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.".

1994. Act Sept. 23, 1994, in subsec. (f), added "Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this title."; in subsec. (u), substituted "the due dates" for "and the due dates" and inserted ", and the disclosures required by section 129(a)"; and added subsecs. (aa) and (bb).

2008. Act Aug. 14, 2008 (effective on enactment, as provided by § 1003 of such Act, which appears as *15 USCS § 1638* note), in subsec. (f), added the sentence beginning "The term 'creditor' includes a private educational lender . . .".

2009. Act May 22, 2009 (effective 9 months after enactment, as provided by § 3 of such Act, which appears as a note to this section), in subsec. (i), substituted "terms 'open end credit plan' and 'open end consumer credit plan' mean" for

"term 'open end credit plan' means", and inserted "or open end consumer credit plan" in three places.

2010. Act July 21, 2010 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), redesignated subsecs. (b)-(bb) as subsecs. (c)-(cc), respectively, and inserted new subsec. (b).

Such Act further (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), added subsecs. [(dd)](cc) and [(ee)](dd).

Other provisions:

**Effective date of amendments made by Act March 31, 1980.** Act March 31, 1980, P.L. 96-221, Title VI, § 625, 94 Stat. 185; July 27, 1981, P.L. 97-25, Title III, § 301, 95 Stat. 145; Dec. 26, 1981, P.L. 97-110, Title III, § 301; 97 Stat. 1515, provides:

"(a) Except as provided in section 608(b) [*15 USCS § 1607* note], the amendments made by this title [among others amending *12 USCS § 1602*(f)] shall take effect upon the expiration of two years and six months after the date of enactment of this title [enacted March 31, 1980].

"(b) All regulations, forms, and clauses required to be prescribed under the amendments made by this title shall be promulgated at least one year prior to such effective date [enacted March 31, 1980].

"(c) Notwithstanding subsections (a) and (b), any creditor may comply with the amendments made by this title [amending this section among other things; for full classification of such title, consult USCS Tables volumes], in accordance with the regulations, forms, and clauses prescribed by the Board, prior to such effective date. Any creditor who elects to comply with such amendments and any assignee of such a creditor shall be subject to the provisions of sections 130 and 131 of the Truth in Lending Act, as amended by sections 615 and 616, respectively, of this *title [15 USCS §§ 1640, 1641*].".

**Effective date of amendment made by Act Oct. 15, 1982.** Act Oct. 15, 1982, P.L. 97-320, Title VII, § 702(b), 96 Stat. 1538, provides: "The amendment made by subsection (a) [amending subsec (f) of this section] shall take effect on the effective date of title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980 [effective 2 years and 6 months from the date of enactment on March 31, 1980, as provided by Act March 31, 1980, P.L. 96-221, Title VI, § 625(a), 94 Stat. 185, as amended, which appears as a note to this section].".

**Regulations implementing the Home Ownership and Equity Protection Act of 1994.** Act Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 155, 108 Stat. 2197, provides: "Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to carry out this subtitle [for full classification, consult USCS Tables volumes], and such regulations shall become effective on the date on which disclosure regulations are required to become effective under section 105(d) of the Truth in Lending Act [*15 USCS § 1604(d)*].".

**Applicability of the Home Ownership and Equity Protection Act of 1994.** Act Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 156, 108 Stat. 2197, provides: "This subtitle, and the amendments made by this subtitle [for full classification, consult USCS Tables volumes], shall apply to every mortgage referred to in section 103(aa) of the Truth in Lending Act [subsec. (aa) of this section] (as added by section 152(a) of this Act) consummated on or after the date on which regulations issued under section 155 [note to this section] become effective.".

**Credit Card Accountability Responsibility and Disclosure Act of 2009; regulatory authority.** Act May 22, 2009, P.L. 111-24, § 2, 123 Stat. 1735, provides: "The Board of Governors of the Federal Reserve System (in this Act referred to as the 'Board') may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act [for full classification, consult USCS Tables volumes].".

**Credit Card Accountability Responsibility and Disclosure Act of 2009; effective date.** Act May 22, 2009, P.L. 111-24, § 3, 123 Stat. 1735, provides: "This Act and the amendments made by this Act [for full classification, consult USCS Tables volumes] shall become effective 9 months after the date of enactment of this Act, except as otherwise specifically provided in this Act.".

**NOTES:**

Code of Federal Regulations:
Federal Deposit Insurance Corporation--Filing procedures, *12 CFR 303.0* et seq.

Related Statutes & Rules:
This section is referred to in *12 USCS §§ 1735f-5, 1735f-7a, 2602, 3401*; *15 USCS §§ 78m, 1604, 1605, 1610, 1615, 1631, 1635, 1638, 1639, 1641, 1667, 1679a, 1693a, 1693g*; *18 USCS § 1030*; *26 USCS § 6311*, *42 USCS § 5511*.

Research Guide:

Federal Procedure:
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:5, 72.

Am Jur:
*9D Am Jur 2d, Bankruptcy § 3618*.
*17 Am Jur 2d, Consumer and Borrower Protection §§ 2, 4, 6-10, 12, 15, 38, 90, 123, 138*.
*20 Am Jur 2d, Credit Cards and Charge Accounts §§ 1, 29, 38*.
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1*.

Am Jur Proof of Facts:
73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.
81 Am Jur Proof of Facts 3d, Identity Theft and Other Misuses of Credit and Debit Cards, p. 113.

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:24, 34, 36, 69, 71, 81, 95, 96.
7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards §§ 39, 60, 71.
17C Am Jur Pl & Pr Forms (2006), Moneylenders and Pawnbrokers, §§ 5, 6, 8, 12.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection §§ 5, 46, 47, 60.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.03-1.05, 1.07, 1.08.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections § 2.02.
1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit §§ 6.02, 6.05, 6.09.
1 Debtor-Creditor Law (Matthew Bender), ch 7, Rent-to-Own Transactions §§ 7.02, 7.07.
1A Debtor-Creditor Law (Matthew Bender), ch 8, Fair Debt Collection § 8.02.
1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense §§ 13.07, 13.18.
1A Debtor-Creditor Law (Matthew Bender), ch 14, Liability of Assignees and Related Creditors; The FTC Holder Rule § 14.04.

1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.04.
1A Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.02.
2A Debtor-Creditor Law (Matthew Bender), ch 21, The Bank-Customer Relationship § 21.13.
5 Debtor-Creditor Law (Matthew Bender), ch 43, Usury § 43.18.

Bankruptcy:
4 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 523, Exceptions to Discharge P 523.08.
4 Collier Bankruptcy Practice Guide, ch 76, Dischargeability of Debts P 76.05.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.5, 62.8, 62.9, 62.19.

Annotations:
Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141*.
Lease with option to purchase agreement as credit sale or consumer lease under definitions in Truth in Lending Act (*15 USCS §§ 1602(g), 1667(1)*) and applicable regulations. *58 ALR Fed 929.*
Who is "creditor" within meaning of § 103(f) of Truth in Lending Act (*15 U.S.C.A. § 1602(f)* [*15 USCS § 1602(f)*]). *157 ALR Fed 419.*
Validity, Construction, and Application of Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 U.S.C.A. §§ 1602(aa), 1610, 1639*, and *1640* [*15 USCS §§ 1602(aa), 1610, 1639, 1640*]. *198 ALR Fed 631.*

Texts:
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

Interpretive Notes and Decisions:
**I.IN GENERAL** 1. Consumer; consumer credit transaction 2.--Personal, family or household purposes 3. Credit 4. Credit sale 5.--Insurance 6.--Rent-to-own agreements 7. Extension of credit 8. Open end credit plan 9. Organization 10. Unauthorized use 11. Miscellaneous

**II.CREDITOR**

**A.In General** 12. Generally 13. Extension or arrangement of credit 14.--Regularity of extension or arrangement

**B.Particular Creditors** 15. Assignees 16. Automobile dealers 17. Banks 18. Credit cards 19.--Issuers 20. Finance companies 21. Hospitals 22. Insurance companies 23. Lessors 24. Mortgages 25.--Assignees 26.--Brokers 27. Pawnbrokers 28. Real estate vendors 29. Miscellaneous

**I.IN GENERAL 1. Consumer; consumer credit transaction**

Where purchasers of lifetime memberships in health club became entitled to use of health club's physical fitness equipment or related property and also became entitled to services of health club personnel in relation to operation and administration of facilities and physical fitness programs offered, purchases of memberships involved both "property" and "services," within meaning of *15 USCS § 1602(h)*, defining consumer. *Joseph v Norman's Health Club, Inc. (1974, ED Mo) 386 F Supp 780*, vacated on other grounds (1976, CA8 Mo) *532 F2d 86.*

Since plaintiff in suit under Truth in Lending Act (*15 USCS §§ 1601* et seq.) was natural person and linoleum, mattress and box springs which plaintiff purchased were knowingly sold for household purposes, plaintiff was consumer and transaction was consumer transaction within meaning of Act. *Sambolin v Klein Sales Co. (1976, SD NY) 422 F Supp 625.*

Under Four Installment Rule, transaction was credit transaction within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) since, although there was no finance charge, payment was to be made in more than four installments. *Sambolin v Klein Sales Co. (1976, SD NY) 422 F Supp 625.*

Fact that sale was for unitary price does not necessarily preclude installment contract from being considered credit transaction subject to Truth in Lending Act (*15 USCS §§ 1601* et seq.), particularly where it appeared that unitary price was used as device to conceal fact of finance charge or to conceal identity of hidden creditor. *Haskins v American Byers Club, Inc. (1978, SD Ill) 77 FRD 715.*

Summary judgment is granted in favor of land purchasers, who charge that developer did not give disclosures in conjunction with these real estate transactions as required by TILA (*15 USCS §§ 1601* et seq.), because there is no doubt that purchases were "consumer transactions" made by "creditor," and developer violated TILA by not providing financing statements. *Yordanich v Dicks (2000, MD Fla) 89 F Supp 2d 1308.*

Court denied motion of defendants, real estate broker, real estate holding company, and related company, for summary judgment as to homeowners' Home Ownership and Equity Protection Act (HOEPA) and Truth in Lending Act (TILA) claims, which alleged that defendants violated disclosure requirements of both statutes as set forth in *15 USCS §§ 1602, 1638, 1639*, and *1641* and implementing regulations, *12 CFR §§ 226.31* and .32, and which sought rescission under *15 USCS § 1635* and *12 CFR § 226.23(a)(2)*, because genuine issues of fact existed as to whether parties intended outright sale, in which case TILA and HOEPA were inapplicable, or whether, given facts surrounding transaction, transaction could be construed as equitable mortgage, in which case TILA and HOEPA applied, and with regard to rescission, given discretion within which court could condition right to rescission, it was not necessary that owners demonstrate they had means to secure necessary financing at instant stage of proceedings. *Jones v REES-MAX, LLC (2007, DC Minn) 514 F Supp 2d 1139.*

Written financial disclosures were not required in transaction where defendants bought mobile home for purpose of repairing and reselling it, with no intent to live in it, since they were not "consumers" and transaction was not "consumer credit transaction" within meaning of Consumer Credit Protection Act (*15 USCS §§ 1602(H), 1631(a)*). *Anderson v Rocky Mountain Fed. Sav. & Loan Ass'n (1982, Wyo) 651 P2d 269.*

Lease of real estate for 1-year term providing for monthly rental and containing acceleration clause in event of nonpayment was not "consumer credit" transaction which would subject landlord to civil liability, under *15 USCS § 1640*, for failure to comply with disclosure requirements of Consumer Credit Protection Act. *Berry v Thompson (1974, La App 2d Cir) 297 So 2d 484.*

**2.--Personal, family or household purposes**

Extension of credit by home improvement contractor to homeowner was consumer credit transaction under *15 USCS § 1602(h)* for personal, family, household, or agricultural [term deleted by 1982 amendment] purposes even though homeowner did not reside in home at time of transaction, since she previously resided in home, visited it periodically, and expected to reside in it upon retirement. *Tower v Moss (1980, CA5 Ala) 625 F2d 1161, 30 FR Serv 2d*

*598.*

Consumer credit transactions are defined by statute as primarily for personal, family, or household purposes; purchase of limited partnership interest for investment purposes can be for personal as opposed to business or commercial purposes and may fall within scope of Truth in Lending Act (*15 USCS §§ 1601* et seq.); whether investment loan is for personal or business purpose requires case by case analysis, and court reverses lower court's summary judgment in favor of creditor. *Thorns v Sundance Properties (1984, CA9 Nev) 726 F2d 1417.*

In mortgage refinance for personal residence, summary judgment was properly granted in favor of lender because lender was not required to make certain disclosures required by Home Ownership and Equity Protection Act (HOEPA) amendment to Truth in Lending Act (TILA), for high cost loans where fees and points did not exceed eight percent of entire loan; payment from loan proceeds to sham creditor was properly not included in calculation because it was not fee paid to mortgage broker. *Cunningham v Nationscredit Fin. Servs. Corp. (2007, CA7 Ill) 497 F3d 714.*

Since plaintiff had purchased lots for investment purposes and not for personal use, Truth In Lending Act exemption pertaining to credit extensions "for business or commercial purposes" (*15 USCS § 1603(1)*) was applicable, and plaintiff was not "consumer," as defined in *15 USCS § 1602(h). Adema v Great N. Dev. Co. (1973, ND Ga) 374 F Supp 318.*

Where plaintiff alleged that his purpose in obtaining loan from defendant was to purchase washer and dryer, but where there was evidence that plaintiff had not purchased washer and dryer and that his purpose in obtaining loan was to finance litigation, plaintiff failed to establish that loan transaction was "consumer" credit transaction within meaning of *15 USCS § 1602(h)*, rather than transaction for "business or commercial purposes" within meaning of *15 USCS § 1603(1)*; plaintiff's action would therefore be dismissed for lack of jurisdiction. *Kenney v Landis Fin. Group (1974, ND Iowa) 376 F Supp 852.*

Sale of automobile was consumer credit transaction within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.), notwithstanding fact that no finance charge was imposed, where purchasers were natural persons who purchased automobile primarily for personal or family use, and price was made payable in more than 4 deferred installments. *Vines v Hodges (1976, DC Dist Col) 422 F Supp 1292.*

Legal fee arrangement is consumer credit transaction under *15 USCS § 1602(h)*, and is not for business or commercial purposes under *15 USCS § 1603*, where legal services rendered concerned propriety of sale of personal property from debtor's farm, purchase of pigs, and defense of felony theft of pig, all services being related either to debtor's household, personal, or agricultural goods, agricultural life stock, or personal interest in defending felony charge. *Dougherty v Hoolihan, Neils, & Boland (1982, DC Minn) 531 F Supp 717.*

Financing transaction which was intended to and did finance commercial fire insurance policy was not primarily for personal, family, or household purposes. *Quinn v A.I. Credit Corp. (1985, ED Pa) 615 F Supp 151.*

Borrowers' Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) claims must fail, even though they listed purpose of refinancing their residential mortgage as "to refinance" or "debt consolidation," where they agreed to higher interest rate on refinance loan, and approximately $ 105,000 of $ 110,000 in extra proceeds went toward business purposes, because TILA's disclosure requirements did not apply since loan was not "primarily for personal, family, or household purposes" under *15 USCS § 1602(h). Gombosi v Carteret Mortg. Corp. (1995, ED Pa) 894 F Supp 176*, affd without op (1996, CA3 Pa) *91 F3d 123.*

Bank was denied summary judgment on bank customers' Truth in Lending Act (TILA) claim because customers produced sufficient evidence that account involved in disputed transaction, home equity line of credit, was held for consumer purposes as their use of line of credit appeared personal in nature under *15 USCS § 1602(h)*, and customers' linking of their credit line to their business checking account did not transform it into business account under *15 USCS § 1603(1). Shames-Yeakel v Citizens Fin. Bank (2009, ND Ill) 677 F Supp 2d 994.*

Debtor's Federal Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., complaint against movants, which sought to rescind loans made by movants to mortgage broker to finance her purchase of debtor's property, was dismissed under *Fed. R. Civ. P. 12(b)(6)* for failure to state claim because debtor was not entitled to receive TILA disclosures when property was principal dwelling of debtor and not broker, person to whom credit was extended, and because HUD-1 statement established that loans constituted residential mortgage transactions exempt from recission under *15 USCS § 1635(e)(1). Figueroa v Smith (In re Figueroa) (2006, BC SD Fla) 20 FLW Fed B 400.*

In determining whether loan is consumer loan, only viable approach is to characterize loan transaction by use to which proceeds are originally placed and maintain same characterization throughout life of loan, but where part of loan proceeds were used for personal purposes and rest for business purposes, court must balance conflicting uses and determine which purpose predominates. *Toy Nat'l Bank v McGarr (1979, Iowa) 286 NW2d 376.*

Plaintiff's purchase of automobile was not for personal purpose within *15 USCS § 1602(h)* where it was purchased for third person, since even though plaintiff's motive was personal, purpose of purchasing vehicle was not personal to him but was to vest ownership in third party and transaction did not qualify as consumer credit transaction subject to Truth in Lending Act. *Hensley v Lubbock Nat'l Bank (1978, Tex Civ App Amarillo) 561 SW2d 885, 23 UCCRS 261.*

**3. Credit**

When automobile insurance is payable in installments under either of 2 plans (plan whereby 40 percent of year's premium is payable at time of application, 30 percent payable at end of 3 months, and 30 percent at end of 6 months, or alternate plan whereby 10 percent of premium is payable at time of application and 10 percent payable on same day of each month thereafter until total of 10 payments is made), but there is no obligation on part of insured to make any installment payment, result being that if he does not make any payment, insurance will be canceled, policyholder is not debtor of insurance company, insurance company is not creditor of insured, and hence there is no "credit" and no consumer credit, so that no duty of disclosure under Truth in Lending Act arises. *Gerlach v Allstate Ins. Co. (1972, SD Fla) 338 F Supp 642, 16 FR Serv 2d 80.*

Unless there exists underlying debt and obligation to make full and complete payment, credit situation within meaning of *15 USCS § 1602(e)* does not arise; fact that homeowner can make lump-sum payment of $ 220 for electrical utility connections rather than paying $ 2.00 per month for 30 years does not render monthly charge "credit". *Munson v Orrin E. Thompson Homes, Inc. (1974, DC Minn) 395 F Supp 152.*

**4. Credit sale**

Seller need not actually extend credit in order for credit sale to occur; credit sale may exist where seller merely arranges for extension of credit. *Stefanski v Mainway Budget Plan (1972, CA5 Fla) 456 F2d 211.*

District court properly dismissed customers' Truth in Lending Act of 1968 (TILA), *15 USCS §§ 1601* et seq., claims as purchasers of delinquent accounts of customers of credit card issuers were not creditors subject to TILA under *15 USCS § 1602(n)*, as purchasers neither issued credit cards nor were they agents of credit card issuers. *Neff v Capital Acquisitions & Mgmt. Co. (2003, CA7 Ill) 352 F3d 1118.*

Although co-operative marketing association had billed farmer for interest on association's cash advances to farmer in connection with grain purchase contracts, Truth in Lending Act (*15 USCS §§ 1601* et seq.) did not apply, since advances were granted by purchaser rather than by seller, thus making transaction excludible from Act under *15 USCS § 1602(g)*, which applies to "any sale with respect to which credit is extended or arranged by seller." *Farmers Union Grain Terminal Ass'n v Nelson (1974, ND) 223 NW2d 494, 16 UCCRS 139.*

To determine whether seller "arranged" for credit as that term is construed in order to bring transaction within definition of credit sale under *15 USCS § 1602(g)*, requirements of § 226.2 of regulation Z must be met; although plaintiff's complaint did not specifically allege elements necessary under such regulation, inference could reasonably be

made that business relationship existed between defendants, who were automobile seller and finance company, whereby latter had knowledge of credit terms extended to plaintiff and participated in preparation of contract documents required in extension of credit to plaintiff. *Manning v Princeton Consumer Discount Co. (1974, ED Pa) 380 F Supp 116.*

Where electric utility constructed underground utility connections in housing development and offered home owners option of paying $ 2.00 per month surcharge for 30 years or of making lump sum payment of $ 220, there was no sale which could constitute "credit sale" within meaning of *15 USCS § 1602(g)*, since plaintiffs did not, as result of such payments, own underground equipment. *Munson v Orrin E. Thompson Homes, Inc. (1974, DC Minn) 395 F Supp 152.*

In drawing distinction between disguised credit sales and true leases for purposes of determining applicability of Truth in Lending Act (*15 USCS § 1602*), precedents in commercial law of state which governs contract in question should be examined; agreement entitled "Rental Agreement with Option to Purchase" television set is "credit sale" despite termination clauses, where agreement required lessee to pay total sum in excess of value of property and contract was to remain in force unless plaintiff exercised right to terminate and forfeited equities built up in set. *Waldron v Best T.V. & Stereo Rentals, Inc. (1979, DC Md) 485 F Supp 718.*

Rental of color television is neither "credit sale" under *15 USCS § 1602(g)* nor "consumer lease" under *15 USCS § 1667(1)* where agreement provided for rental periods of one week with renter's right to terminate thereafter, and rental payment of $ 21 per week was not substantially equivalent to or in excess of aggregate value of television; fact that renter had right to renew lease on week-to-week basis does not convert lease into consumer lease under § 1667(1), which requires lease terms to exceed 4 months. *Stewart v Remco Enterprises, Inc. (1980, DC Neb) 487 F Supp 361.*

**5.--Insurance**

It was error for District Court to dismiss plaintiff's complaint alleging that defendant insurance company sold her automobile insurance policy and that it then arranged with defendant finance company for extension of consumer credit to her for purchase of policy and that transaction was thus "credit sale" within meaning of *15 USCS § 1602(g)*, since facts could be adduced which would support plaintiff's allegations and which would qualify transaction as arrangement of credit by seller within meaning of Truth-in-Lending Act. *Stefanski v Mainway Budget Plan (1972, CA5 Fla) 456 F2d 211.*

Sale of credit life and disability and property insurance to borrowers was made in connection with their loan and was, therefore, not subject to disclosure requirements that attach to credit sales under Truth in Lending Act (*15 USCS § 1605(b)*) and Regulation Z. *Bailey v Defenbaugh & Co. (1981, ND Miss) 513 F Supp 232.*

Bank's activities would amount to consumer credit sales within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) if it could be proved as alleged that bank's financing of automobile insurance purchases was intimately linked with insurance purchase transactions in that bank furnished broker on regular basis with printed contract forms containing terms governing credit sales of insurance, that broker regularly used these forms in its business and required purchasers of automobile insurance to finance their purchases through bank, that bank exercised substantial control over broker in determining which policies could be purchased on credit and in establishing terms of policies and credit sale, that broker acted as conduit for placing of installment contracts with bank, and that bank shared profits from these contracts with broker and paid broker fee for all purchases procured by him which met bank's requirements. *King v Central Bank (1977) 18 Cal 3d 840, 135 Cal Rptr 771, 558 P2d 857.*

**6.--Rent-to-own agreements**

Evidence that lessor enters into numerous transactions for rental of television sets and that most customers keep such sets for required number of weeks and exercise option to become owner is relevant to issue of whether lease is credit sale. *Clark v Rent-It Corp. (1982, CA8 Iowa) 685 F2d 245,* cert den *(1983) 459 US 1225, 75 L Ed 2d 466, 103 S Ct 1232.*

Rent-to-own agreements, which are terminable at any time without additional charges, are not credit sales within purview of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z (*12 CFR § 226.2(a)(16)*). *Ortiz v Rental Management (1995, CA3 NJ) 65 F3d 335.*

To be within coverage of *15 USCS § 1602(g)*, lessee must be obligated to pay sum at least as great as value of property, and lease of television set, under which lessee would have owned set after 18 months but was never obligated for any sum other than 16 weekly rental payments for each week he chose to keep set, is not credit sale under § 1602(g). *Smith v ABC Rental Systems, Inc. (1978, ED La) 491 F Supp 127.*

Lease with option to purchase agreement providing for lease of television set for period of 78 consecutive weeks, obligating lessee to pay only first week, and terminable by either party under certain circumstances, is not consumer lease nor credit sale. *Lemay v Stroman's, Inc. (1981, ED Ark) 510 F Supp 921.*

Although lease terminology is used in terminable residential lease, agreement constitutes credit sale and plaintiff is entitled to statutory damages for failure of defendant to make required disclosures where plaintiff has right to purchase premises for nominal consideration of one dollar at end of lease, if successive monthly rental payments are made for 10 years, rental fees are $ 150 per month for 10 years totaling $ 18,000, amount far in excess of property's fair market value of approximately $ 2,000, and plaintiff is obligated to pay all taxes, water and sewer rents, insurance and to make all repairs. *Davis v Colonial Sec. Corp. (1982, ED Pa) 541 F Supp 302*, app dismd without op (1983, CA3 Pa) *720 F2d 660* and app dismd without op (1983, CA3 Pa) *720 F2d 661.*

**7. Extension of credit**

Where individuals, at time that they purchased "lifetime" memberships in health clubs, executed promissory notes which were assigned to finance companies, finance companies as well as health clubs were liable as "creditor-extenders" of credit, since finance companies operated under definite working arrangement with health clubs. *Joseph v Norman's Health Club, Inc. (1976, CA8 Mo) 532 F2d 86.*

Truth in Lending Act (*15 USCS § 1602*) does not impose penalty until credit is in fact extended even though seller is obligated to make proper disclosures prior to extension of credit; condition precedent contained in order form for automobile requiring approval of appropriate financier indicated that further action was necessary to consummate extension of credit and where negotiations failed and credit was never finally extended, transaction was outside coverage of Act. *Baxter v Sparks Oldsmobile, Inc. (1978, CA4 NC) 579 F2d 863.*

Extension of credit under Truth in Lending Act (*15 USCS §§ 1601* et seq.) requires completed act of giving credit for Act's requirements to be triggered; therefore, there can be no violation of Act until credit transaction is consummated. *Harman v New Hampshire Sav. Bank (1981, CA1 NH) 638 F2d 280.*

Ambulance company which charged customers additional $ 5 when they did not pay by cash or check at time services were rendered was not extending credit because company did not grant right to defer payment of debt or to incur debt and defer its payment, but simply assessed charge in light of customer's failure to pay company at time service was performed. *Hahn v Hank's Ambulance Service, Inc. (1986, CA11 Ala) 787 F2d 543*, reh den, en banc (1986, CA11 Ala) *792 F2d 1126.*

Bail bond transaction which includes contingent promissory note and mortgage does not constitute extension of credit subject to Truth in *Lending Act. Buckman v American Bankers Ins. Co. (1997, CA11 Fla) 115 F3d 892, 11 FLW Fed C 52.*

Agreement for sale of mobile home on credit was extension of credit within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) where purchasers were unconditionally committed to purchase mobile home on credit terms listed in agreement notwithstanding fact that seller's obligation to sell was conditioned upon whether financing could be arranged. *Copley v Rona Enters. (1976, SD Ohio) 423 F Supp 979.*

Seller, by volunteering to accept payment for purchase in six monthly installments, extended consumer credit within meaning of Truth in Lending Act (*15 USCS § 1602*). *Gilbert v Atlantic Richfield Co. (1978, DC Conn) 448 F Supp 440.*

Retail installment contract for purchase of automobile which set forth credit terms for transaction was contract for extension of credit for purposes of disclosure requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.), even though agreement was contingent upon seller's ability to arrange financing, since credit arrangements were completed and spelled out in contract and no separate, more complete contract was contemplated. *Madewell v Marietta Dodge, Inc. (1980, ND Ga) 506 F Supp 286.*

**Unpublished Opinions**

Unpublished: Summary judgment was appropriate in Truth-in-Lending Act (TILA) action where defendant dealer never extended credit to plaintiff purchaser, and so TILA did not apply to purchaser's cash purchase of used truck. *Bade v Courtesy Olds Mobile, Inc. (2006, CA9 Nev) 2006 US App LEXIS 6416.*

**8. Open end credit plan**

Commercial bank operating franchise credit card system is involved in "open end consumer credit plan" covered by Truth in Lending Act. *Wilcox v Commerce Bank of Kansas City (1973, CA10 Kan) 474 F2d 336, 16 FR Serv 2d 1244.*

Fact that particular consumers do not return for further credit extensions does not prevent plan from having been properly characterized as "open end" for purposes of *15 USCS § 1602(i). Myers v First Tenn. Bank, N.A. (2001, MD Ala) 136 F Supp 2d 1225.*

By its very terms, Fair Credit Billing Act's billing error section applies solely to creditors of open end credit plans. *Roybal v Equifax, Transunion, Experian Rickenbacker, Medamerica, City Towing Body Shop, Inc. (2005, ED Cal) 405 F Supp 2d 1177.*

Claim by Chapter 13 debtors that mortgage loan made to them was high cost closed-end loan, requiring extra disclosure under Home Ownership and Equity Protection Act, Pub. L. No. 103-325, was dismissed; yield spread premium earned by broker could not be added to points and fees to make charges in excess of 8 percent because it was not paid at or before closing, as required under *15 USCS § 1602(aa)*, but rather was paid over life of loan. *Balko v Carnegie Fin. Group Inc. (In re Balko) (2006, BC WD Pa) 348 BR 684.*

Open end credit plan is defined as credit arrangement describing terms of credit transactions which may be made thereunder from time to time under terms of which finance charge can be computed on outstanding paid balance from time to time; although arrangement under which buyer entered into separate contracts for purchase of furniture had various characteristics of revolving charge, where intent of parties appears to have been to create closed end consumer credit transaction, such requirements govern contract. *Wise Furniture v Dehning (1984, Minn) 343 NW2d 26.*

Open-end credit is consumer credit extended on account pursuant to plan under which creditor permits customer to make purchases from time to time, customer has privilege paying balance in full or in installments, and finance charge is computed by creditor from time to time on outstanding unpaid balance; employer's policy of providing credit to employees for purchase of employer's goods may constitute open-end credit if reasonable person could conclude that payment by installment is not prohibited. *Clendenin Lumber & Supply Co. v Carpenter (1983) 172 W Va 375, 305 SE2d 332.*

**Unpublished Opinions**

Unpublished: Creditor's affidavit did not make out prima facie case that there was "open end credit plan" between it and debtor; for example, affidavit did not authenticate operative agreement between debtor and creditor and copy of

such agreement was not attached to affidavit; accordingly, creditor failed to establish that *11 USCS § 523(a)(2)(C)* presumption of nondischargeability applied. *GE Money Bank v Keathley (In re Keathley) (2009, BC DC Conn) 2009 Bankr LEXIS 4263.*

**9. Organization**

Where party alleging claim under Truth In Lending Act (*15 USCS §§ 1601* et seq.) in connection with grain purchase contract transactions was member of partnership which owned grain, exclusion of transactions involving extensions of credit to organizations under *15 USCS § 1603(1),* made Act inapplicable in light of definition of partnership under *15 USCS § 1602(c)* as "organization." *Farmers Union Grain Terminal Ass'n v Nelson (1974, ND) 223 NW2d 494, 16 UCCRS 139.*

Claim against individual defendants, alleging violations of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) will be dismissed, where, in order to avoid state usury law, loan was made to corporation formed by husband and wife solely for purposes of loan, since Act does not apply to organizations, which includes corporations. *Selman v Manor Mortg. Co. (1982, ED Mich) 551 F Supp 345.*

**10. Unauthorized use**

Use of credit card issued to business association, by association's office manager for his personal gain, was unauthorized use of card where issuance of card was upon his written request without actual or implied authority and issuer was negligent in failing to verify his authority to request card. *Pritchett v Executive Director of Social Serv. Bd. (1982, ND) 325 NW2d 217* (ovrld by *R.F. v C.A.M. (In re S.R.F.) (2004) 2004 ND 150, 683 NW2d 913).*

Credit card company was granted summary judgment on consumer's claim brought under Truth in Lending Act, *15 USCS § 1643,* arising out of alleged unauthorized use of his credit card, because (1) consumer did not file action until more than one year after he discovered unauthorized uses, as defined by *15 USCS § 1602(o),* so claim was time-barred under *15 USCS § 1640(e)*; (2) consumer's argument that no contractual obligation existed between consumer and company because underlying charges were fraudulent, and thus, statute of limitations did not begin to run at time of alleged unauthorized uses, was inconsistent with language of *15 USCS § 1643,* which presupposed some type of contractual relationship between cardholder and card issuer, and record, which contained allegations of existence of contractual relationship and breach of cardholder agreement; and (3) statute of limitations was not tolled in light of *15 USCS § 1666* and its enacting regulation because § 1666 set forth different cause of action, complaint was devoid of allegations that would state claim under § 1666, and even if properly pled, there was no evidence in record that contradicted company's claim that consumer failed to comply with notice requirements of § 1666. *Asher v Bank One (2008, ND Ill) 538 F Supp 2d 1037.*

Where cardholder was notified of suspicious activity on its master corporate account perpetrated by its accounts payable supervisor, credit card company refused reimbursement and cardholder filed suit under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; district court refused dismiss claim based on defense of apparent authority to cardholder's claim that supervisor's use was unauthorized under *15 USCS § 1602*; even if cardholder's continued payment of fraudulent charges after notice constituted negligent act that cloaked accounts payable supervisor in apparent authority, district court could not determine point at which this authority arose based on pleadings; therefore, TILA claim could not be dismissed. *Permobil, Inc. v Am. Express Travel Related Servs. Co (2008, MD Tenn) 571 F Supp 2d 825.*

Definition of "unauthorized use" excludes from category use by any person who has actual, implied, or apparent authority; credit cards issued upon representations that spouses are authorized to make charges upon accounts confers apparent authority, and apparent authority of spouse to use cards is withdrawn under contract only after cards are returned to bank and accounts are terminated. *Walker Bank & Trust Co. v Jones (1983, Utah) 672 P2d 73,* cert den *(1984) 466 US 937, 80 L Ed 2d 460, 104 S Ct 1911.*

There was no unauthorized use of credit card within meaning of *15 USCS § 1602(o)* where cardholder, under no compulsion by fraud, duress, or otherwise, voluntarily permits use of credit card by another person. *Martin v American Express (1978, Ala Civ App) 361 So 2d 597.*

**Unpublished Opinions**

Unpublished: Allegedly fraudulent charges that were made on plaintiff credit cardholder's account by his personal secretary were not "unauthorized" under *15 USCS §§ 1643* and *1602(o)* since secretary had apparent authority to use account; in instant case, cardholder had paid his bills in full, including disputed charges, for three years without protest and that scenario made compelling case for concluding that secretary had apparent authority to make charges on account. *Asher v Chase Bank United States, N.A. (2009, CA7 Ill) 2009 US App LEXIS 3733.*

**11. Miscellaneous**

Creditor did not violate Home Ownership and Equity Protection Act (HOEPA), *15 USCS §§ 1602(aa)(1)(B), 1639(a),* by not including appraisal fee, title insurance fee, phone-bill charge, or principal disbursement in total points and fees of debtors' loan because (1) appraisal and title insurance fees, if bona fide and reasonable, were excluded from HOEPA's definition of total points and fees under *15 USCS § 1605(e)* and *12 CFR § 226.4(c)(7)*; (2) appraisal and title insurance fees were bona fide and reasonable because they did not violate Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2607(b),* as they were paid to unaffiliated third party for services actually performed and creditor derived no benefit from payments; and (3) *15 USCS § 1602(aa)(4)* did not include telephone charge and principal disbursement in total points and fees. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 451 F3d 913.*

District court properly determined that borrowers' telephone bill and principal overstatement were not part of points and fees and did not trigger additional disclosure requirements of Home Ownership and Equity Protection Act because they were imposed as amount financed, not as charge incident to extension of credit, and were thus payable in comparable cash transaction under *15 USCS § 1605(a)* and excluded from finance charge. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 463 F3d 793.*

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1),* thus, since plaintiff car buyer failed to plead and could not prove detrimental reliance, his Truth in Lending Act claims against defendant bank failed; § 1640(a)(1) did not reference "material disclosures" and did not provide for distinct treatment of "material" violations for purpose of calculating actual damages, thus, definition of "material disclosures" in *15 USCS § 1602(u)* had no relevance to § 1640(a)(1). *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

Credit card issued to business association upon written request of its office manager who had no actual or implied authority to request issuance of card was not "accepted credit card" belonging to business association, where association neither signed, used nor authorized office manager to use card. *Transamerica Ins. Co. v Standard Oil Co. (1982, ND) 325 NW2d 210.*

Lender's disclosures to borrower were proper under *15 USCS § 1602(u),* where disclosures omitted concerned payment demand methods, late payment fees, liens, insurance, and required deposits, because disclosures are not "material." *Morris v Lomas & Nettleton Co. (1989, DC Kan) 708 F Supp 1198.*

Based on undisputed evidence, it was clear that charges homeowner incurred did not exceed eight percent of loan value; as result, *15 USCS § 1602(aa)(4),* part of Homeowner's Equity Protection Act (HOEPA), which amended Truth in Lending Act, *15 USCS §§ 1601* et seq., was not triggered. *Morrison v Brookstone Mortg. Co. (2005, SD Ohio) 415 F Supp 2d 801.*

All stages of construction up to time when residence becomes habitable are within meaning of "initial construction" under *15 USCS § 1602(w)*; thus, residential mortgage transaction includes financing for all stages of construction up to

time of completion. *Perkins v Cent. Mortg. Co. (2006, ED Pa) 422 F Supp 2d 487.*

Loan that borrowers took out two years after their acquisition of property in order to complete construction of home was residential mortgage transaction under *15 USCS § 1602(w)*, part of Truth in Lending Act (TILA), and loan was therefore nonrescindable under *15 USCS § 1635(e)(1)*; as result, borrowers' TILA claims were time-barred under *15 USCS § 1640(e)* because they were brought more than one year after loan transaction. *Perkins v Cent. Mortg. Co. (2006, ED Pa) 422 F Supp 2d 487.*

Claims that mortgage lender violated Truth in Lending Act, *15 USCS §§ 1601* et seq., by, inter alia, failing to provide borrowers with required disclosures for "high cost" mortgage failed on summary judgment because mortgage at issue was not high cost mortgage within meaning of *15 USCS § 1602(aa)(1)(A)* and (B); points and fees fell below eight percent threshold under § 1602(aa)(1)(B)(i), and borrowers failed to establish that fee paid to purported third-party creditor constituted disguised broker's fee or hidden finance charge. *Cunningham v Equicredit Corp. (2006, ND Ill) 427 F Supp 2d 838.*

Although borrowers sought loan for purchase of dwelling, fact that financial corporations encumbered second property, not one being acquired, removed mortgage at issue, pursuant to *15 USCS § 1602(w)*, from purview of residential mortgage exception contained in Truth in Lending Act, *15 USCS §§ 1601* et seq., pursuant to *15 USCS § 1635*, meaning that borrowers had right to rescission; they lost that right, however, when they failed to exercise it within three days after transaction given that their was no indication that required disclosures were not made. *De Jesus-Serrano v Sana Inv. Mortg. Bankers, Inc. (2007, DC Puerto Rico) 552 F Supp 2d 191*, summary judgment gr, claim dismissed, judgment entered (2007, DC Puerto Rico) *552 F Supp 2d 196.*

Lender was entitled to summary judgment on borrower's claim that lender did not make additional disclosures required for high cost loan because loan at issue did not meet requirement of high cost loan when applicable total points and fees payable by lender before closing did not exceed eight percent of total loan amount. *Frazier v Accredited Home Lenders, Inc. (2009, MD Ala) 607 F Supp 2d 1254.*

Creditors' motion to dismiss debtor's claims under *15 USCS § 1639* was granted because debtor had not contested creditors' assertion that HOEPA did not apply to mortgage loan at issue because it fell under residential mortgage transaction exemption of *15 USCS § 1602(aa)(1). Pouth Phrasavang v Deutsche Bank (2009, DC Dist Col) 656 F Supp 2d 196* (criticized in *Minter v Wells Fargo Bank, N.A. (2009, DC Md) 2009 US Dist LEXIS 120930).*

Homeowner sufficiently stated claim under *15 USCS § 1602(aa)* because he alleged that total points and fees charged were in excess of 8% of loan. *Allen v United Fin. Mortg. Corp. (2009, ND Cal) 660 F Supp 2d 1089.*

Borrowers' Truth in Lending Act claim was not barred on motion to dismiss based on statute of limitations of *15 USCS § 1640(e)* because there were factual issues yet to be resolved; however, borrowers failed to state claim for rescission under *15 USCS § 1635* because notice provisions did not apply to residential transactions as defined under *15 USCS § 1602(w). Urbina v Homeview Lending, Inc. (2009, DC Nev) 681 F Supp 2d 1254.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded, because borrower's rescission claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was barred by three-year statute of limitations under *15 USCS § 1635(f)*; further, loan was residential mortgage transaction, *15 USCS § 1602(w)*, that was exempt from TILA rescission under *15 USCS § 1635(e)(1). Saldate v Wilshire Credit Corp. (2010, ED Cal) 2010 US Dist LEXIS 21034*, complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220*, complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051.*

Transaction between lender and debtor qualified as closed-end transaction under *15 USCS § 1602(i)* because lender did not anticipate repeated transactions with debtor. *Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

Where mortgagors asserted that mortgage lender improperly charged mortgagors basic rate for title insurance rather that lower refinance rate which was applicable based on title insurance obtained with regard to prior mortgage loan refinanced by new loan, mortgagors failed to show that lender knew of prior insurance to establish that rate was unreasonable and thus includable as part of finance charge under *15 USCS § 1605(a)* and subject to disclosure under *15 USCS §§ 1602(u), 1638(a)*; there was no credible evidence that mortgagors notified lender of existence of prior title insurance, lender's knowledge that mortgagors had prior mortgage loan did not place lender on notice of such prior insurance, and lender had no duty to inquire concerning existence of prior insurance. Glauser v Deutsche Bank Nat'l Trust Co.(In re Glauser) (2007, BC ED Pa) *365 BR 531*.

**Unpublished Opinions**

Unpublished: Because rescission rules outlined in *15 USCS § 1635*, part of Truth in Lending Act (TILA) do not apply to residential mortgage transactions, as defined by *15 USCS § 1602(w)*, and it appeared that borrower who filed TILA complaint had residential mortgage, borrower's claim of rescission right would fail; however, since complaint was somewhat ambiguous, court based its dismissal instead on fact that claim for rescission, brought more than six years after transaction, was time-barred by *15 USCS § 1635(f)*, which closed door on actions filed more than three years after transaction. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

Unpublished: Claims that insured failed to make disclosures required by Truth in Lending Act and Home Ownership and Equity Protection Act under *15 USCS §§ 1602, 1635, 1638, 1640*, did not require plaintiff to prove that insured knowingly or purposefully failed to make requisite disclosures, and thus, insurer was required to provide defense as to those claims under policy that only excluded risks that arose from event that insured deliberately caused or of which he was consciously aware. *Szelc v Stanger (2010, DC NJ) 2010 US Dist LEXIS 13146.*

**II.CREDITOR**

**A.In General 12. Generally**

Action under Consumer Credit Protection Act was improperly dismissed where insufficient facts were presented to court to enable court to determine factual question whether defendant was "creditor," as defined in *15 USCS § 1602(f)*. *Sarter v Mays (1974, CA5 Ala) 491 F2d 675.*

Under § 103(f) of Truth in Lending Act (*15 USCS § 1602(f)*) both broker and lender are classified as creditors who must make required disclosures before effecting credit transaction. *McGowan v Credit Center of North Jackson, Inc. (1977, CA5 Miss) 546 F2d 73.*

Whether one is TILA creditor is bifurcated question, requiring person both to be creditor in general, by extending credit in certain minimum number of transactions, and to be creditor in specific transaction in dispute. *Pollice v National Tax Funding, L.P. (2000, CA3 Pa) 225 F3d 379* (criticized in *Pentlong Corp. v GLS Capital, Inc. (2001, Pa Cmwlth) 780 A2d 734).*

District court holds that last sentence of *15 USCS § 1602(f)* does not create independent definition of "creditor" under Truth-In-Lending Act, *15 USCS § 1601* et seq. *Viernes v Exec. Mortg., Inc. (2004, DC Hawaii) 372 F Supp 2d 576.*

Lender is "creditor" as defined in *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)*, with regard to *15 USCS 1635* recission regulation if it is originator of loan, even it subsequently assigns its interest in loan to third party; modification exemption set out in *12 CFR § 226.23(f)(2)*, applies when borrower refinances, for increased amount, loan that lender has originated, regardless of whether, at time of refinancing, that loan has been assigned by lender to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

**13. Extension or arrangement of credit**

Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not impose its disclosure duties on, nor accord right of rescission against, every person extending credit, but applies only to those who, according to *15 USCS § 1602(f)*, regularly extend, or arrange for extension of, credit in connection with loans, sales of property or services, or otherwise. *Eby v Reb Realty (1974, CA9 Ariz) 495 F2d 646, 28 ALR Fed 539.*

Contractor was not so closely connected to board financing heat pump as to qualify as "arranger of credit" and thus "creditor" subject to disclosure requirements, since contractor was selected after purchaser negotiated essential terms of loan agreement with board, contractor had no direct or indirect participation in negotiations for loan, contractor was paid in single payment, and contractor extended no credit to purchaser. *McCoy v Harriman Utility Bd. (1986, CA6 Tenn) 790 F2d 493.*

Definition of "creditor" in Truth in Lending Act, *15 USCS § 1602(f)*, does not include mortgage brokers in transactions in which they acted only as broker, even though they might have acted as "creditor" in unrelated transactions; this conclusion was warranted by plain reading of language of § 1602(f), common sense, and Federal Reserve Board's Regulation Z, 12 CFR § 226. *Cetto v LaSalle Bank Nat'l Ass'n (2008, CA4 Va) 518 F3d 263.*

Debtors were not entitled to certain disclosures with respect to refinancing of their home mortgage because "creditor" under Truth in Lending Act, *15 USCS § 1602(f)*, did not include mortgage brokers involved in this transaction, since mortgage brokers acted only as brokers, even though they might have acted as "creditor" in unrelated transactions. *Cetto v LaSalle Bank Nat'l Ass'n (2008, CA4 Va) 518 F3d 263.*

Automobile dealer was "creditor" under *15 USCS § 1602(f)* and Regulation Z, where (1) dealer initially extended credit to purchaser, as was evidenced by subsequent assignment of contract to credit corporation, and (2) by regularly arranging for such assignments to credit corporation and other lenders, which practice was essential to dealer's selling cars on credit, dealer was in actuality arranging for extension of credit. *Meyers v Clearview Dodge Sales, Inc. (1974, ED La) 384 F Supp 722*, affd in part and revd in part on other grounds (1976, CA5 La) *539 F2d 511*, cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Under Truth In Lending Act, as reasonably interpreted in Regulation Z, any party who has received fee in connection with extension of consumer credit may be liable as arranger of credit whether or not it participated in preparation of contract documents, and whether or not fee came directly from consumer. *Childress v Mobile Living Corp. (1974, ED La) 386 F Supp 903*, affd without op (1975, CA5 La) *525 F2d 1406.*

Defendant automobile dealer which frequently dealt with "Ford Motor Credit Corporation," prepared customer statements to be forwarded to such creditor, and negotiated interest rate with buyer, was "arranger of credit" within Truth in Lending Act. *Gonzalez v Schmerler Ford (1975, ND Ill) 397 F Supp 323.*

In action by Master Charge credit cardholder against local bank which issued credit card and Interbank, association of member banks issuing such credit cards, for alleged violations of Truth-in-Lending Act arising out of defendants' alleged failure to disclose conversion and service charges which plaintiff cardholder accrued when he used his card for purchases made on trip through Europe, Interbank is "creditor" as defined in Act, as Interbank was arranger of credit. *Whitman v Connecticut Bank & Trust Co. (1975, DC Conn) 400 F Supp 1341.*

Although contracting firm often helped people seeking home improvement loans from bank in filling out loan application, where contractor received no fee for its help and there was no evidence to indicate that bank would be any more willing to advance funds on home improvement loan simply because contractor would be doing work, contractor was not "arranger of credit" within meaning of § 1603(f) of Truth in Lending Act (*15 USCS § 1603(f)*). *Gerasta v Hibernia Nat'l Bank (1975, ED La) 411 F Supp 176*, affd in part and revd in part on other grounds (1978, CA5 La) *575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Automobile dealership which provided to debtor consumer credit that was extended by automobile manufacturer

under business relationship, and which had knowledge of credit terms in transaction and participated extensively in preparation of contract documents required in connection with extension of credit was "arranger of credit" within meaning of *12 CFR § 226.2* and was therefore "creditor" within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.); automobile manufacturer was "extender of credit" as defined in *12 CFR § 226.2* and was, therefore, also creditor within meaning of Act. *Lauletta v Valley Buick (1976, WD Pa) 421 F Supp 1036.*

Homeowners' TILA (*15 USCS §§ 1601* et seq.) claim against construction company is dismissed with prejudice, even though company referred them to mortgage broker who then located lender for project, because, at most, they allege that company arranged financing of their home improvements and "arrangers of credit" are no longer considered creditors under § 1602(f). *DeLeon v Beneficial Constr. Co. (1999, ND Ill) 55 F Supp 2d 819.*

Lender was entitled to summary judgment in action by borrowers seeking to rescind refinancing agreement for failure to provide borrowers with three-day advance disclosures as required under *15 USCS §§ 1639(a), 1602(aa)* of Home Ownership and Equity Protection Act, *15 USCS § 1601* et seq.; disclosures were not triggered because under plain language of *12 CFR § 226.32(a)(1)(ii)*, yield spread premium could not be included in eight percent trigger calculation under *15 USCS § 1602(aa). Mills v Equicredit Corp. (2004, ED Mich) 344 F Supp 2d 1071.*

Where plaintiff homeowner alleged that she refinanced existing mortgage on her home, that defendants, title company and its principal, in connection with predatory lending scheme that targeted African-Americans, acted as settlement agents for refinancing, but did not allege that either defendant extended consumer credit or that they regularly did so, claim under *15 USCS §§ 1602(f), 1640(a)* failed. *Beard v Worldwide Mortg. Corp. (2005, WD Tenn) 354 F Supp 2d 789.*

Modification exemption applied, and therefore recission notice consistent with 12 CFR § 226, app. H-9, had to be provided to three borrowers pursuant to *15 USCS § 1635(a)* when they refinanced prior original loan and borrowed larger sum of money, even though original lender had assigned its interest in original loan before refinancing occurred and even though fourth borrower had been added to refinanced loan; *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)* defined "creditor" as person to whom debt arising from consumer credit transaction was initially payable, and original lender did not relinquish its status as "creditor" when it assigned its interest in original loan to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Use of tradename for arranger of credit does not comply with requirements of disclosure of name of creditor where tradename is not true identity of any legal entity. *Rainey v Credithrift of America # 5, Inc. (1983, La App 4th Cir) 441 So 2d 278.*

**14.--Regularity of extension or arrangement**

Realty company was "creditor," within meaning of *15 USCS § 1602(f)*, and its extensions of credit were not isolated and incidental transactions which definition of "creditor" was meant to exempt, where realty sales were significant aspect of realty company's business, and where, in nearly half of sales, realty company extended credit to its customers, each of such credit transactions involving large amounts of money. *Eby v Reb Realty (1974, CA9 Ariz) 495 F2d 646, 28 ALR Fed 539.*

Private individual who admitted to conducting lending business whose extension of credit totaled 15 or 20 loans and more than $ 500,000 in outstanding loans, is "creditor" under *15 USCS § 1602(f). AFL-CIO v Marshall (1979, App DC) 199 US App DC 54, 617 F2d 636*, vacated, in part *(1980) 449 US 809, 66 L Ed 2d 12, 101 S Ct 56* and affd in part and vacated in part on other grounds *(1981) 452 US 490, 69 L Ed 2d 185, 101 S Ct 2478, 11 ELR 20736.*

Creditor is one who regularly extends credit for which payment of finance charge is or may be required; if he does so, then he must make disclosures required, whether or not finance charge is actually imposed on each customer under credit plan. *Garland v Mobil Oil Corp. (1972, ND Ill) 340 F Supp 1095.*

Automobile dealers were creditors within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) where they regularly extended consumer credit in sale of automobiles payable in more than 4 installments, and credit extended was other than open end. *Vines v Hodges (1976, DC Dist Col) 422 F Supp 1292.*

Definition of creditor in *15 USCS § 1602(f)* should be applied so as to exclude only those who make isolated and incidental extensions of credit; where person's personal extension of credit is regular (though intermittent) part of his business, and he is acquainted with requirements of Truth in Lending Act, he is subject to that Act. *James v Ragin (1977, WD NC) 432 F Supp 887.*

Bank was extender of credit within meaning of *15 USCS § 1602(f)* and Regulation Z (*12 CFR § 226.2*) rather than mere assignee of retail installment contract where pursuant to agreement with retailer, bank was assigned 61 contracts within 4 1/2 month period, bank furnished retailer form contracts of consumer credit agreement upon which its logo appeared, and agreement stated that retailer would transfer agreement to bank. *Jennings v Edwards (1978, MD NC) 454 F Supp 770,* affd without op (1979, CA4 NC) *598 F2d 614.*

Claim against individual defendants, alleging violations of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) will be dismissed, where loan made for use of husband and wife plaintiffs, through corporation formed solely to evade state usury statute, was only extension of consumer credit made by defendants in that calendar year, since extending one loan does not make lenders creditors within meaning of Regulation Z (*12 CFR § 226.2*), notwithstanding that loan was consumer credit transaction within meaning of § 1602(h). *Selman v Manor Mortg. Co. (1982, ED Mich) 551 F Supp 345.*

Where lender who defrauded bankruptcy debtors through scam sale and lease-back transaction involving debtors' home contended that lender was not creditor within meaning of *15 USCS § 1602(f)* because lender did not regularly extend consumer creditor, lender was creditor since lender originated at least two mortgages identified in *15 USCS § 1602(aa)* within year. *O'Brien v Cleveland (In re O'Brien) (2010, BC DC NJ) 423 BR 477.*

Seller of household goods and appliances who extended credit to buyer although it was not seller's usual practice to extend credit was not creditor under Consumer Protection Act, and therefore Act did not apply. *Lowell & Austin, Inc. v Truax (1985) 146 Vt 448, 507 A2d 949.*

**B.Particular Creditors 15. Assignees**

Where individuals, at time that they purchased "lifetime" memberships in health clubs, executed promissory notes which were assigned to finance companies, finance companies as well as health clubs were liable as "creditor-extenders" of credit, since finance companies operated under definite working arrangement with health clubs. *Joseph v Norman's Health Club, Inc. (1976, CA8 Mo) 532 F2d 86.*

Assignee of installment credit appliance contract is creditor, within meaning of *15 USCS § 1602(f)* and Regulation Z, *12 CFR §§ 226.2(a)* and *226.8(c)(1),* with whom defendant retailer had dealer-financing agreement and to whom 65 percent of dealer's contracts were assigned, and failure to disclose assignee as creditor constitutes violation of *12 CFR §§ 226.6* and *226.8*. *Eustace v Cooper Agency, Inc. (1984, CA10 NM) 741 F2d 294.*

Assignees of consumer retail installment sales contracts who regularly extend or arrange for extension of credit to consumers through assignors of such contract can themselves be "creditors" within meaning of Truth in Lending Act; lenders cannot escape Truth in Lending Act status as creditors by using sales companies as "frontmen," and even though finance companies may have had no direct contact with contract debtors, factfinder could reasonably conclude from companies' long standing relationship with health clubs that finance companies were prime movers in credit sales and thus had arranged to extend credit to consumers. *Garza v Chicago Health Clubs (1972, ND Ill) 347 F Supp 955, 16 FR Serv 2d 820.*

In action under Truth in Lending Act, arising out of plaintiffs' purchase of mobile home, banking corporation which

was assignee of sales contract between plaintiffs and mobile home dealer was issuer of credit within meaning of Act. *Reed v Washington Trailer Sales, Inc. (1974, MD Tenn) 393 F Supp 886.*

Credit corporation, as assignee of retail installment contract from retail auto dealer, is not liable for failure to disclose terms of side loan made to finance down payment of automobile, since corporation was not creditor within meaning of *15 USCS § 1602* on 2 earlier assignments arising out of same purchase where it refused to accept initial assignment because of insufficient down payment, subsequent installment agreement was never sent to corporation, and third installment agreement incorporated terms of side loan. *Marcano v Northwestern Chrysler-Plymouth Sales, Inc. (1982, ND Ill) 550 F Supp 595, 37 FR Serv 2d 690.*

Finance company was assignee of credit agreement, not "creditor," under *15 USCS § 1602(f)*, where credit agreement clearly identified seller of satellite dish as sole seller of credit for satellite purchases, seller provided credit disclosure statements to consumer, and agreement indicated that finance company could purchase credit agreement. *Canaday v Household Retail Servs. (2000, MD Ala) 119 F Supp 2d 1258*, affd (2001, CA11 Ala) *268 F3d 1067.*

Assignee to financing agreement for purchase of automobile was not liable for used car dealer's alleged violations of Truth in Lending Act where giving full effect to holder rule, *16 C.F.R. § 433.2*, would have negated protections that *15 USCS § 1602(f)* provided for assignee. *Diaz v Paragon Motors of Woodside, Inc. (2006, ED NY) 424 F Supp 2d 519.*

Borrowers did not state claim against mortgage loan servicer for assignee liability under *15 USCS § 1641(e)* because there were no allegations as to whether violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., were apparent on face of disclosure statements; however, borrowers sufficiently alleged that servicer qualified as creditor under *15 USCS § 1602(f)* based on its acquisition of or merger with lender that made borrowers' loan. *Seldon v Home Loan Servs. (2009, ED Pa) 647 F Supp 2d 451, 74 FR Serv 3d 235.*

Where health club regularly assigned membership contracts of installment-paying customers to finance company, finance company may be viewed directly as extender of consumer credit which health club had merely arranged; hence, both health club and finance company were "creditors" within meaning of Truth in Lending Act. *Glaire v La Lanne-Paris Health Spa, Inc. (1974) 12 Cal 3d 915, 117 Cal Rptr 541, 528 P2d 357.*

Assignee of automobile installment sales contract who exercised sufficient control over central terms of contract and used dealer as mere "conduit" in supplying customers to assignee must be considered creditor within meaning of *15 USCS § 1602. Ford Motor Credit Co. v Spann (1980) 153 Ga App 535, 265 SE2d 863.*

**Unpublished Opinions**

Unpublished: Homeowner's claims under Truth in Lending Act and Home Ownership and Equity Protection Act were dismissed pursuant to *15 USCS § 1602(f)* where he failed to differentiate between entities involved in refinancing of his house or explain how they were creditors or assignees of his loan. *Silvas v GMAC Mortg., LLC (2009, DC Ariz) 2009 US Dist LEXIS 118854.*

**16. Automobile dealers**

Automobile dealer who had extended credit to plaintiff in connection with purchase of automobile, as well as finance company to which dealer had assigned contract, were creditors under Truth in Lending Act and Regulation Z, since dealer could not have assigned contract to finance company without first having rights under contract itself. *Philbeck v Timmers Chevrolet (1973, ND Ga) 361 F Supp 1255*, revd on other grounds (1974, CA5 Ga) *499 F2d 971*, reh den (1974, CA5 Ga) *502 F2d 1167.*

Automobile dealer which did not itself finance credit sales of its automobiles, but had to obtain credit approval from one of lenders with which it regularly dealt, was liable as "creditor" for alleged violations of disclosure requirements of Truth in Lending Act and Regulation Z, since "creditor" is one who regularly extends or arranges for

extension of credit for which finance charge is required; dealer initially extended credit to automobile purchaser, since it subsequently assigned sales contract to lending institution. *Meyers v Clearview Dodge Sales, Inc. (1974, ED La) 384 F Supp 722,* affd in part and revd in part on other grounds (1976, CA5 La) *539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Defendant automobile dealer which frequently dealt with "Ford Motor Credit Corporation" and prepared customer statements to be forwarded to such creditor and negotiated interest rate with buyer was "arranger of credit" within Truth in Lending Act. *Gonzalez v Schmerler Ford (1975, ND Ill) 397 F Supp 323.*

Only automobile dealer, not assignee of dealer's interest in retail installment contract with automobile purchaser, was "creditor" under *15 USCS § 1602(f),* and assignee could be liable only if alleged violation was apparent on face of disclosure statement. *Baldwin v Laurel Ford Lincoln-Mercury, Inc. (1998, SD Miss) 32 F Supp 2d 894.*

Used car dealer was creditor under *15 USCS § 1602(f),* part of Truth in Lending Act and Regulation Z at 12 CFR pt. 226, and thus, was liable for dealer's failure to honor disclosed finance rate under *15 USCS § 1638(b)* and its attempt to force consumer to accept higher rate; thus, consumer was entitled to statutory damages under *15 USCS § 1640(a). Muro v Hermanos Auto Wholesalers, Inc. (2007, SD Fla) 514 F Supp 2d 1343.*

By holding itself out on installment contract as creditor-seller to whom purchasers were obligated to pay amount financed and finance charge, dealership was person to whom debt arising from consumer credit transaction was initially payable on face of evidence of indebtedness. dealership also regularly extended credit to its customers to finance their vehicle purchasers, at least for such limited time until contracts could be validly assigned to third-party lender; therefore, dealership met statutory definition of TILA creditor at *15 USCS § 1602(f)* as matter of law. *Patton v Jeff Wyler Eastgate, Inc. (2007, SD Ohio) 608 F Supp 2d 907.*

In Chapter 13 bankruptcy case, in which debtor challenged alleged predatory loan transaction, debtor had no claim under Home Ownership Equity Protection Act, *15 USCS § 1639* et seq., because points and fees, calculated pursuant to *15 USCS §§ 1602(aa), 1605(c)* and *12 C.F.R. §§ 226.4(c)(7), 226.32(b)(1),* did not exceed eight percent of total loan amount. *Bell v Parkway Mortg., Inc. (In re Bell) (2004, BC ED Pa) 309 BR 139,* mod and reh den (2004, BC ED Pa) *314 BR 54, 59 FR Serv 3d 763.*

Loan was not "high cost" Home Ownership and Equity Protection Act loan, where debtor paid part of mortgage broker's fee at closing and balance of fee was paid by lender and was to be recouped from debtor via slightly higher interest rate; mortgage qualified for Truth in Lending Act, *15 USCS § 1601* et seq., protections only where mortgagor is required to pay certain points and fees at or before closing of loan, not over course of loan. *Collins v Canton Home Improvement (In re Collins) (2004, BC ND Miss) 310 BR 299.*

Loan was not "high cost" Home Ownership and Equity Protection Act loan where debtor borrowed $ 25,900, debtor paid part of mortgage broker's fee from her funds at closing, balance of fee was paid by lender, and lender was to recoup latter portion of fee from debtor through slightly higher interest rate; while lender's contribution to mortgage broker's fee would obviously be more than repaid by debtor over life of loan through elevated interest rate, plain meaning of statute, i.e., "payable by consumer at or before closing," could not be ignored. *Sigle v Canton Home Improvement (In re Sigle) (2004, BC ND Miss) 310 BR 303.*

In absence of any evidence to establish whether automobile dealer received any type of consideration for referring plaintiff purchaser to loan company which financed his purchase of automobile, or any evidence concerning knowledge on part of dealer of credit terms, or any evidence to establish participation by dealer in preparation of credit contract documents, there exists genuine issue as to material fact of dealer's status as "creditor" under Truth in Lending Act. Owens v Modern Loan Co. (1972, F DC Ky) CCH CCG P 99099.

One who sells automobiles on credit to consumers, with financing charges imposed on installment payment program, is "creditor," subject to requirements of Truth in Lending Act, under *15 USCS § 1602(f). Washington Motor*

*Sales v Ferreira (1974) 131 NJ Super 328, 329 A2d 599,* affd *(1976) 140 NJ Super 529, 357 A2d 17,* affd *(1977) 75 NJ 136, 380 A2d 703.*

Used car dealer who was lessor of automobile was "creditor" within meaning of Truth in Lending Act (*15 USCS § 1602*) where under terms of contract lessee was to pay sum of $ 5,400 in 36 monthly installments of $ 150 and dealer's newspaper advertisement had listed car in question and 15 others for sale with complete financing available. *Tom Benson Chevway Rental & Leasing, Inc. v Allen (1978, Tex Civ App El Paso) 571 SW2d 346,* cert den *(1979) 442 US 930, 61 L Ed 2d 298, 99 S Ct 2861.*

**17. Banks**

Bank which, pursuant to agreement with health spa, purchased at constant discount rate most of promissory notes or retail installment contracts entered into by health spa and its customers was creditor within meaning of Truth in Lending Act, where bank checked credit references of each member and had final choice of accepting or rejecting particular note. *Kriger v European Health Spa, Inc. (1973, ED Wis) 363 F Supp 334.*

Bank which had "handled financing" of used automobile, as well as automobile dealer, was creditor within meaning of Truth in Lending Act and Regulation Z. *Starks v Orleans Motors (1974, ED La) 372 F Supp 928,* affd without op (1974, CA5 La) *500 F2d 1182.*

Borrower's claim for rescission under 1994 Home Ownership and Equity Protection Act (HOEPA),*15 USCS § 1602(aa),* failed because borrower had not established that refinance loan from bank was "high cost" loan that was entitled to HOEPA protections. *Reese v JPMorgan Chase & Co. (2009, SD Fla) 22 FLW Fed D 81.*

Pursuant to *15 USCS § 1602(u),* "material disclosures" are defined to include disclosures required by *15 USCS § 1639(a),* and if debtors' contention was correct, then right to rescind continued until latter of three days after those material disclosures were provided by bank or until three years after consummation of transaction under *15 USCS § 1635(a)* and (f). *Merriam v Chase Manhattan Mortg. Corp. (In re Merriam) (2005, BC WD NY) 333 BR 22.*

Because bank had fully disbursed entire loan to debtors at closing, it could not possibly have contemplated repeat transactions on line of credit it was extending debtors through its loan; accordingly, loan failed to satisfy definition of open end credit plan, and could not qualify for any exemption from category of mortgages to which *15 USCS § 1602(aa)* refers. *Merriam v Chase Manhattan Mortg. Corp. (In re Merriam) (2005, BC WD NY) 333 BR 22.*

Where fees and points charged to debtors totaled $ 3,176.50, and total loan amount was $ 40,073.50 (i.e., principal of refinance loan plus principal of credit line, less prepaid fees and points), total of fees and points represented only 7.9266847 percent of bank's total loan, less than eight percent threshold for violation of *15 USCS § 1602(aa)(1)(B). Merriam v Chase Manhattan Mortg. Corp. (In re Merriam) (2005, BC WD NY) 333 BR 22.*

Where bank regularly uses automobile dealer as conduit through which to place installment sales contracts with purchasers, finance company or bank is creditor as defined in *15 USCS § 1602(f). Walker v Security Trust Co. (1976) 85 Misc 2d 614, 379 NYS2d 308.*

**18. Credit cards**

Where Mastercharge credit cardholder alleged violation of Truth in Lending Act by bank issuing credit card and by "Interbank," credit card association which advertised Mastercharge credit card and received dues and assessments from member banks and licensees computed on basis of card accounts having balances, evidence that plaintiff obtained credit in Europe through banks which had no contractual relationship with bank that issued credit card to plaintiff, and evidence that European banks forwarded charge slips through Interbank, raised issues of material fact as to whether Interbank arranged for extension of credit, precluding summary judgment in favor of Interbank. *Whitman v Connecticut Bank & Trust Co. (1975, DC Conn) 400 F Supp 1341.*

Customer's Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claim failed since neither of companies who purchased customer's defaulted credit card account were alleged to be person to whom debt was initially payable; neither of companies were creditors under *TILA. Neff v Capital Acquisitions & Mgmt. Co. (2002, ND Ill) 238 F Supp 2d 986,* affd (2003, CA7 Ill) *352 F3d 1118.*

Where there were no allegations that either defendant credit card network ever extended any type of credit to cardholders, neither could be considered creditor under Truth in *Lending Act. In re Currency Conversion Fee Antitrust Litig. (2003, SD NY) 265 F Supp 2d 385, 2003-2 CCH Trade Cases P 74099.*

**19.--Issuers**

Oil company which issued credit card was not creditor covered by Truth in Lending Act [prior to 1974 amendment to *15 USCS § 1602(f)* dealing with credit card issuers], where company had initiated practice of imposing single "late payment charge" upon credit customer who owed $ 25 or more for over 90 days and of terminating delinquent customer's credit upon imposition of such late payment charge. *Garland v Mobil Oil Corp. (1972, ND Ill) 340 F Supp 1095.*

Where holder of oil company's credit card was billed on monthly basis, was assessed monthly charge of 1 1/2 percent for bills not paid in full within 60 days, and was permitted to continue to use credit card for purchases even though account remained unpaid and monthly charges continued to be assessed, with accounts containing unpaid bills 180 days old being canceled by oil company, oil company was "creditor" within meaning of *15 USCS § 1602(f)*, oil company's status as "creditor" depending upon whether monthly charge imposed on bills not paid in full within 60 days constituted "finance charge" under *15 USCS § 1605. Kroll v Cities Service Oil Co. (1972, ND Ill) 352 F Supp 357, 17 FR Serv 2d 323.*

Charge card company was held not to regularly "arrange for extension of credit for which payment of finance charge is required" [prior to 1974 amendment to *15 USCS § 1602(f)* dealing with credit card issuers] and, hence, not to be creditor covered by Truth in Lending Act, where agreement between company and its cardholders provided for payment of charges upon receipt of periodic statements except for certain purchases as to which deferred payment plan was available with respect to which cardholder signed additional agreement at time of purchase, there being legend on statement that it was "payable in full upon receipt of statement," and there being no evidence that card company did in fact permit its cardholders to defer payment. *Rootberg v American Express Co. (1972, SD NY) 352 F Supp 949.*

Financial institution, which issues credit cards to certain persons, does not become "creditor" when it, in unrelated transactions, purchases accounts receivable, on accounts of other persons to whom it has never issued credit card, simply because company is also card issuer to other consumers. *Neff v Capital Acquisitions & Mgmt. Co. (2002, ND Ill) 238 F Supp 2d 986,* affd (2003, CA7 Ill) *352 F3d 1118.*

Law firm did not qualify as agent of credit card issuer because it did not enter into any type of contractual relationship with issuer, and cardholder had no independent credit privileges with law firm. *Langenfeld v Chase Bank United States, N.A. (2008, ND Okla) 537 F Supp 2d 1181.*

**20. Finance companies**

Credit company which approves, prior to execution of retail installment contract, buyer's credit application, and which subsequently purchases contract without recourse against seller pursuant to prior arrangement, is "creditor" within meaning of *15 USCS §§ 1601* et seq. if finance company actually extends credit while seller merely arranges for its extension without financing any transactions, any sales are contingent upon finance company's approval of buyer's credit worthiness, and acceptance of contract and assignment become operational simultaneously and divests seller of any risk involved in transaction; statement in contract which notifies buyer that contract is accepted by seller and assigned to finance company is sufficient disclosure of finance company's creditor status since such statement discloses nature of relationship of finance company to transaction. *Ford Motor Credit Co. v Cenance (1981) 452 US 155, 68 L*

*Ed 2d 744, 101 S Ct 2239.*

Finance company which routinely finances sale of automobiles by dealers in exchange for assignment of automobile purchaser's original note is "creditor" under *15 USCS § 1602(f)* and *12 CFR § 226.2*, and designation of finance company as "subsequent assignee" is insufficient to identify it as creditor and violates Regulation Z. *Cenance v Bohn Ford, Inc. (1980, CA5 La) 621 F2d 130,* reh den (1980, CA5 La) *629 F2d 1349* and affd in part and revd in part on other grounds *(1981) 452 US 155, 68 L Ed 2d 744, 101 S Ct 2239.*

Finance company which regularly used automobile dealer as conduit through which to place its installment sales contracts with customers, finance company preparing contracts and giving them to automobile dealer who assigned contracts to finance company, was creditor within meaning of *15 USCS § 1602(f). Philbeck v Timmers Chevrolet (1973, ND Ga) 361 F Supp 1255,* revd on other grounds (1974, CA5 Ga) *499 F2d 971,* reh den (1974, CA5 Ga) *502 F2d 1167.*

In action by husband and wife seeking damages from defendant finance company for alleged Truth in Lending Act violations arising out of personal loan transaction, finance company, which is in business of extending credit for which payment of finance charge is required, is "creditor" within meaning of *15 USCS § 1602(f). Doggett v Ritter Fin. Co. (1974, WD Va) 384 F Supp 150,* affd in part and revd in part on other grounds (1975, CA4 Va) *528 F2d 860.*

Where automobile dealer merely served as "conduit" for placing finance company's contracts with consumers and then regularly assigned contracts to finance company, finance company was "creditor" within meaning of *15 USCS § 1602(f)* and Regulation Z, and finance company was not merely "subsequent assignee" of purchaser's note so as to be entitled to protection under *15 USCS § 1641. Meyers v Clearview Dodge Sales, Inc. (1974, ED La) 384 F Supp 722,* affd in part and revd in part on other grounds (1976, CA5 La) *539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Where finance company assumed so close relationship with seller that it became integral part of seller's financing program, finance company could be viewed directly as extender of consumer credit, under *15 USCS § 1602(f),* so as to give finance company full responsibility for disclosures required under Truth In Lending Act. *Glaire v La Lanne-Paris Health Spa, Inc. (1974) 12 Cal 3d 915, 117 Cal Rptr 541, 528 P2d 357.*

Where finance company regularly uses automobile dealer as conduit through which to place installment sales contracts with purchasers, finance company or bank is creditor as defined in *15 USCS § 1602(f). Walker v Security Trust Co. (1976) 85 Misc 2d 614, 379 NYS2d 308.*

**21. Hospitals**

Hospital that deliberately establishes for in-patients option of electing for discharge to arrange to pay their bills in installments is creditor for purposes of *15 USCS § 1602. Bright v Ball Memorial Hospital Asso. (1980, CA7) 616 F2d 328.*

Patient's Fair Credit Billing Act (*15 USCS §§ 1666* et seq.) claim against hospital must be dismissed, where legislative history indicates Congress did not intend hospitals to be covered, even if patient worked out arrangement with hospital to reconcile all his bills, because such agreement is classic example of "informal workout arrangement" not within coverage of § 1602(f). *Finnegan v University of Rochester Med. Ctr. (1998, WD NY) 21 F Supp 2d 223.*

Bank's motions to dismiss were granted because Truth in Lending Act, *15 USCS § 1601* e. seq., did not govern credit denial or racially discriminatory lending; Equal Credit Opportunity Act, *15 USCS § 1691* et seq., claim failed because race of loan officers did not support inference of discriminatory intent. *Powell v Am. Gen. Fin., Inc. (2004, ND NY) 310 F Supp 2d 481.*

**22. Insurance companies**

Within meaning of Truth in Lending Act, insurance company is not "creditor" of its policyholders with respect to installment payment plans for automobile insurance coverage, where insured is permitted to stop payments at any time, with resulting cessation of insurance benefits and with no continuing liability for insurance coverage already supplied; when automobile insurance is payable in installments under either of 2 plans (plan whereby 40 percent of year's premium is payable at time of application, 30 percent payable at end of 3 months, and 30 percent at end of 6 months, or plan whereby 10 percent of premium is payable at time of application and 10 percent payable on same day of each month thereafter until total of 10 payments is made), but there is no obligation on part of insured to make any installment payment, result being that if he does not make any payment, insurance will be canceled, policyholder is not "debtor" of insurance company, insurance company is not "creditor" of insured, and hence there is no credit and no consumer credit, so that no duty of disclosure under Truth in Lending Act arises. *Gerlach v Allstate Ins. Co. (1972, SD Fla) 338 F Supp 642, 16 FR Serv 2d 80.*

Contract for installment payment of insurance policy premiums is not extension of credit, and so is not subject to Truth in Lending Act, *15 USCS §§ 1601* et seq., where policy provided for initial down payment, plus monthly payments, including interest for ten months, but customer was not obliged to finish making payments, customer could cancel contract and receive refund of unearned premiums at any time, and failure to make payment would result in lapse of policy, because regulations provide that TILA does not apply unless customer is obligated to continue making payments. *Kuhfeldt v Liberty Mut. Ins. Co. (1993, ED Mich) 833 F Supp 632.*

Insurance company which guaranteed bank loans for its customers without disclosing its policy of applying refunded premiums to customers' accounts instead of returning them directly to customers, did not violate disclosure requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z (*12 CFR §§ 226.1* et seq.), since guarantor of note is not "creditor" within contemplation of Act and Regulation Z and is not required to make disclosures. *Carter's Ins. Agency, Inc. v Franklin (1982, La App 1st Cir) 428 So 2d 808.*

**23. Lessors**

Consumers' claim under Truth-in-Lending Act (TILA) against lessor of television programming equipment, including remote control, failed as lessor was not creditor in general as it was not creditor of consumers where transaction was never consummated and where leases with consumers were not credit sales as defined in *TILA. Ysasi v Nucentrix Broadband Networks, Inc. (2002, SD Tex) 205 F Supp 2d 683.*

Indebtedness represented by convenience check that credit card issuer gave to its credit card holder, which credit card holder used to pay off credit card debt to creditor, was nondischargeable in bankruptcy under *11 USCS § 523(a)(2)(C)* because check was cash advance that was extension of consumer credit under open end credit plan. *MBNA Am. Bank, N.A. v Ashland (In re Ashland) (2004, BC DC Mass) 307 BR 317, 52 CBC2d 1.*

Lessor of mobile home who enters into agreement for rental of mobile home which includes purchase option clause providing for purchase for nominal sum after 10 years is creditor for purposes of *15 USCS § 1602* where security agreements entered into by lessor are sold to banks or finance companies in ordinary course of business. *Gulf Homes v Gonzales (1983, App) 139 Ariz 1, 676 P2d 635, 37 UCCRS 1823,* approved, in part, vacated, in part, en banc *(1984) 138 Ariz 596, 676 P2d 628.*

**24. Mortgages**

Provisions of Home Ownership and Equity Protection Act of 1994, set forth in *15 USCS §§ 1602(aa), 1610, 1639,* and *1640,* did not repeal federal parity provisions set forth in Alternative Mortgage Transaction Parity Act of 1982, *12 USCS §§ 3801* et seq., and state regulations that attempted to impose additional restrictions on alternative mortgage transactions made by state chartered banks were not proper. *Ill. Ass'n of Mortg. Brokers v Office of Banks & Real Estate (2002, CA7 Ill) 308 F3d 762.*

Lending institutions accused of violating disclosure provisions of Truth in Lending Act were in business which

involved extension of credit in connection with loans on real estate within meaning of *15 USCS § 1602(e)*, (f). *Umdenstock v American Mortgage & Inv. Co. (1973, WD Okla) 363 F Supp 1375, 1974-1 CCH Trade Cases P 74955, 18 FR Serv 2d 85*, affd in part and revd in part on other grounds (1974, CA10 Okla) *495 F2d 589, 1974-1 CCH Trade Cases P 75039, 18 FR Serv 2d 1075.*

Borrowers' potential class was limited to those who were actually injured in same manner as borrowers (having refinanced their Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 USCS §§ 1602(aa)* and *1639*, loans with another lender and incurring prepayment penalties) upon finding that *15 USCS § 1635* did not preclude equitable remedy of recession under circumstances. *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26* (criticized in *Morris v Wachovia Sec., Inc. (2004, ED Va) 223 FRD 284, 59 FR Serv 3d 169)* and (criticized in *Bell v Ameriquest Mortg. Co. (2004, ND Ill) 2004 US Dist LEXIS 24289)* and (criticized in *Murry v America's Mortg. Banc, Inc. (2005, ND Ill) 2005 US Dist LEXIS 11751).*

In case of first impression involving *15 USCS § 1602(aa)(1)(B)*, District Court finds that mortgage qualifies for protections under Truth in Lending Act, *15 USCS §§ 1601* et seq., only where mortgagor is required to pay certain points and fees at or before closing of loan, not over course of loan. *Terry v Cmty. Bank of N. Va. (2003, WD Tenn) 255 F Supp 2d 811*.

Borrower had stated actionable claim against assignee of mortgage lender under Truth In Lending Act, as amended by Home Owners Equity Protection Act, *15 USCS §§ 1602(aa), 1639*, when borrower alleged that lender had not disclosed mandatory monthly insurance payment that was required by Federal Housing Administration as mandatory monthly payment under loan, and assignee's motion to dismiss was denied. *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962.*

Mortgage company's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' complaint alleging that mortgage company was "creditor" under Truth in Lending Act, *15 USCS § 1602(f)(1)*, who failed to provide all of material disclosures set forth in *15 USCS § 1639(a)* was denied because documents attached as exhibit in support of motion were not indisputably authentic, and it was conceivable that borrowers could prove facts allowing relief. *Smith v Argent Mortg. Co. L.L.C. (2006, DC Colo) 237 FRD 436.*

Homeowners had to amend their claims against lenders and loan servicers to allege facts demonstrating that their loans were covered by Home Ownership Equity Protection Act under *15 USCS §§ 1602(aa), 1639. Biggins v Wells Fargo & Co. (2009, ND Cal) 266 FRD 399, 74 FR Serv 3d 25.*

Neither mortgage lender's parent (until 2007), nor trustee holder of secured mortgage deeds of trust, were creditors or assignees of creditors as defined by Truth in Lending Act, *15 USCS §§ 1601* et seq.: neither entity was party to which debt was initially payable, neither was "creditor" pursuant to *15 USCS § 1602(f)(1)*; further, because plaintiff did not allege TILA violation apparent on face of disclosure statement, neither qualified as lender's "assignee" pursuant to *15 USCS § 1641(e). Roach v Option One Mortg. Corp. (2009, ED Va) 598 F Supp 2d 741*, injunction den (2009, ED Va) *2009 US Dist LEXIS 11262.*

In case in which homeowner sued lender, asserting that it violated Home Ownership and Equity Protection Act (HOEPA), *15 USCS § 1639*, by engaging in pattern or practice of making high cost mortgage loans without regard to their ability to pay and lender filed *Fed. R. Civ. P. 12(b)(6)* motion to dismiss that claim, homeowner's loan was not high cost loan that triggered coverage of HOEPA since it did not meet either of criteria set forth in *15 USCS § 1602(aa)(1)* or *12 CFR § 226.32(a). Palmer v GMAC Commer. Mortg. (2009, DC Dist Col) 628 F Supp 2d 186.*

Borrower failed to sufficiently plead violation of Truth in Lending Act by lender and servicer under *15 USCS § 1635* because residential mortgage transactions, as defined under *15 USCS § 1602*, were excluded from three-year right of rescission and his claim for statutory damages was likely barred by one-year limitations period of *15 USCS § 1640(e). Delino v Platinum Cmty. Bank (2009, SD Cal) 628 F Supp 2d 1226.*

Mortgage holder was not "creditor" within meaning of Truth in Lending Act (TILA), *15 USCS §§ 1601-1667(e),* because loan to debtor was only mortgage loan mortgage holder ever made, and because residential loan transaction did not involve "dwelling" within meaning of TILA as real property in question contained five units. *Tavares v Sprunk (In re Tavares) (2003, BC DC Mass) 298 BR 195.*

Debtors' objection to creditor's claim was overruled, where debtors did not sustain their burden of proof to invalidate mortgage on basis of fraud; among other things, debtors signed three-day prior notice form under Home Ownership and Equity Protection Act of 1994 that conspicuously disclosed that their residence would secure loan. *In re Williams (2005, BC MD La) 330 BR 534.*

To be "creditor" required to disclose, among other things, "the identity of creditor required to make disclosure," mortgagee must fall under both prongs of *15 USCS § 1602(f). Patchell v Option One Mortg. Corp. (In re Patchell) (2005, BC DC Mass) 336 BR 1.*

Facts did not support debtors' attempt to cast loan as home improvement loan, or refinance, instead of loan used to acquire dwelling; loan was residential mortgage transaction in that debtors used funds to acquire their primary residence. *In re Schweizer (2006, BC DC Idaho) 2006 Bankr LEXIS 2124,* objection granted, in part, objection denied, in part, relief from stay denied, confirmation denied (2006, BC DC Idaho) *354 BR 272.*

Creditor had not stated viable claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., for violation of Home Owner's Equity Protection Act, because mortgage at issue did not meet requirements of *15 USCS § 1602(aa)(1)* when total points and fees did not exceed 8% of total loan amount. *Vincent v Ameriquest Mortg. Co. (In re Vincent) (2008, BC DC Mass) 381 BR 564.*

**Unpublished Opinions**

Unpublished: Mortgagor was not entitled to damages, rescission, and injunction preventing foreclosure on grounds that lender failed to make certain disclosures mandated by *15 USCS §§ 1639(a)(1)* and *1602(aa)(1),* because act did not apply to residential mortgages. *Booker v Wells Fargo Home Mortg., Inc. (2005, CA6 Mich) 138 Fed Appx 728.*

Unpublished: Debtor failed to show that lender knew or should have known that debtor qualified for refinance rate for title insurance set forth in § 5.6 of Manual of Title Insurance Rating Bureau of Pennsylvania at time of loan's closing because debtor failed to prove two of three requirements for obtaining refinance rate, and, thus, Home Ownership Equity Protection Act of 1994 disclosure requirements in *15 USCS § 1602(aa)(1)(B)* did not apply. *In re Fields (2008, CA3 Pa) 2008 US App LEXIS 13595.*

**25.--Assignees**

In homeowners' suit alleging that mortgage assignee was liable for all violations of law committed by original lender, homeowners were not entitled to summary judgment on Home Ownership and Equity Protection Act (HOEPA) claim, because material facts were in dispute as to whether certain finance charges incurred for loan were properly excluded from points and fees calculations that determine whether loan was covered by *HOEPA. Cooper v First Gov't Mortg. & Investors Corp. (2002, DC Dist Col) 238 F Supp 2d 50.*

Loan assignee's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' claims alleging that it was liable for original lenders' unlawful charges, costs, and interest assessed in issuance of loans secured by borrowers' home was granted where borrowers admitted that they had paid nothing at closing; thus, loans did not qualify as "high cost" loans under *15 USCS § 1602(aa)(1)(B),* and loan assignee, whose liability was predicted solely on its status as assignees of allegedly "high cost" loans pursuant to Truth in Lending Act, *15 USCS §§ 1601* et seq., could not be liable for claims based on allegedly improper acts of borrowers' creditors. *Terry v Cmty. Bank of N. Va. (2003, WD Tenn) 255 F Supp 2d 811.*

In borrowers' suit regarding second mortgage that mortgage company immediately assigned to assignee, on

assignee's motion to dismiss, borrowers could not state claim under Federal Truth in Lending Act, *15 USCS § 1601* et seq., based upon mortgage company's designation of assignee as recipient of borrowers' rescission notice because technical violation of Federal Reserve Board Regulation Z, 12 C.F.R. pt. 226 (2004), was minor deviation with no potential for actual harm. *Rodrigues v Members Mortg. Co. (2004, DC Mass) 323 F Supp 2d 202.*

Loan assignee's motion for summary judgment as to payee's claims under Truth in Lending Act was denied where payee's loan qualified as high cost loan under Home Owner's Equity Protection Act (HOEPA) because points and fees paid by payee at closing clearly exceeded 8% trigger, so that reasonable jury could conclude that payee was entitled to HOEPA protection and thus holder-in-due-course defense was not available to assignee. *Short v Wells Fargo Bank Minn., N.A. (2005, SD W Va) 401 F Supp 2d 549.*

**Unpublished Opinions**

Unpublished: District court properly concluded that mortgagor could not hold mortgagee's assignee liable under Truth in Lending Act (TILA) provisions, which imposed duties on "creditors," because mortgagor did not allege facts showing that assignee was "creditor" as defined in *15 USCS § 1602(f)* and *12 C.F.R. § 226.2(a)(17)*; there were two required elements for "creditor" under TILA, and assignee did not meet second element because her name did not appear on face of any of mortgage loan documents that mortgagor had signed. *Parker v Potter (2007, CA11 Fla) 2007 US App LEXIS 3391.*

**26.--Brokers**

Whether 10 individual obligees of promissory notes representing portions of mortgage loan which had been arranged by mortgage brokers were "creditors" within meaning of *15 USCS § 1602(f)* was factual question to be determined on remand, since term "creditor" was limited by statutory definition to those who "regularly" extend or arrange for extension of credit and it was possible that some or all of obligees lend money on regular basis. *Ljepava v M. L. S. C. Properties (1975, CA9 Cal) 511 F2d 935.*

*15 USCS § 1641*(d)(1), part of Home Ownership and Equity Protection Act overrides holder-in-due-course doctrine for high-interest mortgage loans, providing that person who purchases or is otherwise assigned mortgage that is referred to in *15 USCS § 1602(aa)* shall be subject to all claims and defenses with respect to that mortgage that consumer could assert against creditor of mortgage. *Reiser v Residential Funding Corp. (2004, CA7 Ill) 380 F3d 1027*, cert den (2005, US) *161 L Ed 2d 107, 125 S Ct 1301.*

Mortgage brokers were not "creditors" for purposes of liability under Truth in Lending Act, *15 USCS §§ 1601* et seq., when there was no showing that mortgage brokers regularly extended credit or that they were entities to which debt was to be payable. *Robey-Harcourt v Bencorp Fin. Co. (2002, WD Okla) 212 F Supp 2d 1332*, affd (2003, CA10 Okla) *326 F3d 1140.*

Summary judgment was granted in favor of mortgage broker with regard to Truth-In-Lending Act (TILA), *15 USCS § 1601* et seq., claims because broker was not "creditor" under TILA because broker did not extend credit or receive payments on loan and disclosure and other requirement of TILA were only applicable to creditors. *Viernes v Exec. Mortg., Inc. (2004, DC Hawaii) 372 F Supp 2d 576.*

Borrower's claim against mortgage broker for alleged violations of Truth in Lending Act (TILA) was dismissed because TILA only applied to creditors and mortgage broker was not creditor as defined by *15 USCS § 1602(f)*, as borrower did not allege that his mortgage was originally payable on its face or by agreement to mortgage company and did not allege additional facts to argue that mortgage broker met TILA's definition of creditor. *Wilson v Homecomings Fin. Network, Inc. (2005, ND Ohio) 407 F Supp 2d 893.*

Mortgage broker could not be held liable to Chapter 13 debtor for failing to provide disclosures under Truth in Lending Act, *15 USCS §§ 1601* et seq., because broker was not "creditor" as defined under *15 USCS § 1602*; debtor's

mortgage loan obligation was initially payable to lender, not to broker. *Maroun v New York Mortg. Co., LLC (In re Maroun) (2010, BC DC NH) 2010 BNH 8, 427 BR 200.*

Mortgage brokers who for commission had negotiated bank loans secured by junior mortgage on plaintiffs' home qualified as "arranging" creditors within meaning of Truth in Lending Act and Regulation Z. *Mills v State Nat'l Bank (1975, 1st Dist) 28 Ill App 3d 830, 329 NE2d 255.*

**27. Pawnbrokers**

Transaction in Alabama with pawnbroker created obligation to repay despite fact that neither pawn ticket nor receipt recited promise to do so and to hold pawnbroker immune from Truth in Lending Act (*15 USCS §§ 1601* et seq.) where plaintiff paid $ 880 for $ 200 loan over period of less than 2 years would be to withhold protection from area where it was most sorely needed. *Dennis v Handley (1978, ND Ala) 453 F Supp 833.*

Individuals cannot be held personally liable for Truth in Lending Act (*15 USCS §§ 1601* et seq.) violations by pawn shop they operate, where there is no evidence that either individual led any consumer to believe that pawn transactions were between consumer and them, because transactions were held out as being between pawn shop and its customers, and individuals are not "creditors" under § 1602(f). *Barlow v Evans (1997, MD Ala) 992 F Supp 1299.*

Pawnbroker is not exempt from Truth in Lending Act (*15 USCS §§ 1601* et seq.) as result of his pawnbroker status. *Paglia v Elliott (1985, Iowa) 373 NW2d 121.*

**28. Real estate vendors**

Purchaser of real estate may be able to prove state of facts to support claim under Consumer Credit Protection Act against vendor of real estate if he can prove that such vendor was one "who regularly extends, or arranges for extension of, credit for which payment of finance charge is required." *Sarter v Mays (1974, CA5 Ala) 491 F2d 675.*

Realty company is creditor for purposes of *15 USCS § 1602(f)* where realty sales on its own account are significant aspect of its business; where, in nearly half its sales, defendant realty company extended credit to its customers, it falls within definition of Act which applies to those who "regularly" extend or arrange for extension of credit. *Eby v Reb Realty (1974, CA9 Ariz) 495 F2d 646, 28 ALR Fed 539.*

Where purchasers gave to seller of residence note secured by second deed of trust on property, and seller assigned instruments to third party, seller was "creditor" within terms of *15 USCS § 1602(f). Littlefield v Walt Flanagan & Co. (1974, CA10 Colo) 498 F2d 1133.*

Realtor was creditor as defined in *15 USCS § 1602(f)* where (1) on at least 10 occasions in 5 years he had taken promissory notes and second deeds of trust to finance portions of purchase price of homes that he had sold, and (2) court determined that he extended credit to plaintiffs through lease-and-sale arrangement which, in court's view, was in all practical effect loan. *James v Ragin (1977, WD NC) 432 F Supp 887.*

Real estate vendor who took mortgage covering sum due on sale to purchasers was not "creditor" under *15 USCS § 1602* as "arranger of credit", since sale to purchasers was only instance in which vendor himself extended credit, vendor did not obtain financing for any other customers but arranged through realtor for funds to be available, vendor never received compensation for loans made to his customers, and vendor at no time participated in preparation of contract documents required in connection with loans to his customers. *Dorsey v Beads (1980) 288 Md 161, 416 A2d 739.*

**29. Miscellaneous**

Home improvement contractor who entered into contract with borrower to provide and install aluminum siding, as well as lending institution which financed home improvement contract, were statutory "creditors" within meaning of *15*

*USCS § 1602(f). Sosa v Fite (1974, CA5 Tex) 498 F2d 114.*

Employees of subdivision developer who, on behalf of developer, extended credit to home purchasers by providing additional financing through second mortgage on home, are creditors within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and are subject to liability under Act. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

Mobile home dealer who sold used mobile home under installment contract was "creditor" under *15 USCS § 1602(f)*, but transaction, while "credit sale", was one for business purposes and thus was exempt from Act under *15 USCS § 1603(1)*, where mobile home was purchased for rental purposes. *Puckett v Georgia Homes, Inc. (1974, DC SC) 369 F Supp 614.*

Seller of mobile home on credit was creditor within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) notwithstanding fact that extension of credit was made conditional on availability of financing. *Copley v Rona Enters. (1976, SD Ohio) 423 F Supp 979.*

Parent corporation was creditor within meaning of § 103(f) of Truth in Lending Act (*15 USCS § 1602(f)*) where wholly owned subsidiary was creditor, there were overlapping corporate officers, directors, and offices between corporations, and parent dominated subsidiary's extension of credit particularly in that it prepared from contract and insured its use in all credit dealings with customers. *Barber v Kimbrell's, Inc. (1976, WD NC) 424 F Supp 42*, affd in part and revd in part on other grounds (1978, CA4 NC) *577 F2d 216, 25 FR Serv 2d 815*, cert den *(1978) 439 US 934, 58 L Ed 2d 330, 99 S Ct 329* and (criticized in *Strang v JHM Mortgage Sec. Ltd. Partnership (1995, ED Va) 890 F Supp 499)* and (superseded by statute as stated in *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841).*

Loan originators are "creditors" for purposes of Truth in Lending Act (*15 USCS §§ 1601* et seq.), where their primary business is offering nonconforming loans to public and assessing finance charges, and loans are closed in names of originators, because originators meet definition of creditor under § 1602(f). *Noel v Fleet Fin. (1997, ED Mich) 971 F Supp 1102*, dismd, in part (1998, ED Mich) *183 FRD 618.*

Borrower proffered sufficient documentary evidence for material issues of fact on lender's status as statutory creditor under Truth in Lending Act, *15 USCS § 1601* et seq., and such evidence was sufficient to defeat partial summary judgment because retail installment sales contract was devoid of reference to lender's affiliate, who was not authorized to operate as financing company, installment sales form named lender as insured creditor, and lender executed assignment and transfer clause of contract and filed proof of claim in bankruptcy to collect on delinquent account. *Gonzalez-Ramos v Empresas Berrios, Inc. (2005, DC Puerto Rico) 360 F Supp 2d 373.*

Law firm's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' claim that law firm violated Truth in Lending Act, *15 USCS §§ 1601* et seq., by failing to provide all of material disclosures set forth in *15 USCS § 1639(a)* was granted because complaint did not contain any allegations creating inference that law firm was creditor in borrowers' refinancing transaction pursuant to *15 USCS § 1602(f)(1). Smith v Argent Mortg. Co., LLC (2006, DC Colo) 447 F Supp 2d 1194.*

Telephone company which is regulated utility is not creditor for purposes of Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.). *Moenning v Illinois Bell Tel. Co. (1985, 1st Dist) 139 Ill App 3d 521, 94 Ill Dec 103, 487 NE2d 980.*

In order for materialman on home construction project to become consumer creditor within meaning of *15 USCS § 1602(f)*, credit agreement must exist between materialman and homeowner, and agreement between materialman and contractor is insufficient. *Anderson v Wagner (1980) 207 Neb 87, 296 NW2d 455* (ovrld in part by *Strong v Omaha Constr. Indus. Pension Plan (2005) 270 Neb 1).*

Health club whose customers purchased membership contracts by means of installment payments was "creditor" within meaning of Truth in Lending Act. *Glaire v La Lanne-Paris Health Spa, Inc. (1974) 12 Cal 3d 915, 117 Cal Rptr*

*541, 528 P2d 357.*

**Unpublished Opinions**

Unpublished: Collection agency that obtained confession of judgment against defaulting debtor was not "creditor" as defined by *15 USCS § 1602(f)*, part of Truth in Lending Act, because agency did not regularly extend consumer credit and was not initially payable for debt arising from consumer credit transaction. *Piche v Clark County Collection Serv. (2004, CA9 Nev) 119 Fed Appx 104.*

Unpublished: Even where court assumed that husband's claims were not time-barred and that financial institutions were creditors under *15 USCS § 1602(f)*, because husband made no allegation that they failed to comply with Federal Truth in Lending Act's specific financial disclosure requirements, his claims were properly dismissed. *Marangos v Swett (2009, CA3 NJ) 2009 US App LEXIS 13998.*

Unpublished: Because rescission rules outlined in *15 USCS § 1635*, part of Truth in Lending Act (TILA), do not apply to residential mortgage transactions, as defined by *15 USCS § 1602(w)*, and it appeared that borrower who filed TILA complaint had residential mortgage, borrower's claim of rescission right would fail; however, since complaint was somewhat ambiguous, court based its dismissal instead on fact that claim for rescission, brought more than six years after transaction, was time-barred by § 1635(f), which closed door on actions filed more than three years after transaction. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

4 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1603*

§ 1603. Exempted transactions [Caution: See prospective amendment notes below.]

This *title [15 USCS §§ 1601* et seq.] does not apply to the following:

(1) Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) 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 and other than private education loans (as that term is defined in section 140(a) [*15 USCS § 1650(a)*]), in which the total amount financed exceeds $ 25,000.

(4) Transactions under public utility tariffs, if the Board determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

(5) Transactions for which the Board, by rule, determines that coverage under this *title [15 USCS §§ 1601* et seq.] is not necessary to carry out the purposes of this *title [15 USCS §§ 1601* et seq.].

(6) [Repealed]

(7) Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (*20 U.S.C. 1070* et seq.).

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Chapter 1, § 104, 82 Stat. 147; Oct. 28, 1974, P.L. 93-495, Title IV, § 402, 88 Stat. 1517; March 31, 1980, P.L. 96-221, Title VI, § 603(c), 94 Stat. 169, Oct. 15, 1982, P.L. 97-320, Title VII, § 701(a), 96 Stat. 1538; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2102(a), 110 Stat. 3009-398.)

(As amended Act Aug. 14, 2008, P.L. 110-315, Title X, Subtitle B, § 1022, 122 Stat. 3488; July 21, 2010, P.L. 111-203, Title X, Subtitle H, §§ 1100A(2), 1100E(a)(1), 124 Stat. 2107, 2111.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

**Amendment of para. (3), effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100E(a)(1), 124 Stat. 2111 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides: "Section 104(3) of the Truth in Lending Act (*15 U.S.C. 1603(3)*) is amended by striking '$ 25,000' and inserting '$ 50,000'.".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1974. Act Oct. 28, 1974 (effective 10/28/74, as provided by § 416 such Act, which appears as *15 USCS § 1665a* note) added para. (5).

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note) substituted para. (1) for one which read: "Credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations."; substituted para. (3) for one which read: "Credit transactions, other than real property transactions, in which the total amount to be financed exceeds $ 25,000."; and deleted para. (5) which read: "Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $ 25,000.".

1982. Act Oct. 15, 1982 (effective as provided by § 701(c) of such Act, which appears as as note to this section), added para. (6).

1996. Act Sept. 30, 1996 redesignated paras. (5) and (6) as paras. (6) and (7), respectively, and added a new para. (5).

2008. Act Aug. 14, 2008 (effective on enactment, as provided by § 1003 of such Act, which appears as *15 USCS § 1638* note), in para. (3), inserted "and other than private education loans (as that term is defined in section 140(a))".

Other provisions:

**Application of Oct. 15, 1982 amendment.** Act Oct. 15, 1982, P.L. 97-320, Title VII, § 701(c), 96 Stat. 1538; Jan. 12,

1983, P.L. 97-457, § 31, 96 Stat. 2511, provides: "The amendment made by subsection (a) and subsection (b) [amending this section and adding *20 USCS § 1099*] shall be effective with respect to loans made prior to, on, and after the date of enactment of this Act [enacted Oct. 15, 1982].".

**Exceptions to Truth in Lending Act and Expedited Funds Availability Act.** For temporary exceptions to the Truth in Lending Act (*15 USCS §§ 1601* et seq.) and the Expedited Funds Availability Act (*12 USCS §§ 4001* et seq.) for transactions within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (*42 USCS § 5170*), has determined that a major disaster exists, see *12 USCS § 4008* note.

**Adjustments for inflation.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100E(b), 124 Stat. 2111, provides: "On and after December 31, 2011, the Bureau shall adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act [*15 USCS §§ 1603(3)* and *1667(1)*] (as amended by this section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $ 100, or $ 1,000, as applicable.".

**NOTES:**

Code of Federal Regulations:

Federal Deposit Insurance Corporation--Filing procedures, *12 CFR 303.0* et seq.

Related Statutes & Rules:

This section is referred to in *12 USCS § 2606*; *15 USCS § 1645*.

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 13, 14.*
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1.*
*69 Am Jur 2d, Securities Regulation--Federal § 288.*

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:

25 *Rabkin & Johnson, Current Legal Forms, § 21.30*, Sales and Exchanges.
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:31, 32, 45, 48.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection §§ 10, 18.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.03.
1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.18.

1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.01.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.7.

Annotations:
What constitutes "business or commercial" purpose within meaning of § 104(1) of Truth in Lending Act (*15 USCS § 1603(1)*), exempting business or commercial credit transactions from act. *54 ALR Fed 491*.
Who is "creditor" within meaning of § 103(f) of Truth in Lending Act (*15 U.S.C.A. § 1602(f)* [*15 USCS § 1602(f)*]). *157 ALR Fed 419.*

Texts:
3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

Interpretive Notes and Decisions:
1. Generally 2. Relationship with other laws 3. Business or commercial purpose for extension of credit 4.--Particular cases 5. Agricultural purpose for extension of credit 6. Personal residence or property securing extension of credit 7. Public utility tariffs 8. Higher education loans 9. Miscellaneous

**1. Generally**

Court must look not at how loan is eventually used but at purpose of loan to determine if it is subject to disclosure requirements of Truth in Lending Act. *Smith v Russellville Production Credit Asso. (1985, CA11 Ala) 777 F2d 1544.*

Truth in Lending Act does not require Board of Governors of Federal Reserve System to make fact-specific determination in every exemption case. *Aronson v Peoples Natural Gas Co. (1999, CA3 Pa) 180 F3d 558.*

**2. Relationship with other laws**

McCarran Act, *15 USCS §§ 1011* et seq., does not preclude application of Truth in Lending Act, *15 USCS §§ 1601* et seq., to credit agreement between lending institution and borrower who had obtained loan to purchase automobile insurance. *Cochran v Paco, Inc. (1979, CA5 Ga) 606 F2d 460, 51 ALR Fed 731*.

Limitation on liability for unauthorized use of credit card, as provided in *15 USCS § 1643*, is not intended by Congress to be affected by fact that certain "credit transactions" are exempted from Truth in Lending Act by *15 USCS § 1603(1). Credit Card Service Corp. v Federal Trade Com. (1974, App DC) 161 US App DC 424, 495 F2d 1004, 1974-1 CCH Trade Cases P 74996.*

Action against Federal Land Bank (FLB), FLB Association, and their presidents primarily for failure to comply with Farm Credit Act (*12 USCS §§ 2001* et seq.), alleging failure to make required disclosures under Truth-in-Lending Act (TILA) in connection with consumer credit transactions, is dismissed with leave to amend, where *15 USCS §*

*1603(3)* excludes certain consumer credit transactions from TILA requirements, because plaintiffs fail to allege facts regarding credit transactions at issue from which court can conclude TILA is applicable. *Brekke v Volcker (1987, DC Mont) 652 F Supp 651.*

**3. Business or commercial purpose for extension of credit**

Whether transaction comes within commercial use exception to Truth in Lending Act is factual issue to be resolved by trier of fact by considering transaction as whole and purpose for which credit was extended. *Gallegos v Stokes (1979, CA10 NM) 593 F2d 372, 26 FR Serv 2d 1114, 54 ALR Fed 485.*

In determining whether transaction is primarily commercial in nature and therefore exempt from Truth in Lending Act under *15 USCS § 1603(1)* court must examine transaction as whole and determine purpose for which credit was extended. *Tower v Moss (1980, CA5 Ala) 625 F2d 1161, 30 FR Serv 2d 598.*

Prevailing party in action pursuant to *15 USCS § 1643* that was business entity using credit account for business purpose was not entitled to attorneys' fees and costs under *15 USCS § 1640(a)(3)*, as plain language of Truth in Lending Act (TILA) excluded that party from obtaining attorneys' fees and costs pursuant to § 1640(a)(3); with few clearly delineated exceptions, most sections of TILA did not apply to businesses, and § 1640 was not included in list of exceptions to business credit transaction exemption clearly delineated in *15 USCS § 1645*; therefore, on its face, business exemption of TILA provided by *15 USCS § 1603(1)* did apply to *15 USCS § 1640* such that party was not entitled to attorneys' fees or costs. *DBI Architects, P.C. v Am. Express Travel Related Servs. Co. (2006, DC Dist Col) 462 F Supp 2d 1.*

Bank was denied summary judgment on bank customers' Truth in Lending Act (TILA) claim because customers produced sufficient evidence that account involved in disputed transaction, home equity line of credit, was held for consumer purposes as their use of line of credit appeared personal in nature under *15 USCS § 1602(h)*, and customers' linking of their credit line to their business checking account did not transform it into business account under *15 USCS § 1603(1). Shames-Yeakel v Citizens Fin. Bank (2009, ND Ill) 677 F Supp 2d 994.*

**4.--Particular cases**

Transaction entered into by consumer who did not have ongoing business at time of purchase of truck, nor prospect of establishing such business and who traded her only car and personal jewelry in on purchase was not transaction for business or commercial purposes and, therefore, was not exempt from provisions of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Gallegos v Stokes (1979, CA10 NM) 593 F2d 372, 26 FR Serv 2d 1114, 54 ALR Fed 485.*

Consumer credit transactions are defined by statute as primarily for personal, family, or household purposes; purchase of limited partnership interest for investment purposes can be for personal as opposed to business or commercial purposes and may fall within scope of Truth in Lending Act (*15 USCS §§ 1601* et seq.); whether investment loan is for personal or business purpose requires case by case analysis, and court reverses lower court's summary judgment in favor of creditor. *Thorns v Sundance Properties (1984, CA9 Nev) 726 F2d 1417.*

Truth in Lending Act (*15 USCS §§ 1601-1693*) applies to transaction in which creditor makes loan to commercial entity with knowledge that loan will be assumed by noncommercial entity with no changes in terms of loan, so that Act applied where commercial entity arranged mortgage financing with lender, but lender was aware that consumers sought credit for consumer purposes, lender required consumers to submit applications for loans and reserved right to disapprove their applications, and "change of ownership forms" executed by consumers showed them to be new borrowers, so that transactions constituted "refinancing." *Adiel v Chase Fed. Sav. & Loan Ass'n (1987, CA11 Fla) 810 F2d 1051.*

Transaction is not one for business or commercial purposes under exemption from Truth in Lending Act (*15 USCS §§ 1601* et seq.) contained in *15 USCS §§ 1603(1)* where debtor's purpose in entering into transaction was to prevent

seizure of debtor's home and funds were applied to selected debts which represented most immediate threats to security of debtor's home, even though part of funds were used for business debts. *AFL-CIO v Marshall (1979, App DC) 199 US App DC 54, 617 F2d 636,* vacated, in part *(1980) 449 US 809, 66 L Ed 2d 12, 101 S Ct 56* and affd in part and vacated in part on other grounds *(1981) 452 US 490, 69 L Ed 2d 185, 101 S Ct 2478, 11 ELR 20736.*

Subsequent sale of membership contract by health spa to financial institution, even at discount, involves commercial or business credits, which is specifically exempted from coverage of Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.). *Alpert v U. S. Indus. (1973, CD Cal) 59 FRD 491, 17 FR Serv 2d 696.*

Since plaintiff had purchased lots for investment purposes and not for personal use, Truth In Lending Act exemption pertaining to credit extensions "for business or commercial purposes" (*15 USCS § 1603(1)*) was applicable, and plaintiff was not "consumer," as defined in *15 USCS § 1602(h). Adema v Great N. Dev. Co. (1973, ND Ga) 374 F Supp 318.*

Where plaintiff's purpose in making credit purchase of mobile home was to replace rental mobile home which had been destroyed by fire, and where plaintiff intended to continue to supplement his income with rents he received from tenant occupying mobile home, plaintiff's primary occupation being that of barber, transaction was for business purposes and was exempt under *15 USCS § 1603(1). Puckett v Georgia Homes, Inc. (1974, DC SC) 369 F Supp 614.*

Where plaintiff alleged that his purpose in obtaining loan from defendant was to purchase washer and dryer, but where there was evidence that plaintiff had not purchased washer and dryer and that his purpose in obtaining loan was to finance litigation, plaintiff failed to establish that loan transaction was "consumer" credit transaction within meaning of *15 USCS § 1602(h)*, rather than transaction for "business or commercial purposes" within meaning of *15 USCS § 1603(1)*; plaintiff's action would therefore be dismissed for lack of jurisdiction. *Kenney v Landis Fin. Group (1974, ND Iowa) 376 F Supp 852.*

Transaction in which individual purchases truck for friend and at suggestion of seller uses his own credit to finance deal is not business or commercial transaction even though friend uses truck for business as well as pleasure. Allen v City Dodge, Inc. (1975, ND Ga) CCH CCG P 98428.

Loan taken from bank by home owners who entered into contractual agreement with contractor for purpose of repairing and/or improving their intended residence prior to occupancy was not transaction for business or commercial purposes and, therefore, was not exempt from provisions of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Gerasta v Hibernia Nat'l Bank (1975, ED La) 411 F Supp 176,* affd in part and revd in part on other grounds (1978, CA5 La) *575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Purchase of automobile under retail installment contract is consumer credit transaction rather than commercial transaction in view of fact that automobile is borrower's only one and despite its occasional use to run errands at work its primary use is personal. *Smith v Chapman (1977, WD Tex) 436 F Supp 58,* affd (1980, CA5 Tex) *614 F2d 968.*

Obligor who obtained credit for purpose of making repairs to home which was subsequently rented and in which obligor did not intend to live for at least 4 years could not be considered to have borrowed money for primarily personal, family, or household purpose within meaning of *15 USCS § 1602(h)* and could not seek rescission under *15 USCS § 1635. Tower v Home Constr. Co. (1978, SD Ala) 458 F Supp 112.*

Loan was extension of credit "primarily" for business or commercial purposes within purview of *15 USCS § 1603(1)* notwithstanding that nearly half of its proceeds were used to retire debtor's existing residential mortgage, since "primarily" refers to use of more than half of funds, and since $ 9,000 of $ 17,000 loan was used for down payment on tractor-trailer for debtor's business. *Bokros v Associates Finance, Inc. (1984, ND Ill) 607 F Supp 869.*

In action in which plaintiff, contractor who purchased lots and began construction on homes on those lots for resale,

alleged that defendants, mortgage company and other parties involved in financing of lots, often agreed to loan builders funds to construct new homes under pretenses of mortgage, transaction at issue were exempted from Truth in Lending Act pursuant to *15 USCS § 1603(1)* because loans were made primarily for business or commercial purposes. *Jones v Luthi (2008, DC SC) 586 F Supp 2d 595.*

Transaction is not one for business or commercial purposes under exemption from Truth in Lending Act (*15 USCS §§ 1601* et seq.) contained in *15 USCS §§ 1603(1)* where debtor's purpose in entering into transaction was to prevent seizure of debtor's home and funds were applied to selected debts which represented most immediate threats to security of debtor's home, even though part of funds were used for business debts. *Anderson v Lester (1980, La App 3d Cir) 382 So 2d 1019,* cert den *(1981) 450 US 1045, 68 L Ed 2d 244, 101 S Ct 1767* and (criticized in *Stipetich v First Mount Vernon Indus. Loan Assoc. (In re Stipetich) (2003, BC WD Pa) 294 BR 635).*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) is inapplicable to use of credit in business transaction; provisions of TILA do not apply to installment sales contract for tractor-trailer truck. *Giddens v Bo Lovein Ford, Inc. (1983) 167 Ga App 699, 307 SE2d 271.*

Loan's original characterization as for business purposes controlled throughout life of loan where original use of loan was for commercial purposes and subsequent loan was to repay original loan, and no evidence was presented that debtors were aware loan was for any purpose other than business. *Conrad v Smith (1986) 42 Wash App 559, 712 P2d 866.*

Loan made with purpose of financing mail route business is not within scope of Truth in Lending Act *(15 USCS §§ 1600* et seq.); commercial debt is not incurred primarily for personal, family, or household purpose even though part of proceeds are used to pay off second mortgage on residence in view of lending practice to require such payoff with transfer of collateral. *Anderson v Foothill Indus. Bank (1984, Wyo) 674 P2d 232.*

Loan is exempt under *15 USCS § 1603(1)* from provisions of Truth-in-Lending Act, where debtors primarily applied proceeds of loan to retire business debts and purchase inventory, and fact that debtors drew on proceeds for personal purposes does not change business nature of loan since such nature must be judged at time loan is made. *Winkle v Grand Nat'l Bank (1980) 267 Ark 123, 601 SW2d 559,* cert den *(1980) 449 US 880, 66 L Ed 2d 104, 101 S Ct 230.*

Although mortgage was executed for business purposes and is exempt under *15 USCS § 1603(1)* from operation of Truth in Lending Act, defendant borrowers have right to rely on disclosure statement provided, even though it was not required, and 5 percent late fee charge contained in disclosure statement may not be exceeded. *First Sav. & Loan Asso. v Kern (1977, 3d Dist) 55 Ill App 3d 838, 13 Ill Dec 299, 370 NE2d 1326.*

Truth in Lending Act, because of *15 USCS § 1603(1)* and (3), did not apply to transaction involving loan of $ 30,000 for business purposes. *Sullivan County Nat'l Bank v Lieman (1977) 89 Misc 2d 780, 392 NYS2d 793.*

In absence of any evidence that plaintiff's purchase of motor home was for business or commercial purposes, mere fact that motor home happened to have wheels so that it was movable did not so qualify it for exemption under *15 USCS § 1603(1)* and failure of bank to provide plaintiff with copy of promissory note and security agreement was violation of Truth in Lending Act (*15 USCS § 1638*). *Cantrell v First Nat'l Bank (1977, Tex Civ App Fort Worth) 560 SW2d 721.*

In bank's suit against debtor to collect on defaulted loan, summary dismissal of debtor's request to have loan rescinded was proper because loan was primarily for business purposes, and transaction was thus exempt from Truth in Lending Act's disclosure requirements under *15 USCS § 1603. Cashmere Valley Bank v Brender (2006, Wash) 146 P3d 928.*

**5. Agricultural purpose for extension of credit**

Loan was primarily for agricultural purposes under *15 USCS § 1603(1)* where loan application indicated that about half of loan was intended to cover crop expenses, and most other expenditures listed in application were agriculturally related, such as (1) refinancing production credit association loan as alternative to selling off farming assets to repay such obligation, and (2) mortgage payment on farm residence, which was related to acquisition of real property with farm residence under *15 USCS § 1602(s). Smith v Russellville Production Credit Asso. (1985, CA11 Ala) 777 F2d 1544.*

Clear indication that primary purpose of loan was agricultural was fact that collateral for loan was farmland and farm equipment, and fact that farmland included dwelling did not defeat agricultural nature of transaction. *Jonak v John Hancock Mut. Life Ins. Co. (1985, DC Neb) 629 F Supp 90.*

Loan transaction in which more than half of proceeds were used to refinance existing Federal Land Bank loans used by farmer for purchasing farming land is credit transaction for "agricultural purposes" under *15 USCS § 1603*, making transaction exempt from Truth-in-Lending provisions. *Federal Land Bank v Kennedy (1987, ND Miss) 662 F Supp 787.*

Although borrowers contended that loans were consumer credit transactions that were subject to disclosure requirements of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., because loan proceeds were used primarily to pay off prior debt, purpose of loans was primarily agricultural in nature and thus disclosure requirements of TILA did not apply; one loan was expressly intended to finance farming activities, collateral for loans included farm animals, equipment, and land, prior debt was incurred to pay farming expenses, loan documents made numerous references to farm operations, and lender itself was organized under federal law to provide loans to persons in connection with farm and ranch activities. *Nelson v Farm Credit Servs. of North Dakota (2005, DC ND) 380 F Supp 2d 1061.*

**6. Personal residence or property securing extension of credit**

Loan transactions are exempt from Truth in Lending Act under provisions of *15 USCS § 1603(1)* where they are for purpose of financing corporation despite fact that they are secured by residence owned by principal stockholder's wife. *Poe v First Nat'l Bank (1979, CA5 Ga) 597 F2d 895.*

Fact that credit transaction was secured by mortgage on home does not transform loan from its essential character as business loan to one within ambit of Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.). *Sherrill v Verde Capital Corp. (1983, CA11 Fla) 719 F2d 364.*

Civil relief must be denied to debtors who executed mortgage on their personal residence to secure obligation on rental property owned by them, since allegedly offending mortgage transaction was specifically exempted from operation of Truth-in-Lending Act by *15 USCS § 1603(1)* as credit transaction involving extension of credit "for business or commercial purposes"; fact that mortgagors were regularly employed elsewhere did not change result, since Act does not distinguish between full-time and part-time businesses where mortgagors are in fact engaged in business of owning real estate for profit, regardless of other occupations. *Sapenter v Dreyco, Inc. (1971, ED La) 326 F Supp 871,* affd (1971, CA5 La) *450 F2d 941,* cert den *(1972) 406 US 920, 32 L Ed 2d 120, 92 S Ct 1775.*

Where borrowers obtained loan for purpose of repairing their intended residence it is not exempt from Truth in Lending Act under *15 USCS § 1603(1)* despite fact that second mortgage on property which has rental income is given as security. *Gerasta v Hibernia Nat'l Bank (1975, ED La) 411 F Supp 176,* affd in part and revd in part on other grounds (1978, CA5 La) *575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Loan made by lenders to corporation on condition that incorporators of business become guarantors by providing second mortgages on their individual residences is for business or commercial purposes and therefore exempt under *15 USCS § 1603(1)* from Truth in Lending Act. *Weingarten v First Mortg. Co. (1979, ED Pa) 466 F Supp 349.*

Because ultimate purpose of credit transaction involving plaintiff parents' home was commercial in nature (i.e.,

parents executed indemnity mortgage to defendant bank to allow their son to acquire loan to buy commercial property), not consumer credit transaction, provisions of Truth in Lending Act, including right to rescind, did not apply. *Kuechler v Peoples Bank (2009, DC Md) 602 F Supp 2d 625.*

Pursuant to *15 USCS § 1603(3)*, where debtor granted to creditor mortgage on her principal dwelling to secure loan that exceeded $ 25,000, then loan transaction between parties constituted consumer credit transaction governed by Truth in Lending Act, *15 USCS §§ 1601* et seq.; *12 C.F.R. § 226.9*. *Webster v Centex Home Equity Corp. (In re Webster) (2003, BC WD Okla) 300 BR 787* (criticized in *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602).*

Loan of money in order for borrowers to construct "spec" house to be used in connection with one of borrowers dealership in commercial enterprise involving certain brand of homes was business transaction notwithstanding that borrowers' own home was pledged as security for loan. *Hawkeye Bank & Trust Co. v Michel (1985, Iowa) 373 NW2d 127.*

Loan sought for payment of IRS indebtedness arising out of business operations which was secured in part by mortgage on nonbusiness property of debtor's employee was extension of credit for commercial purposes under *15 USCS § 1603*, since personal benefit derived from transaction acted to facilitate obtaining of loan, and loan is not subject to rescission under *15 USCS § 1635*. *First Nat'l Bank v Skidis (1980, 5th Dist) 82 Ill App 3d 602, 38 Ill Dec 41, 403 NE2d 56.*

**7. Public utility tariffs**

Public utility tariff exemption provided in *15 USCS § 1603(4)* applies only to public utilities, i.e. entities which are highly regulated by government; thus, exemption does not apply to assignee of claims arising from public utility services. *Pollice v National Tax Funding, L.P. (2000, CA3 Pa) 225 F3d 379* (criticized in *Pentlong Corp. v GLS Capital, Inc. (2001, Pa Cmwlth) 780 A2d 734).*

Because defendant uranium hexafluoride supplier was wholly owned by Russian Federation, it was instrumentality of Russian Federation and was thus itself considered to be "foreign state" for purposes of *28 USCS § 1603(b)(2)*. *Globe Nuclear Servs. & Supply, Ltd. v AO Techsnabexport (2004, CA4 Md) 376 F3d 282.*

Where electric power customer contended that, by billing residential customers upon "net" and "gross" rate basis, gross rate being 10 percent in excess of net rate and payable if customer did not pay net bill within 10 days of billing date, Tennessee Valley Authority and state power board were engaged in failure to disclose in violation of Truth in Lending Act, defendants' motion to dismiss complaint would be sustained, since late payment provision of power rates under attack was specifically exempted from disclosure provisions of Act, in that, acting pursuant to *15 USCS § 1604*, Federal Reserve Board specifically exempted late charges in public utility bills from disclosure provisions by enacting *12 CFR § 226.3*. *Ferguson v Electric Power Board (1974, ED Tenn) 378 F Supp 787,* affd without op (1975, CA6 Tenn) *511 F2d 1403.*

Where electric utility installed underground connections in housing development and imposed $ 2.00 per month surcharge for 30 years with option of paying $ 220 lump-sum payment, such transaction was exempt under *15 USCS § 1603(4)* as transaction under public utility tariffs, where rate schedule providing for such payment had been filed with village and where utility remained owner of facilities and no long term installment contracts were involved. *Munson v Orrin E. Thompson Homes, Inc. (1974, DC Minn) 395 F Supp 152.*

Telephone company is not creditor and security deposit requirements are exempt from Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.) where regulations regarding deposits are on file with local regulator. *Moenning v Illinois Bell Tel. Co. (1985, 1st Dist) 139 Ill App 3d 521, 94 Ill Dec 103, 487 NE2d 980.*

Operator of sewage facilities for subdivision was regulated by state public service commission, so as to make

charges and delayed payment charges for sewage services exempt from Consumer Credit Protection Act under *15 USCS § 1603(4)*, even though Federal Reserve Board had not determined that state regulatory body was regulating such rates. *Grein v Hawkins (1974, La App 3d Cir) 295 So 2d 219.*

City's practice of adding 5 percent penalty to customers' water bills when not paid on time was exempt from provisions of Consumer Credit Protection Act because of operation of *15 USCS § 1603(4)* and of *12 CFR§ 226.3(c). Dalton v Tulsa (1977, Okla) 560 P2d 955.*

**8. Higher education loans**

Loans made, issued or guaranteed under Higher Education Act (*20 USCS §§ 1070* et seq.) are exempt from FTC rule on preservation of consumer defenses, which requires that consumer credit contracts include provision advising holders of such contracts that they are subject to all claims and defenses that debtor has against seller of goods and services. *Veal v First American Sav. Bank (1990, CA7 Ind) 914 F2d 909*, reh den, en banc (1990, CA7) *1990 US App LEXIS 19762.*

Promissory note entered into between student and college obligating student to pay full amount of tuition within specified period, after which student was to pay specified interest on unpaid principle, was not part of student loan exempt from Truth in Lending Act under § 1603(7). *Manley v Wichita Business College (1985) 237 Kan 427, 701 P2d 893.*

**9. Miscellaneous**

By virtue of express exclusion in § 1603 of transactions in securities accounts, court cannot look to intention of Congress in enacting Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) to determine whether private right of action exists under Securities and Exchange Commission rule making it unlawful for any broker or dealer to extend credit to customer in connection with any securities transaction unless such broker or dealer has established procedures to assure that each customer is given, at time of opening account, written statement concerning credit terms. *Angelastro v Prudential-Bache Secur., Inc. (1985, CA3 NJ) 764 F2d 939, CCH Fed Secur L Rep P 92076*, cert den *(1985) 474 US 935, 88 L Ed 2d 274, 106 S Ct 267* and (criticized in *Miller v Asensio (2000, DC SC) 101 F Supp 2d 395, CCH Fed Secur L Rep P 91002).*

Where party alleging claim under Truth In Lending Act in connection with grain purchase contract transactions was member of partnership which owned grain, exclusion of transactions involving extensions of credit to organizations, under *15 USCS § 1603(1)*, made Act inapplicable in light of definition of partnership under *15 USCS § 1602(c)* as "organization". *Farmers Union Grain Terminal Ass'n v Nelson (1974, ND) 223 NW2d 494, 16 UCCRS 139.*

Auto dealers' motion to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)* claims for violations of Truth in Lending Act were denied as to cars where amount financed was shown to fall within $ 25,000 amount financed limitation under *15 USCS § 1603(3)*, where purchasers alleged that dealers wrongfully included amounts representing negative equity in trade-in vehicles and charges for non-existent add-on features in amount financed for first vehicle and that amount financed did not exceed $ 25,000 once those amounts were deducted, but was granted as to purchase that fell outside $ 25,000 limitation where purchaser did not make similar allegations. *Leal v Sonic-Massey Pontiac Buick GMC, Inc. (2006, DC Colo) 444 F Supp 2d 1163.*

5 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1604*

§ 1604. Rules and regulations [Caution: See prospective amendment note below.]

(a) Promulgation, contents, etc., of regulations. The Board shall prescribe regulations to carry out the purposes of this *title [15 USCS §§ 1601* et seq.]. Except in the case of a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*], these regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this *title [15 USCS §§ 1601* et seq.], to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) Model disclosure forms and clauses; publication, criteria, compliance, etc. The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this *title [15 USCS §§ 1601* et seq.] and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Board shall consider the use by creditors or lessors of data processing or similar automated equipment. Nothing in this *title [15 USCS §§ 1601* et seq.] may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Board under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this *title [15 USCS §§ 1601* et seq.] with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this *title [15 USCS §§ 1601* et seq.], or (B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.

(c) Procedures applicable to adoption of model forms and clauses. Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with *section 553 of title 5, United States Code*.

(d) Effective dates of regulations containing new disclosure requirements. Any regulation of the Board, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this chapter, chapter 4, or chapter 5 [*15 USCS §§ 1601* et seq., *1666* et seq., or *1667* et seq.], or by any regulation of the Board promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Board may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements.

(e) [Not enacted]

(f) Exemption authority.

(1) In general. The Board may exempt, by regulation, from all or part of this *title [15 USCS §§ 1601* et seq.] any class of transactions, other than transactions involving any mortgage described in section 103(aa), for which, in the determination of the Board, coverage under all or part of this *title [15 USCS §§ 1601* et seq.] does not provide a meaningful benefit to consumers in the form of useful information or protection.

(2) Factors for consideration. In determining which classes of transactions to exempt in whole or in part under paragraph (1), the Board shall consider the following factors and publish its rationale at the time a proposed exemption is published for comment:

(A) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Board.

(B) The extent to which the requirements of this *title [15 USCS §§ 1601* et seq.] complicate, hinder, or make more expensive the credit process for the class of transactions.

(C) The status of the borrower, including--

(i) any related financial arrangements of the borrower, as determined by the Board;

(ii) the financial sophistication of the borrower relative to the type of transaction; and

(iii) the importance to the borrower of the credit, related supporting property, and coverage under this title, as determined by the Board;

(D) whether the loan is secured by the principal residence of the consumer; and

(E) whether the goal of consumer protection would be undermined by such an exemption.

(g) Waiver for certain borrowers.

(1) In general. The Board, by regulation, may exempt from the requirements of this *title [15 USCS §§ 1601* et seq.] certain credit transactions if--

(A) the transaction involves a consumer--

(i) with an annual earned income of more than $ 200,000; or

(ii) having net assets in excess of $ 1,000,000 at the time of the transaction; and

(B) a waiver that is handwritten, signed, and dated by the consumer is first obtained from the consumer.

(2) Adjustments by the Board. The Board, at its discretion, may adjust the annual earned income and net asset requirements of paragraph (1) for inflation.

(h) Deference [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. Notwithstanding any power granted to any Federal agency under this *title [15 USCS §§ 1601* et seq.] , the deference that a court affords to the Bureau with respect to a determination made by the Bureau relating to the meaning or interpretation of any provision of this *title [15 USCS §§ 1601* et seq.] , other than section 129E or 129H [*15 USCS § 1639e* or *1639h*], shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of this *title [15 USCS §§ 1601* et seq.] .

(i) Authority of the Board to prescribe rules [Caution: This subsection takes effect on the designated transfer date (as such date is defined in § 1062 of Act July 21, 2010, P.L. 111-203, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note.]. Notwithstanding subsection (a), the Board shall have authority to prescribe rules under this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 [*12 USCS § 5519(a)*]. Regulations prescribed under this subsection may contain such classifications, differentiations, or other provisions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 105, 82 Stat. 148; March 31, 1980, P.L. 96-221, Title VI, § 605, 94 Stat. 170; Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 152(e)(2)(A), 108 Stat. 2194; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, §§ 2102(b), 2104, 110 Stat. 3009-399, 3009-401.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (4)-(7), Title XIV, Subtitle F, § 1472(c), 124 Stat. 2107, 2190.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears, other than in subsec. (i) (as added by such Act), and inserting "Bureau".

**Amendment of subsecs. (a), (b), and (f), effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(4)-(6), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that the Truth in Lending Act is amended:

"(4) in section 105(a) (*15 U.S.C. 1604(a)*), in the second sentence--

"(A) by striking 'Except in the case of a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*], these regulations may contain such' and inserting 'Except with respect to the provisions of section 129 [*15 USCS § 1639*] that apply to a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*], such regulations may contain such additional requirements,'; and

"(B) by inserting 'all or' after 'exceptions for';

"(5) in section 105(b) (*15 U.S.C. 1604(b)*), by striking the first sentence and inserting the following: 'The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.';

"(6) in section 105(f)(1) (*15 U.S.C. 1604(f)(1)*), by inserting 'all or' after 'from all or part of this title';".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note) designated the existing provisions as subsec. (a); and added subsecs. (b), (c), and (d).

1994. Act Sept. 23, 1994, in subsec. (a), substituted "Except in the case of a mortgage referred to in section 103(aa), these" for "These".

1996. Act Sept. 30, 1996 added subsecs. (f) and (g).

2010. Act July 21, 2010 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), added subsec. (i).

Such Act further (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), added subsec. (h).

**NOTES:**

Code of Federal Regulations:

Federal Reserve System--Consumer leasing (Regulation M), *12 CFR 213.1* et seq.

Federal Deposit Insurance Corporation--Filing procedures, *12 CFR 303.0* et seq.

Research Guide:

Am Jur:

*11 Am Jur 2d, Banks and Financial Institutions § 1007*.

*17 Am Jur 2d, Consumer and Borrower Protection §§ 4, 18, 20, 33, 82, 86*.

*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1*.

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:

24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection §§ 37, 46.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.05, 1.07-1.09.

3 Debtor-Creditor Law (Matthew Bender), ch 26, Confession of Judgment § 26.03.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.2, 62.12.

Annotations:
Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141.*

Texts:
3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions §§ 52.05, 52.06.

Interpretive Notes and Decisions:
1. Power of Board 2. Construction of regulations 3.--Weight and deference to be given regulations and interpretations 4. Liability for violation of regulations 5. Miscellaneous

**1. Power of Board**

*15 USCS § 1604* empowers Federal Reserve Board to define such classifications as are reasonably necessary to insure that objectives of Truth in Lending Act (*15 USCS §§ 1601* et seq.) are fulfilled, no matter what adroit or unscrupulous practices are employed by those extending credit to consumers. *Mourning v Family Publications Serv. (1973) 411 US 356, 36 L Ed 2d 318, 93 S Ct 1652.*

Federal Reserve Board did not exceed its authority by promulgating four installment rule, which is reasonably related to its objective of preventing creditors from concealing finance charges in cash price; rule is not invalid as inconsistent with parts of Truth in Lending Act merely because Act specifically mentions disclosure only in regard to transactions in which finance charge is in fact imposed, although rule requires disclosure in some cases in which no such charge exists; rule is not void merely because it requires disclosure by some creditors who do not charge for credit and thus need not be deterred; rule does not conflict with due process clause of Fifth Amendment as conclusively presuming that all creditors within its ambit assess finance charges; rule does not make such presumption, but rather imposes disclosure requirement on all members of defined class in order to discourage evasion by substantial portion of that class. *Mourning v Family Publications Serv. (1973) 411 US 356, 36 L Ed 2d 318, 93 S Ct 1652.*

Federal Reserve Board has authority to promulgate provisions of Regulation Z mandating use of specific terminology; disclosure of "deferred payment price", being reasonably related to goal of Truth and Lending Act (*15 USCS §§ 1601* et seq.) despite fact that Congress did not specify such term in *15 USCS § 1638(a)* and Board was within its statutory authority in mandating such disclosure. *McGowan v King, Inc. (1978, CA5 Miss) 569 F2d 845.*

Truth in Lending Act does not require Board of Governors of Federal Reserve System to make fact-specific determination in every exemption case. *Aronson v Peoples Natural Gas Co. (1999, CA3 Pa) 180 F3d 558.*

Federal Reserve Board regulations promulgated pursuant to Home Equity Loan Consumer Protection Act of 1988 (P.L. 100-709, 102 Stat. 4725) to provide disclosures and substantive limitations with respect to open-end lines of credit secured by consumers' residences are upheld, because Congress specifically required Board to promulgate regulations to

implement home equity loan provisions; in those cases where it is arguable whether regulations follow literal language of statute, Board has properly invoked its broad "exception authority" under *15 USCS § 1604*. *Consumers Union of U.S., Inc. v Federal Reserve Bd. (1990, DC Dist Col) 736 F Supp 337,* affd in part and revd in part on other grounds (1991, App DC) *291 US App DC 1, 938 F2d 266.*

**2. Construction of regulations**

Lender who meets every requirement of *12 CFR § 226.18*, which regulation was promulgated pursuant to *15 USCS § 1604* to identify disclosures for consumer loans, does not violate federal requirements by disclosing information in confusing manner notwithstanding allegation that creditor created unnecessary confusion by stating different interest rates and principal amounts on note and in truth in lending statement, where perceived inconsistency arises from lender's compliance with truth-in-lending requirements in that disclosure statement defined "annual percentage rate" and "amount financed" which are terms of art, defined by federal regulations, and explained in disclosure statement itself, so that there is no inconsistency in fact that amount financed differs from principal amount of loan or that annual percentage rate differs from general definition of interest rate. *Smith v Anderson (1986, CA4 Va) 801 F2d 661.*

Defendant bank's failure to provide notice of rate increase on or before effective date of increase did not violate Truth in Lending Act, *15 USCS §§ 1601* et seq., because, pursuant to Federal Reserve Board's interpretation, *12 CFR § 226.9(c)*'s use of "change" referred only to change in contractual terms themselves; bank's position had to prevail for transactions in case, which took place prior to August 2009 when statutory changes and revised regulations took effect. *Shaner v Chase Bank USA, N.A. (2009, CA1 Mass) 587 F3d 488.*

Regulations enacted to implement "meaningful disclosure" standard of Truth in Lending Act are of necessity rather technical, but remedial nature of Act demands strict compliance. *Woods v Beneficial Fin. Co. (1975, DC Or) 395 F Supp 9.*

Truth in Lending Act *(15 USCS §§ 1600* et seq.) and Regulation Z do not apply to bank customer's action, where he complains about lack of disclosure of insufficient funds processing fees charged to his checking account and overdraft protection agreement, because (1) processing fees were not finance charges, and (2) agreement provided for overdraft fee only on amount of overdraft check not covered by agreement. *Terrelll v Hancock Bank (1998, SD Miss) 7 F Supp 2d 812, RICO Bus Disp Guide (CCH) P 9544.*

Official staff commentary promulgated by Board of Governors of Federal Reserve System indicating that payday loans were "extensions of credit" under *15 USCS § 1604(a)* and *12 C.F.R. § 226.2(a)(14)* constituted substantive change in law, and, thus, did not have retroactive application to transactions that occurred before compliance with official staff commentary was either optional or mandatory. *Clement v Amscot Corp. (2001, MD Fla) 176 F Supp 2d 1292.*

**3.--Weight and deference to be given regulations and interpretations**

Special deference must be given to Federal Reserve Board regulation under Truth in Lending Act since determination of what is "meaningful disclosure" under Truth in Lending Act is empirically achieved balance between incomplete disclosure and informational overload, task to which Board is better suited than courts. *Griggs v Provident Consumer Discount Co. (1982, CA3 Pa) 680 F2d 927, 34 FR Serv 2d 219,* vacated on other grounds, remanded *(1982) 459 US 56, 74 L Ed 2d 225, 103 S Ct 400, 35 FR Serv 2d 365* (superseded by statute as stated in *Burt v Ware (1994, CA5 La) 14 F3d 256, 28 FR Serv 3d 204)* and (superseded by statute as stated in *Woodard v Hardenfelder (1994, ED NY) 845 F Supp 960)* and (superseded by statute as stated in *Leader Nat'l Ins. Co. v Industrial Indem. Ins. Co. (1994, CA9 Wash) 19 F3d 444, 94 CDOS 1866, 94 Daily Journal DAR 3435, 28 FR Serv 3d 488)* and (superseded by statute as stated in *Wallis v J.R. Simplot Co. (1994, CA9 Idaho) 28 FR Serv 3d 1464)* and (superseded by statute as stated in *Hatfield v Board of County Comm'rs (1995, CA10 Wyo) 52 F3d 858, 31 FR Serv 3d 1258)* and (superseded by statute as stated in *Schroeder v McDonald (1995, CA9 Hawaii) 55 F3d 454, 95 CDOS 3701, 32 FR Serv 3d 196).*

Regulation Z, Federal Reserve Board staff opinions, and model forms are not absolute and binding on federal court,

but are entitled to great weight and deference in construing requirements of Truth in Lending Act. *Bloomer v McKnight Road Dodge, Inc. (1975, WD Pa) 397 F Supp 403.*

Federal Reserve Board Staff Opinions, which explain provisions of Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.) and regulations under Act, are entitled to great weight for they constitute part of body of informed experience and judgment of agency to which Congress delegated appropriate authority; however, they are not binding upon court. *English v MCC Financial Services, Inc. (1975, MD Ga) 403 F Supp 679,* affd without op (1975, CA5 Ga) *520 F2d 941.*

Credit disclosures which fall short of clearly expressed requirements of Regulation Z constitute violations of Truth in Lending Act; conversely, creditors who comply with rule, regulation, or interpretation of Federal Reserve Board are entitled to good faith defense to claims under Truth in Lending Act. *Paull v Chrysler Credit Corp. (1982, ND Ill) 544 F Supp 848,* affd (1983, CA7 Ill) *705 F2d 944.*

Regulations, rulings, and letters by federal reserve board are to be given considerable weight by court in resolving complex consumer credit dispute; unofficial letters are considered by court only if they are not strained and unrealistic interpretations of Regulation Z and Act; if letters do not contradict one another and are consistent with Act's intent and are reasonable, court looks to them for guidance. *Adiel v Chase Federal Sav. & Loan Asso. (1984, SD Fla) 586 F Supp 866.*

Congress delegated task of carrying out purpose of Truth in Lending Act (TILA) to Federal Reserve Board, and those regulations are to be deferred to when construing language of *TILA. In re Currency Conversion Fee Antitrust Litig. (2003, SD NY) 265 F Supp 2d 385, 2003-2 CCH Trade Cases P 74099.*

Where non-customers challenged adequacy of fee notices posted by bank on automatic teller machines, bank was entitled to summary judgment as to "wrongful verb" claim because Electronic Funds Transfer Act (EFTA) did not require use of "will" with on-machine notice provided that there were circumstances in which bank did not assess fee; significant deference was given to Regulation E's, *12 CFR § 205.16(b),* current substantive interpretation of *EFTA. Brown v Bank of Am., N.A. (2006, DC Mass) 457 F Supp 2d 82.*

Regulation Z, 12 C.F.R. pt. 226, promulgated by Federal Reserve Board under *15 USCS § 1604,* is to be accepted by courts, as should Board's interpretation of its own regulation. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Under broad powers granted to Federal Reserve Board under *15 USCS § 1604,* absent some obvious repugnance, "Regulation Z," 12 C.F.R. pt. 226, should be accepted by courts, as should Board's interpretation of its own regulation. *Sheppard v GMAC Mortg. Corp. (In re Sheppard) (2003, BC ED Pa) 299 BR 753.*

Under *15 USCS § 1604* staff letters of Federal Reserve Board are not proper rules, regulations or interpretations thereof upon which claim or defense under Truth-in-Lending Act may be based. *Brown v U. S. Life Credit Corp. (1980, Tex Civ App Fort Worth) 602 SW2d 94.*

**4. Liability for violation of regulations**

Consumer was properly ordered to arbitrate her Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claims arising from alleged misrepresentations made with regard to credit card company's pre-loaded cards: (1) consumer alleged that arbitration provisions in card contracts, which contained class action waiver, were unenforceable under *9 USCS § 2* because they were unconscionable under Missouri law; (2) arbitration provisions were not substantively unconscionable under Missouri law as they did not limit remedies that consumer could recover, which pursuant to *15 USCS § 1640(a)(1)*-(4), could include attorney's fees, costs, statutory damages (up to $ 2,000), and actual damages if she prevailed; and (3) arbitration provisions were not procedurally unconscionable under Missouri law because their language was plain and not hidden in contracts. *Pleasants v Am. Express Co. (2008, CA8 Mo) 541 F3d 853.*

Where borrower refinanced home mortgage, but form providing notice of right to rescind transaction left blank spaces for date of transaction and actual deadline to rescind, notice adequately complied with *15 USCS § 1635(a)* because reasonable borrower could not have been misled since short notice period for rescission at will was plain despite blanks. *Melfi v WMC Mortg. Corp. (2009, CA1 RI) 568 F3d 309.*

In view of fact that *15 USCS § 1604* authorizes Federal Reserve Board to prescribe regulations to carry out purposes of Truth in Lending Act and *15 USCS § 1640* prescribes liability for failure to disclose any information required under Part B of Act (dealing with credit transactions), it is clear that regulations effectuating purposes of Part B, if valid under § 1604, are within scope of § 1640(a); hence, creditor is liable for civil penalty for violation of regulations promulgated pursuant to § 1604. *Walker v College Toyota, Inc. (1974, WD Va) 399 F Supp 778,* affd (1975, CA4 Va) *519 F2d 447.*

Action against car dealerships for violations of Truth in Lending Act (TILA) (*15 USCS § 1604*) and "Regulation Z" is proper case for permanent injunction under *15 USCS § 53(b)*, because, even though defendants have altered some of their violative conduct, there is cognizable danger of recurrent violations, particularly since constant policing by FTC has proven unsuccessful in preventing violations. *United States v Hopkins Dodge Sales, Inc. (1987, DC Minn) 661 F Supp 1155.*

While *15 USCS § 1640(f)* provided that good-faith compliance with Commentary to *12 CFR § 226.23* protected lender from civil liability under Truth in Lending Act, and *15 USCS § 1604(b)* provided that lender was also shielded from liability if it provided its disclosures using one of model forms prescribed by Federal Reserve Board, defendant loan originator rendered annual percentage rate disclosure to plaintiff borrowers unclear by defining annual percentage rate as "the cost of your credit as yearly rate" but also used same term to define initial interest rate on payment-option adjustable rate mortgage, and compliance with Regulation Z, 12 CFR pt. 226, was not dispositive where another disclosure rendered particular term ambiguous. *Jordan v Paul Fin., LLC (2009, ND Cal) 644 F Supp 2d 1156.*

**5. Miscellaneous**

Although use of model forms is not required by statute, use of appropriate model form necessarily complies with statute. *In re Porter (1992, CA3 Pa) 961 F2d 1066, CCH Bankr L Rptr P 74544.*

Plain language of *15 USCS § 1604(b)* and regulations did not require exclusive use of model forms in *12 CFR § 226.23* (app. H-8, H-9); lenders' alleged failure to provide appropriate form to home owners was not per se violation of *15 USCS § 1635* and *Regulation Z. Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Assignee to mortgage company, which that admitted that company did not disclose mandatory insurance payment to borrower as part of disclosures required to be made under Truth In Lending Act, as amended by Home Owners Equity Protection Act, *15 USCS §§ 1602, 1639*, was not entitled to "safe harbor" defense based upon assertion that company used model forms promulgated by Federal Reserve because mortgage company nevertheless had obligation to assure that disclosures on forms accurately reflected borrower's monthly re-payment obligation. *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962.*

Although borrowers' claims for damages under *15 USCS § 1604(a)* were barred by one-year limitations period of *15 USCS § 1640(e)*, borrowers had to allege that they were not provided notice of their right to rescind and that lender failed to make material disclosures so as to plead claim for rescission under *15 USCS § 1635(a). Kelley v Mortgage Elec. Registration Sys. (2009, ND Cal) 642 F Supp 2d 1048.*

6 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1605*

§ 1605. Determination of finance charge [Caution: See prospective amendment note below.]

(a) "Finance charge" defined. Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed.

(b) Life, accident, or health insurance premiums included in finance charge. Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is

extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Property damage and liability insurance premiums included in finance charge. Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) Items exempted from computation of finance charge in all credit transactions. If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

(e) Items exempted from computation of finance charge in extensions of credit secured by an interest in real property. The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of loan-related documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.

(6) Credit reports.

(f) Tolerances for accuracy. In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge--

(1) shall be treated as being accurate for purposes of this *title [15 USCS §§ 1601* et seq.] if the amount disclosed as the finance charge--

(A) does not vary from the actual finance charge by more than $ 100; or

(B) is greater than the amount required to be disclosed under this *title [15 USCS §§ 1601* et seq.]; and

(2) shall be treated as being accurate for purposes of section 125 [*15 USCS § 1635*] if--

(A) except as provided in subparagraph (B), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the total amount of credit extended; or

(B) in the case of a transaction, other than a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*], which--

(i) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 103(w) [*15 USCS § 1602(w)*], or is any subsequent refinancing of such a transaction; and

(ii) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent of the total amount of credit extended.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 106, 82 Stat. 148; March 31, 1980, P.L. 96-221, Title VI, § 606, 94 Stat.

170; Sept. 30, 1995, P.L. 104-29, §§ 2(a), (b)(1), (c)-(e), 3(a), 109 Stat. 271, 272.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), in subsec. (a), substituted ". The finance charge does not include charges of a type payable in a comparable cash transaction. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable" for ", including any of the following types of charges which are applicable"; and in subsec. (d), deleted paras. (3) and (4) which read:

"(3) Taxes.

"(4) Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Board by regulation.".

1995. Act Sept. 30, 1995, in subsec. (a), in the introductory matter, inserted "The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges."; in subsec. (d), added para. (3); in subsec. (e), substituted para. (2) for one which read: "(2) Fees for preparation of a deed, settlement statement, or other documents." and, in para. (5), inserted ", including fees related to any pest infestation or flood hazard inspections conducted prior to closing"; and added subsec. (f).

Such Act further (effective as provided by § 2(b)(2) of such Act, which appears as a note to this section), in subsec. (a), added para. (6).

Other provisions:

**Effective date of subsec. (a)(6).** Act Sept. 30, 1995, P.L. 104-29, § 2(b)(2), 109 Stat. 271, provides:

"The amendment made by paragraph (1) [adding subsec. (a)(6) of this section] shall take effect on the earlier of--

"(A) 60 days after the date on which the Board of Governors of the Federal Reserve System issues final regulations under paragraph (3); or

"(B) the date that is 12 months after the date of the enactment of this Act.".

**Regulations implementing borrower-paid mortgage broker fees.** Act Sept. 30, 1995, P.L. 104-29, § 2(b)(3), 109

Stat. 271, provides: "The Board of Governors of the Federal Reserve System shall promulgate regulations implementing the amendment made by paragraph (1) [adding subsec. (a)(6) of this section] by no later than 6 months after the date of the enactment of this Act.".

**Ensuring finance charges reflect cost of credit.** Act Sept. 30, 1995, P.L. 104-29, § 2(f), 109 Stat. 272, provides:

"(1) Report.

(A) In general. Not later than 6 months after the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to the Congress a report containing recommendations on any regulatory or statutory changes necessary--

"(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

"(ii) to address abusive refinancing practices engaged in for the purpose of avoiding rescission.

"(B) Report requirements. In preparing the report under this paragraph, the Board shall--

"(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act [this section] as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

"(ii) consult with and consider the views of affected industries and consumer groups.

"(2) Regulations. The Board of Governors of the Federal Reserve System shall prescribe any appropriate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act.".

**NOTES:**

Code of Federal Regulations:

Federal Deposit Insurance Corporation--Filing procedures, *12 CFR 303.0* et seq.

Related Statutes & Rules:

This section is referred to in *12 USCS § 1735f-7a*; *15 USCS §§ 1602, 1607, 1635, 1638, 1649, 1666f.*

Research Guide:

Federal Procedure:

5B Fed Proc L Ed, Bankruptcy § 9:1787.

Am Jur:

*9D Am Jur 2d, Bankruptcy § 3727.*

*17 Am Jur 2d, Consumer and Borrower Protection §§ 27, 28, 30-33.*

*53A Am Jur 2d, Moneylenders and Pawnbrokers §§ 1, 29, 32, 33, 44.*

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

18 Am Jur Proof of Facts, Actionable Practices in Debt Collection, p. 59.

Forms:

1 *Bender's Federal Practice Forms, Form 8(II):103*, Federal Rules of Civil Procedure.

6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:24, 58, 59.

5A Am Jur Legal Forms 2d, Consumer Credit Protection Acts § 66:28.

19 Am Jur Legal Forms 2d, Article 9 Secured Transactions; Sales of Accounts and Chattel Paper §§ 253:1861, 1878.

17C Am Jur Pl & Pr Forms (2006), Moneylenders and Pawnbrokers, § 5.

24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection § 5.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.04, 1.07-1.09.

1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections §§ 2.02-2.05.

5 Debtor-Creditor Law (Matthew Bender), ch 43, Usury § 43.18.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.10.

Annotations:

Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141*.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (*15 USCS § 1605(a)*) or applicable regulations. *46 ALR Fed 642*.

When is item sufficiently "itemized and disclosed" in accordance with § 106(d) of the Consumer Credit Protection Act (*15 USCS § 1605(d)*) and applicable regulations so that it need not be included in finance charge. *51 ALR Fed 754*.

What constitutes violation of § 106(e) of Truth in Lending Act (*15 USCS § 1605(e)*) relating to exemption of certain costs or fees from computation of finance charge in extensions of credit secured by interest in real property. *115 ALR Fed 453*.

What constitutes violation of requirements of § 106(b), (c) of Truth in Lending Act (TILA) (*15 USCS § 1605(b)*, (c)) concerning inclusion of premiums for life, accident, or health insurance, or for property damage or liability insurance, in determination of finance charge. *116 ALR Fed 635*.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (*15 U.S.C.A. § 1605(a)*) [*15 USCS § 1605(a)*] or applicable regulations. *154 ALR Fed 431*.

What constitutes "fraudulent" or "unconscionable" agreement or conduct within meaning of state consumer credit protection act. *42 ALR4th 293*.

Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure. *53 ALR4th 231*.

Construction and effect of disclosure statutes requiring one extending credit or making loan to give statement showing terms as to amounts involved and charges made. *14 ALR3d 330*.

Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic

payments on note, mortgage, or instalment sale contract. *63 ALR3d 50.*

Interpretive Notes and Decisions:
**I.IN GENERAL** 1. Generally 2. Tolerances for accuracy

**II.INCLUDABLE ITEMS**

**A.In General** 3. Delivery and similar charges 4. Discounts 5. Finder's fee 6. Interest 7. Notary fee 8. Pawnbrokers 9. Service agreements 10. Miscellaneous

**B.Insurance Premiums**

**1.In General** 11. Property damage, loss or liability insurance 12.--Automobile insurance 13. Miscellaneous

**2.Credit Life, Accident or Health Insurance** 14. Generally 15. Optional coverage 16. Written authorization for insurance 17.--Co-obligors 18. Cost of insurance 19. Term of insurance 20. Placement of disclosure 21. Miscellaneous

**III.EXCLUDABLE ITEMS** 22. Comparable cash transaction charges 23. Escrows 24. License and registration fees 25. Taxes 26. Title examination or insurance 27. Miscellaneous

**I.IN GENERAL 1. Generally**

Truth in Lending Act (*15 USCS §§ 1601* et seq.) neither requires nor encourages borrowers to guess or to assume that disclosure has particular meaning, or that it in fact has no meaning, nor does it permit lenders to add meaningless information to disclosure statements, for to do so would encourage borrowers to ignore or to avoid reading these statements, and would thereby frustrate purpose of statute. *Wright v Tower Loan of Mississippi, Inc. (1982, CA5 Miss) 679 F2d 436.*

Whether lender has violated Truth in Lending Act (*15 USCS §§ 1601* et seq.) or Regulation Z by making additional, nonrequired disclosure depends on facts of each case, lender, however, bears burden of proving compliance. *Wright v Tower Loan of Mississippi, Inc. (1982, CA5 Miss) 679 F2d 436.*

It is clear from language of *15 USCS § 1605(a)*, that examples provided do not constitute exhaustive list. *McGee v Kerr-Hickman Chrysler Plymouth (1996, CA7 Ill) 93 F3d 380, 35 FR Serv 3d 1217.*

In financing agreement containing condition precedent, where condition of obtaining financing is within exclusive control of seller and third-party lender, consummation occurs when consumer signs contract; in vehicle purchaser's suit against dealer alleging violations of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., even assuming that retail installment contracts, which were signed by purchaser but not by dealer, contained condition precedent regarding dealer's ability to obtain financing, district court was incorrect in finding that consummation occurred only upon assignment of loan; purchaser's signature on those documents rendered purchaser contractually obligated to purchase of credit and, thus, constituted consummation for purposes of TILA disclosures. *Bragg v Bill Heard Chevrolet, Inc. (2004, CA11 Fla) 374 F3d 1060, 17 FLW Fed C 727,* cert den (2005, US) *160 L Ed 2d 898, 125 S Ct 963.*

Inclusion of charge in note may give rise to violation under Truth in Lending Act even though effect of lender having made such charge may be to render his note unenforceable in state court. *Barrett v Vernie Jones Ford, Inc. (1975, ND Ga) 395 F Supp 904,* revd on other grounds (1976, CA5 Ga) *543 F2d 568.*

Western District of Pennsylvania court agrees with majority approach and holds that in order for borrower to

recover actual damages under *15 USCS § 1640(a)* for violation of *15 USCS § 1605(b)* disclosure requirements borrower must show that he or she detrimentally relied on lender's defective disclosure statement. To recover actual damages borrower must prove: (1) that he or she read lender's Truth in Lending Act disclosure statement; (2) that he or she understood charges being disclosed; (3) that had disclosure statement been accurate, he or she would have sought lower price; and (4) that he or she would have obtained lower price for his or her loan transaction. *Vallies v Sky Bank (2008, WD Pa) 583 F Supp 2d 687.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not purport to regulate amount of finance charge or compel computation of finance charge in any specific way. *Briscoe v First Nat'l Bank & Trust Co. (1983) 167 Ga App 886, 307 SE2d 767.*

**2. Tolerances for accuracy**

Remedial purpose of TILA is best effectuated by construing *15 USCS § 1605(f),* which provides tolerances for accuracy in finance charge disclosures, as potential affirmative defense, rather than as essential element of finance charge disclosure claim. *Inge v Rock Fin. Corp. (2002, CA6 Mich) 281 F3d 613, 52 FR Serv 3d 119.*

Disclosure of finance charges was deemed accurate because amount disclosed was greater than amount required to be disclosed. *Carmichael v Payment Ctr., Inc. (2003, CA7 Ill) 336 F3d 636,* reh, en banc, den (2003, CA7 Ill) *2003 US App LEXIS 20763* and cert den *(2004) 541 US 987, 158 L Ed 2d 491, 124 S Ct 2015.*

Because Truth in Lending Act's tolerances for accuracy defense, *15 USCS § 1605(f),* is not affirmative, but can be put in play by general denial pursuant to *Fed. R. Civ. P. 8(b),* lender did not forfeit chance to benefit from provision by failing to raise tolerance issue specifically as affirmative defense or in answer to borrower's complaint. *Sterten v Option One Mortg. Corp. (In re Sterten) (2008, CA3 Pa) 546 F3d 278.*

Lender's technical violation of Truth in Lending Act by misstating APR of adjustable loan did not provide claim for which relief could be granted because error fell within safe harbor provision of *15 USCS § 1605(f)(1)(B). Alicea v Citifinancial Servs., Inc. (2002, DC Mass) 210 F Supp 2d 4.*

Mortgage assignee's motion to dismiss couple's claim that original loan documents violated Truth in Lending Act by failing to disclose total finance charge was granted where undisclosed finance charge in original loan documents was less than 1/2 percent of couple's total residential loan and was, therefore, subject to de minimis exception set forth in *15 USCS § 1605(f)* and *12 C.F.R. § 226.23(g). Walker v Gateway Fin. Corp. (2003, ND Ill) 286 F Supp 2d 965.*

Where defendant lender pleaded that it excluded only allowable charges from finance charge, "tolerances for accuracy" provision in *15 USCS § 1605(f)* applied regardless of whether lender specifically stated it as affirmative defense; bankruptcy court's order which held that provision was *Fed. R. Civ. P. 8(c)* affirmative defense was vacated. *Sterten v Option One Mortg. Corp. (2007, ED Pa) 479 F Supp 2d 479.*

Although *15 USCS § 1605(f)(2)* allowed understatements of up to one-half of one percent of total credit extended, there was exemption from that general rule under *15 USCS § 1635(i)(2),* which allowed only $ 35 understatement after initiation of any judicial or nonjudicial foreclosure process; thus, plaintiff borrowers stated viable claim for relief because complaint rested on allegation that judicial foreclosure process was commenced against property, thus reducing rescission tolerance level to $ 35. *Glucksman v First Franklin Fin. Corp. (2009, ED NY) 601 F Supp 2d 511.*

Borrower was not entitled to summary judgment on its claim that lenders violated *15 USCS § 1605* when they charged attorney document preparation fee because there were genuine issues concerning whether or not charge was disclosed to borrower in truth in lending disclosure statement or that borrower was not in fact double charged, that fee was bona fide and reasonable. and that claim possibly fell within accuracy tolerance threshold of § 1605(f). *McAnaney v Astoria Fin. Corp. (2009, ED NY) 665 F Supp 2d 132.*

Allegation regarding misdisclosure of finance charge, in violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., brought by Chapter 13 debtors, could not be dismissed on pleadings because, given low pleading standard of *Fed. R. Civ. P. 8(a)*, made applicable by *Fed. R. Bankr. P. 7008*, allegation sufficiently put defendants on notice of claim against them, and it was not necessary for debtors to allege in complaint that defendant exceeded applicable tolerance. *Hopkins v First NLC Fin. Servs. (In re Hopkins) (2007, BC ED Pa) 372 BR 734.*

**II.INCLUDABLE ITEMS**

**A.In General 3. Delivery and similar charges**

Pursuant to Federal Reserve Board official staff commentary (which is to be given great weight in interpreting Truth in Lending Act and regulations under it), fee for courier service charged by settlement agent to send document to title company or some other party is not finance charge, provided that creditor has not required use of courier or retained charge. *Cowen v Bank United, FSB (1995, CA7 Ill) 70 F3d 937, 33 FR Serv 3d 138.*

If borrower can choose to avoid express mail fee by having documents sent via regular mail, then fee is not imposed as incident to extension of credit and does not constitute finance charge. *Veale v Citibank, F.S.B. (1996, CA11 Fla) 85 F3d 577, 10 FLW Fed C 3,* cert den *(1997) 520 US 1198, 137 L Ed 2d 704, 117 S Ct 1556.*

Where "delivery and packing charges" were imposed by seller regardless of whether purchase was made by immediate cash payment of full purchase price or in installment payments, such charges did not constitute "finance charge," within meaning of *15 USCS § 1605(a). Mondik v Di Simo (1974, WD Pa) 386 F Supp 537,* affd without op (1975, CA3 Pa) *521 F2d 1399; Mondik v Di Simo (1974, WD Pa) 386 F Supp 537,* affd without op (1975, CA3 Pa) *521 F2d 1399.*

Mortgagor's claim that bank refinancing her mortgage did not disclose $ 25 expedited delivery fee in violation of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) must fail, where fee was imposed by settlement attorney and neither creditor nor its assignee required expedited delivery service for which charge was made, because delivery fee was not TILA "finance charge." *Smith v Highland Park (1996, ND Ala) 915 F Supp 281,* affd (1997, CA11 Ala) *108 F3d 1325, 10 FLW Fed C 792.*

Mortgagor failed to state claim under *15 USCS § 1605*, where she alleged that mortgage company should have disclosed courier fees in disclosure documents as finance charges, but she failed to allege that mortgage company required use of courier service as condition to extending credit, that she lacked ability to send documents via regular mail, and that mortgage company retained charges, when it appeared, on face of disclosure statements, that fees were imposed by third parties. *Martinez v Weyerhaeuser Mortg. Co. (1996, SD Fla) 959 F Supp 1511.*

**4. Discounts**

Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) and regulations promulgated thereunder requires that discounts paid by seller of consumer accounts receivable must be included in stated finance charge if and to extent that they are passed on to consumers. *Joseph v Norman's Health Club, Inc. (1976, CA8 Mo) 532 F2d 86.*

For purpose of determining whether charge is exempt from TILA disclosure requirements as cost of doing business (i.e. creditor is not necessarily required to disclose to consumer that it plans on selling retail installment contract at discount), charge for cost of discount should be considered separately imposed on credit consumer, and therefore must be disclosed, when it is imposed in credit transactions but not in cash transactions. *Walker v Wallace Auto Sales (1998, CA7 Ill) 155 F3d 927.*

Where only 35 of 1775 purchasers of health spa memberships paid cash while remaining purchasers gave notes which were discounted by bank at 16 percent, spa did not sell its services on cash basis and violated Truth in Lending Act when it listed "0%" in installment contract form disclosure for "finance charge" and "annual percentage rate"; spa's

"unitary price" was marketing tool designed to convince customer that he was getting free extension of credit and thus ran against policy of Truth in Lending Act; since bank checked credit references of each member and had final choice of accepting or rejecting particular note, "cash price" of spa membership was discount amount paid by bank to health spa while balance of note constituted undisclosed "finance charge" for purposes of Act. *Kriger v European Health Spa, Inc. (1973, ED Wis) 363 F Supp 334.*

Where health club charged lower price for "life membership" to members paying in cash within required time, rather than executing promissory note, difference in amount between "regular" price and such lower price constituted finance charge. *Joseph v Norman's Health Club, Inc. (1974, ED Mo) 386 F Supp 780,* vacated on other grounds (1976, CA8 Mo) *532 F2d 86.*

Where electric utility constructed underground connections in housing development and offered homeowners option of paying $ 2.00 per month surcharge for 30 years (total of $ 720.00) or paying lump sum of $ 220, difference of $ 500 was not "finance charge" within meaning of Truth in Lending Act, since transaction did not constitute "credit sale". *Munson v Orrin E. Thompson Homes, Inc. (1974, DC Minn) 395 F Supp 152.*

Discount, difference between amount financed and amount bank paid retailer upon assignment, is not type of discount or additional charge contemplated by *15 USCS § 1605(a)(1)* and need not be included in finance charge, since to do so would distort proper application of *15 USCS § 1605* and would unjustifiably impair normal transaction of selling commercial paper for less than its face value. *Jennings v Edwards (1978, MD NC) 454 F Supp 770,* affd without op (1979, CA4 NC) *598 F2d 614.*

Car dealership did not violate Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., by failing to include advertised rebate amount in purchaser's disclosed finance charges where rebate was not finance charge under *15 USCS § 1605(a)* because it was clear that manufacturer rebate was discount available to both cash and credit customers, including purchaser, and therefore, was not finance charge, and rebate that purchaser was ineligible for and did not receive due to his choice of financing was not cost of consumer credit, and thus, was not finance charge that should have been disclosed under *TILA. Coelho v Park Ridge Oldsmobile, Inc. (2003, ND Ill) 247 F Supp 2d 1004.*

Plaintiff consumers' truth in lending suit was dismissed on summary judgment, where discounts were offered to both cash and credit purchasers and were not part of finance charge that was not disclosed to consumers. *Virachack v Univ. Ford (2003, SD Cal) 259 F Supp 2d 1089,* affd (2005, CA9 Cal) *2005 US App LEXIS 9219.*

Where merchant regularly and systematically discounts contracts at fixed rate to third party, amount of discount represents finance charge payable indirectly by person to whom credit is extended, and imposed indirectly by creditor as incident to extension of credit, within meaning of *15 USCS § 1605(a). Glaire v La Lanne-Paris Health Spa, Inc. (1974) 12 Cal 3d 915, 117 Cal Rptr 541, 528 P2d 357.*

In action by lender on installment contract for purchase of automobile, trial court erroneously prevented defendant from exploring discount practices between plaintiff and used car dealer since if it is shown that used car dealer regularly discounts contracts such as those executed by defendant to plaintiff at large discounts and included cost of financing in inflated price, there is violation of Truth in Lending Act by both plaintiff and used car dealer. *Schleimer v McPherson (1978, 2d Dept) 60 App Div 2d 837, 400 NYS2d 566,* app dismd *(1978) 44 NY2d 730, 405 NYS2d 460, 376 NE2d 933.*

**5. Finder's fee**

Additional funds received by credit arranger for his services to credit extender is not finders fee and includable within finance charge even though such compensation is indirectly borne by debtor since such compensation is not imposed by creditor as incident to extension to credit, but is rebate designed to induce dealer to sell its notes to finance company. *Meyers v Clearview Dodge Sales (1976, CA5 La) 539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Broker fee paid from proceeds of home improvement loan was finder's fee, which had to be included in disclosed finance charge under *15 USCS § 1605(a)*, and, thus, lender's failure to include this fee in finance charge entitled borrower to rescind loan and to receive statutory damages. *Newton v United Cos. Fin. Corp. (1998, ED Pa) 24 F Supp 2d 444*, costs/fees proceeding, remanded on other grounds (2002, CA3 Pa) *33 Fed Appx 23.*

**6. Interest**

Concern behind requirement of *15 USCS § 1605(a)* that lenders disclose interest rate as well as any finance charge is that lender might try to make interest rate look lower than it really is by charging part of interest in form of fees for services rendered in connection with closing of loan. *Cowen v Bank United, FSB (1995, CA7 Ill) 70 F3d 937, 33 FR Serv 3d 138.*

For purposes of defining term "interest" within context of Truth in Lending Act (*15 USCS §§ 1601* et seq.), to extent that disclosure statement in which "interest" label appears is considered to be part of contractual transaction, meaning intended by parties should control and both definition and determination whether this charge is within that definition are questions of fact. *Trist v First Federal Sav. & Loan Asso. (1979, ED Pa) 466 F Supp 578, 1979-2 CCH Trade Cases P 62849.*

Difference between amount actually extended to borrower and face amount of note is interest charged by lender to borrower. *Martin v Body (1976, Tex Civ App Corpus Christi) 533 SW2d 461.*

**7. Notary fee**

Since notary fee for notarization of promissory notes as required by state law is not specifically exempted by statute or regulation from inclusion in finance charge under Truth in Lending Act, it is required to be included in finance charge, and nominal amount of fee ($ 1) is immaterial as far as disclosure requirement is concerned. *Buford v American Finance Co. (1971, ND Ga) 333 F Supp 1243, 15 FR Serv 2d 792.*

Notary's fee did not have to be included in finance charge in consumer credit transaction provided it was itemized on disclosure statement where state law prescribed that documents in connection with credit transaction had to be notarized; however, where creditor did not pay entire amount of notary fee listed on disclosure statement to notary, difference between charge for notary fee and amount actually paid to notary constituted hidden finance charge and failure to include this amount in finance charge constituted violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Williams v Bill Watson Ford, Inc. (1976, ED La) 423 F Supp 345.*

**8. Pawnbrokers**

Where transaction between pawnbroker and customer is determined to be loan, difference between amount advanced by pawnbroker for customer's property and repurchase price of such property constitutes finance charge. *Burnett v Ala Moana Pawn Shop (1993, CA9 Hawaii) 3 F3d 1261, 93 CDOS 6506, 93* Daily Journal DAR 11172.

"Storage fee" of $ 30 imposed by automobile pawnbroker at beginning of each transaction was "finance charge" under *15 USCS § 1605*, where pawnbroker would not have extended credit unless pawned automobile was left in its possession and fee was paid, even if pawnbroker refunded fee on pro rata basis when automobile was redeemed in less than 30 days. *Yazzie v Ray Vicker's Special Cars, Inc. (1998, DC NM) 180 FRD 411.*

**9. Service agreements**

$ 50 service charge for freezer was finance charge within meaning of *15 USCS § 1605(a)* because service contract apparently was required to be purchased by each appliance customer and was inextricably intertwined with dealer's interest as creditor. *Carney v Worthmore Furniture, Inc. (1977, CA4 Va) 561 F2d 1100.*

Food and freezer service agreement which was required in connection with frozen food purchase plan contract, whether considered insurance contract, service agreement, or membership fee, was includable in finance charge under *15 USCS § 1605(a)* since it was imposed as condition before credit was extended. *Berryhill v Rich Plan of Pensacola (1978, CA5 Ala) 578 F2d 1092, 46 ALR Fed 642.*

**10. Miscellaneous**

Fee for bank-approved attorney, whom bank required each car-loan borrower to employee in order to prepare valid chattel mortgage on car, was finance charge within meaning of § 106 of Truth in Lending Act (*15 USCS § 1605*), rather than part of "amount financed," notwithstanding that precise amount of fee was set by third person and bank did not retain fee, and bank was thus required to disclose fee as part of finance charge rather than to disclose it separately. *First Acadiana Bank v Federal Deposit Ins. Corp. (1987, CA5) 833 F2d 548.*

Release fees charged by mortgage lenders as condition of releasing deeds of trust on mortgaged property following repayment of mortgage loans were not within "finance charge" as that term is defined under *15 USCS § 1605(a)* and regulations promulgated pursuant thereto where release fees were not charged during transaction during which credit was extended, but as incident to formal extinguishment of lenders' liens after debts had been repaid, and loans were in no way conditioned on borrowers agreeing to pay release fees, and record reveals no evidence that borrowers were ever under any legal obligation to pay fees. *Adamson v Alliance Mortg. Co. (1988, CA4 Va) 861 F2d 63*, withdrawn by publisher, substituted op, reh den (1988, CA4) *1988 US App LEXIS 16583* and (ovrld in part by *Busby v Crown Supply (1990, CA4 Va) 896 F2d 833, 114 CCH LC P 12032)* and (criticized in *Bloom v Martin (1996, CA9 Cal) 77 F3d 318, 96 CDOS 1152, 96* Daily Journal DAR 1971, *142 ALR Fed 781)* and (ovrld as stated in *McAnaney v Astoria Fin. Corp. (2005, ED NY) 357 F Supp 2d 578).*

Moneys lent to debtor to satisfy debtor's previously owing taxes and prior mortgages are not finance charges within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Smith v Fid. Consumer Disc. Co. (1990, CA3 Pa) 898 F2d 896.*

Statutorily prescribed damages (*42 USCS § 254o*) awarded to United States in action brought for breach of scholarship agreement under National Health Service Corps Scholarship Program do not violate Truth in Lending Act, since damages provision is not credit provision because it only establishes damages due upon default, and charges for default are not finance charges under Act. *United States v Citrin (1992, CA9 Ariz) 972 F2d 1044, 92 CDOS 6880, 92* Daily Journal DAR 11075.

Even if loan broker's fees were finance charge under state law, such is irrelevant to claim that lender violated Truth in Lending Act, which is federal law. *Johnson v Fleet Fin. (1993, CA11 Ga) 4 F3d 946, 7 FLW Fed C 931.*

Claim that although installment sales contract for purchase of books provided that there was "no finance charge," deferred payment price included hidden finance charge, would be rejected, where (1) numerous purchasers paid full amount in cash at outset, rather than paying same total amount by means of installments extending over several months, (2) seller did not discount or assign its credit transactions to third parties, and (3) installment contracts including finance charge and longer period of installments were available. *Manzina v Publishers Guild (1974, SD NY) 386 F Supp 241.*

Fee charged purchasers of land in housing development for membership in development association was not finance charge within meaning of *15 USCS § 1605(a)* where charge was made regardless of whether sales of property were made on cash or credit basis. *Glover v Doe Valley Development Corp. (1975, WD Ky) 408 F Supp 699.*

Assumption by borrower of pre-existing debt of another as condition to extension of credit is interest applicable to borrower's loan and constitutes finance charge. *Campbell v Liberty Fin. Planning (1976, DC Neb) 422 F Supp 1386.*

$ 4 fee paid for filing financing statement by assignee bank was not finance charge within meaning of *15 USCS § 1605(a)* since it was not paid directly by borrower, but was paid by bank and absorbed as cost of doing business, and as

such, it need not have been disclosed. *Jennings v Edwards (1978, MD NC) 454 F Supp 770,* affd without op (1979, CA4 NC) *598 F2d 614.*

Hospital levies "late payment charge" rather than "finance charge" within meaning of Truth in Lending Act (*15 USCS § 1605*) when it expects payment upon discharge of patient from hospital, but adds charge after bill is overdue specified period. *Bright v Ball Memorial Hospital Asso. (1979, SD Ind) 463 F Supp 152,* affd (1980, CA7) *616 F2d 328.*

Required payment of reaffirmed debt, previously discharged in bankruptcy proceeding, constitutes finance charge under *15 USCS § 1605* where payment is required as incident or condition for granting loan, and failure to list reaffirmed debt as finance charge violates disclosure requirements of § 1605. *Campbell v General Finance Corp. (1981, WD Va) 523 F Supp 989.*

Borrowers who alleged that lender failed to include $ 1,019.40 prepaid finance charge in $ 40,675.60 finance charge, despite lender's assertion that annual percentage rate was correctly stated even if finance charge was not, states claim assertion violation of *15 USCS § 1605(a)* where borrowers were innocent consumers and no circumstances are asserted to warrant lender's release from TILA violations. *April v Union Mortgage Co. (1989, ND Ill) 709 F Supp 809.*

Federal Reserve System rule that debt cancellation fees be accorded identical treatment to credit insurance premiums is upheld, even though such ruling allows for exclusion of such fees from disclosed finance charge in certain specified circumstances, and *15 USCS § 1605* generally calls for any charge for protecting creditor against obligor's default to be included in finance charge, because nothing in § 1605 directly addresses debt cancellation fees, and rule serves to clarify treatment of such fees. *American Bankers Ins. Group v Board of Governors of the Fed. Reserve Sys. (1998, DC Dist Col) 3 F Supp 2d 37.*

In car buyers' suit alleging that lender, dealer, and general manager violated Truth in Lending Act, *15 USCS §§ 1601* et seq., through special financing program that involved acquisition fees, hidden finance charge and disclosure claims against dealer survived summary judgment because factual question existed as to whether dealer "separately imposed" acquisition fee on credit customers. *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841.*

In class action by car purchasers against car dealer alleging violations of federal Truth-In-Lending Act (TILA), *15 USCS § 1601* et seq., purchasers demonstrated that dealer failed to disclose documentary preparation fee that was assessed to purchasers financing purchase of automobile by credit, which was hidden finance charge as defined under *15 USCS § 1605(a). Hook v Baker (2004, SD Ohio) 352 F Supp 2d 839.*

Where it was unclear whether document preparation fees, facsimile fees, and recording fees charged to mortgagors when they prepaid their loans were charged for services requested by mortgagors, mortgagors' claims of undisclosed finance charges in violation of Truth in Lending Act survived dismissal. *McAnaney v Astoria Fin. Corp. (2005, ED NY) 357 F Supp 2d 578.*

Price charged to automobile purchaser in excess of advertised price was hidden finance charge for purposes of Truth in Lending Act where undisputed evidence showed that advertised price was available to cash and prime lender creditors but was not available to purchaser because he required sub-prime lending and salesman knew that purchaser was sub-prime credit customer when he established price. *Diaz v Paragon Motors of Woodside, Inc. (2006, ED NY) 424 F Supp 2d 519.*

Lenders were not entitled to summary judgment on one borrower's claims for violation of *15 USCS § 1605* because there were material issues of disputed fact concerning whether fee characterized as attorney document preparation fee was bona fide and reasonable and whether or not lenders demanded loan repayment in violation of contractual commitments, and whether or not fee was collected twice. *McAnaney v Astoria Fin. Corp. (2009, ED NY) 665 F Supp 2d 132.*

Borrower's TILA claim for damages against lender failed because claim was barred by one-year limitations period of *15 USCS § 1640(e)*; TILA rescission claim failed because payment schedule including legal obligation of minimum payment could not be basis for violation of Regulation Z and TILA and there were insufficient facts to support violations of claim based on APR disclosure under *15 USCS §§ 1605* and *1606*. *Conder v Home Sav. of Am. (2010, CD Cal) 680 F Supp 2d 1168.*

Summary judgment for bank was not proper in intervenor mortgagor's action against bank because filing of initial complaint within Truth in Lending Act (TILA), *15 USCS § 1601* et seq., period of limitation for mortgagor's claim under *15 USCS § 1605*, but outside TILA period of limitations for original representative's claim was sufficient to toll period of mortgagor's claim on previously unpleaded TILA claim under Mich. Ct. R. 3.501(F); further, question of fact existed whether bank's documentation fee was bona fide within meaning of applicable federal law. *Cowles v Bank West (2006, Mich) 719 NW2d 94.*

**B.Insurance Premiums**

**1.In General 11. Property damage, loss or liability insurance**

Disclosure statement which told borrower only that where insurance against loss of or damage to property is written in connection with such loan, "the cost" of such insurance may be obtained by borrower through person of his choice, did not satisfy provision of *15 USCS § 1605(c)* which requires lender to include charge for property insurance in finance charge unless "clear and specific" statement in writing is furnished borrower informing him that he has right to purchase insurance from person of his choice; in instant case, disclosure statement can at best be said to be unclear; it advised borrower that he could discover "the cost" of fire insurance from person of his choice but did not advise him that he had right to purchase such insurance from that source. *Burton v G. A. C. Finance Co. (1976, CA5 Ga) 525 F2d 961, 21 FR Serv 2d 318.*

Court of appeals found that consumer and motor vehicle dealer consummated series of agreements dealer prepared so consumer could finance purchase of two trucks when consumer signed agreements, not when dealer found third party to finance purchases, and it affirmed district court's judgment that dealer violated Truth in Lending Act (TILA); however, because court of appeals also found that dealer committed third violation of TILA when it included charge for guaranteed auto protection insurance in one of agreements, it vacated district court's judgment awarding consumer $ 53,627 in attorney fees and remanded case so district court could determine if that award was appropriate. *Gibson v LTD, Inc. (2006, CA4 Va) 434 F3d 275.*

Requirement of § 106(c) of Truth in Lending Act (*15 USCS § 1605(c)*) and regulations promulgated thereunder that premiums for insurance written in connection with credit transaction against loss of or damage to property be included in finance charge was not satisfied by statement in boldface letters stamped on security agreement that purchaser was required to carry physical damage insurance and separate statement set forth balance due on insurance premium and due date of premium but neither document contained required statement that customer could choose person through whom insurance was to be obtained. *Vines v Hodges (1976, DC Dist Col) 422 F Supp 1292.*

Bank properly excluded premiums for vendor's single interest insurance from finance charge under *15 USCS § 1605(c)* on installments contract form used in connection with automobile financing transaction, where insurer waived right of subrogation against customer, amount of insurance premium was stated on face of installment contract, and contract clearly stated that customer had right to choose person through whom insurance would be obtained, notwithstanding that statement of amount of premium was not further qualified by stating that charge shown was charge if obtained through creditor; fact that premium charge was inadvertently placed on line for "miscellaneous" charges, one line above that for "physical damage insurance" is de minimis violation, since premium charge was placed under proper grouping "other charges." *Kramer v Marine Midland Bank (1983, SD NY) 559 F Supp 273.*

Debtor who signed disclosure statement acknowledging that he had read statement could not complain that creditor

had failed to disclose property insurance charge where charge was clearly revealed in statement since debtor was presumed to have been aware of contents of document which he signed. *Bud Finance Co. v Gilardi (1976, La App 4th Cir) 330 So 2d 622.*

Under § 106(c) of Truth-in-Lending Act (*15 USCS § 1605(c)*) and Regulation Z (12 CFR § 226.403) [now *12 CFR § 226.4(d)*] property insurance information need not be disclosed on disclosure statement but may be contained within other financing documents, since property insurance premium is not cost imposed by lender where debtor was free to choose her own insurer on automobile and in fact did so. *Mullen v North Pacific Bank (1980) 25 Wash App 864, 610 P2d 949.*

**12.--Automobile insurance**

Buyer's claim that seller's charge for extended warranty on automobile was insurance and therefore should have been disclosed as part of finance charge requirement in Truth in Lending Act (*15 USCS §§ 1601* et seq.), failed to state cause of action under *15 USCS § 1605(a)* where buyer did not allege that it was charge imposed directly or indirectly as incident to or as condition of extension of credit. *Thomas v Ford Motor Credit Co. (1981) 48 Md App 617, 429 A2d 277, 31 UCCRS 1265.*

Where auto insurance premium was not included in finance charge and creditor did not furnish consumer with written statement setting forth cost of insurance obtained through creditor, creditor's failure to include insurance premiums in amount financed was violative of *15 USCS § 1605*. *McDonald v Savoy (1973, Tex Civ App San Antonio) 501 SW2d 400.*

**13. Miscellaneous**

Borrowers may proceed with claim that premium collected by lender for "nonrecording insurance" should have been included in finance charge disclosure under *15 USCS § 1605(a)(5)*, where borrowers marshaled substantial amount of evidence to show that lender never purchased true nonrecording insurance but instead simply pooled premiums collected, because genuine issue of fact exists as to whether contested amount was really "premium or other charge for any guarantee or insurance protecting creditor against obligor's default or other credit loss." *Dixon v S & S Loan Serv. (1990, SD Ga) 754 F Supp 1567.*

Twenty-dollar premium was properly excluded from "finance charge" pursuant to *15 USCS § 1605(d)* and *12 CFR § 226.4(e)*, even though debtor argues creditor is charging premium for general default insurance and labeling it as nonfiling insurance, because language of policy clearly establishes it is for nonfiling insurance and evidence fails to establish mutual error between creditor and insurer, or that "general default" insurance exists as product in insurance industry. *Edwards v Your Credit (1997, MD La) 971 F Supp 1045*, vacated on other grounds, remanded (1998, CA5 La) *148 F3d 427*, amd on other grounds, reh, en banc, den (1998, CA5 La) *1998 US App LEXIS 20916.*

**2.Credit Life, Accident or Health Insurance 14. Generally**

Disclosure statement does not violate *15 USCS § 1605(b)* by (1) having date of statement typed rather than written in by creditor at time of signing, (2) not showing term of life insurance where insurance term coincides with term of loan, or (3) leaving some blanks on disclosure statement in section dealing with insurance; cost of insurance was revealed clearly and plaintiff admitted she knew she was purchasing life insurance. *Young v Ouachita Nat'l Bank (1977, WD La) 428 F Supp 1323.*

Credit life insurance charges or premiums must be included in disclosure of finance charges unless insurance coverage is not required by creditor and is disclosed in writing to customer and customer desiring such insurance coverage gives specific dated and separately signed written indication of such desire. *In re Estate of Graff (1983, 3d Dist) 117 Ill App 3d 900, 73 Ill Dec 161, 453 NE2d 1150.*

Loan agreement containing insurance agreement providing that credit insurance is not required by bank, is not factor in approval of extension of credit and that no credit insurance is to be provided unless debtor signs appropriate authorization conveys necessary information in lucid terms, is located in proximity with other insurance provisions of agreement so that customer's attention is drawn to it, and is clear and conspicuous disclosure within meaning of Truth in Lending Act (*15 USCS § 1605*) and Regulation Z (*12 CFR §§ 226.4, 226.6*). *National Republic Bank v Proctor (1978, 1st Dist) 66 Ill App 3d 534, 23 Ill Dec 283, 383 NE2d 1310, 26 UCCRS 567.*

**15. Optional coverage**

Creditor may include optional credit insurance premiums in finance charge even though he is not required to do so. *Robinson v Central Loan & Fin. Corp. (1980, CA5 Ga) 609 F2d 170, 28 FR Serv 2d 853.*

Where defendant's disclosure form on its face gave clear written disclosure to plaintiff that insurance was not required as condition of loan to plaintiff and disclosed cost of voluntary life and disability insurance, requirements of *15 USCS § 1605(b)* were not violated. *Fisher v Beneficial Finance Co. (1974, DC RI) 383 F Supp 895.*

Used car dealer did not violate *15 USCS § 1605(b)* and comparable provision of Regulation Z (*12 CFR § 226.4*) even though insurance premium charges were not included in finance charge, where automobile sales contract listed insurance premium charges separately and specifically informed buyer that he was not required to obtain credit life and/or accident and health insurance, it being conceded that contract specifically informed plaintiff that he was not required to purchase such insurance; although plaintiff may not have fully understood terms of contract, this cannot be attributed to defendant's failure to comply. *Stanley v R. S. Evans Motors, Inc. (1975, MD Fla) 394 F Supp 859.*

Nonmandatory credit insurance premiums are not finance charges and are not required to be disclosed by Truth in Lending Act (*15 USCS §§ 1601* et seq.) regulations promulgated thereunder. *Ecenrode v Household Finance Corp. (1976, DC Del) 422 F Supp 1327.*

Defendant's failure to properly disclose cost, type, and term of optional credit life and disability insurance stated claim for which relief could be granted under Truth in Lending Act; but when credit insurance is optional and is clearly noted as such on face of contract, cost of insurance premium is excluded from finance charge under *15 USCS § 1605(b)* and Regulation Z § 226.4, regardless of amount of commission seller makes, even against claim that such commission is unusually large. *Rivera v Dick McFeely Pontiac, Inc. (1977, DC Ill) 431 F Supp 506.*

Class action claim by customers of consumer loan finance company alleging violation of Truth In Lending Act (TILA) is denied summarily, where customers claimed that premium for accidental death and dismemberment (AD&D) insurance should have been calculated in finance charge, because AD&D insurance was not required feature of consumer loans and was therefore not imposed as incident to extension of credit, so premiums did not have to be included in finance charge. *Mitchell v Industrial Credit Corp. (1995, ND Ala) 898 F Supp 1518.*

Borrowers' *15 USCS § 1605(b)* claim against lender will not be denied summarily, even though loan contracts unequivocally state that purchase of insurance is optional, where borrowers assert that lender's agent represented that credit life insurance was required as condition of their loans, because reasonable finder of fact could conclude that lender required credit life insurance and that premiums for this insurance should have been added into finance charge. *Hager v American Gen. Fin., Inc. (1999, SD W Va) 37 F Supp 2d 778.*

Bank was not required to parrot language of regulation in its credit card application that enrollment in its credit insurance package was wholly voluntary, where credit card applicant brought suit against bank for alleged violation of *15 USCS § 1605(b)*, since bank could disclose voluntary nature of package in any particular manner so long as disclosure was clear and conspicuous. *London v Chase Manhattan Bank USA, N.A. (2001, SD Fla) 150 F Supp 2d 1314*, revd on other grounds, remanded (2003, CA11 Fla) *340 F3d 1246, 56 FR Serv 3d 506, 16 FLW Fed C 969.*

Summary judgment was entered against vehicle buyer as to his claim for actual damages under *15 USCS § 1640(a)*,

arising from bank lender's violation of *15 USCS § 1605(b)* disclosure requirements, because buyer could not show that he detrimentally relied on lender's defective disclosure statement, which proof was required to recover actual damages under Truth in Lending Act (TILA); although lender violated TILA by including cost of accidental debt cancellation insurance in its finance charge without disclosing to buyer cost of insurance or that it was optional, buyer could not show detrimental reliance because he did not decline insurance or insist that lender deduct insurance cost from his loan transaction after company that issued insurance policy informed him of cost and that insurance was optional. *Vallies v Sky Bank (2008, WD Pa) 583 F Supp 2d 687.*

In Chapter 13 bankruptcy case in which debtor challenged alleged predatory loan transaction, debtor had no claim under Home Ownership Equity Protection Act, *15 USCS § 1639* et seq., because points and fees, calculated pursuant to *15 USCS §§ 1602(aa), 1605(c)* and *12 C.F.R. §§ 226.4(c)(7), 226.32(b)(1),* did not exceed eight percent of total loan amount. *Bell v Parkway Mortg., Inc. (In re Bell) (2004, BC ED Pa) 309 BR 139,* mod and reh den (2004, BC ED Pa) *314 BR 54, 59 FR Serv 3d 763.*

Even if insurance is not factor in creditor's decision to extend credit, insurance costs must be included in finance charge where consumer does not have opportunity to exercise choice, result being same whether creditor officially requires coverage or informally does so by practices which undermine borrower's voluntary election; where, despite lender's official policy providing that credit life or health insurance was optional, lender included insurance in loan documents prior to giving consumers proper written disclosure of their options, told customers about credit insurance charges without disclosing that insurance was voluntary and asked customers to sign for insurance before they elected to purchase such coverage, borrower confusion about voluntary nature of insurance was contributed to by such practices, independently and collectively and lender's failure to include cost of insurance in calculation of finance charge and annual percentage rate constituted violation of Truth in Lending Act (*15 USCS § 1605(b)*) and § 5 of Federal Trade Commission Act (*15 USCS § 45*). In *Matter of USLIFE Credit Corp. (1978, FTC) 92 FTC 353.*

**16. Written authorization for insurance**

Where lender did not obtain signature of borrower accepting credit life insurance, charge for such insurance was required to be disclosed in finance charge, and failure to make such disclosure constituted violation of regulations promulgated pursuant to Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.), although failure to disclose term of such insurance was not violation. *Simmons v American Budget Plan (1974, ED La) 386 F Supp 194.*

Under *15 USCS § 1605(b)* and provision of Regulation Z (*12 CFR § 226.4*) which implements statutory section, borrower's written request for credit life insurance need not be dated next to signature, where date appears on top of page and there is no dispute as to date for purposes of regulation requirement that credit life charges be included in finance charges unless specifically dated request is signed. *In re Warren (1975, SD Ohio) 387 F Supp 1395.*

Section 106(b) of Truth in Lending Act (*15 USCS § 1605(b)*) and *12 CFR 226.4* promulgated thereunder require only that cost of credit life insurance be included in finance charge unless request for credit life insurance is separately signed and dated, and where cost of insurance was included in finance charge, lack of date appearing beside debtor's signature, indicating his desire for credit life insurance, does not bar assignee of debt from claiming status of holder in due course. *Personal Finance Co. v Meredith (1976, 5th Dist) 39 Ill App 3d 695, 350 NE2d 781, 20 UCCRS 198.*

**17.--Co-obligors**

Plaintiff's contention, in action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) that lender illegally included charges for credit life insurance, which was not required, in amount financed rather than in finance charge where co-borrower (plaintiff's wife), although signing disclosure statement, did not indicate desire for such insurance was without merit since letter of staff of Federal Reserve Board indicated that consent to insurance was not required by all borrowers in multi-party transaction and borrower was sufficiently informed as to cost of such insurance. *Gantt v Commonwealth Loan Co. (1978, CA8 Mo) 573 F2d 520.*

Where husband, who was one obligor on loan obtained credit insurance while his wife, co-obligor, did not obtain insurance, creditor was not required to include cost of credit insurance in amount of finance charge disclosed to wife; although wife, by cosigning note, obligated herself on entire amount of loan, including cost of husband's credit insurance, and because creditor failed to include cost of husband's insurance coverage in finance charge disclosed to her, creditor arguably understated finance charge charged her since she was obligated to pay cost of husband's credit obligation should he default on his obligation, Truth in Lending Act and regulations do not expressly require creditor to recompute finance charge disclosed to uninsured co-obligor. *Mason v General Finance Corp. (1975, ED Va) 401 F Supp 782,* affd in part and revd in part on other grounds (1976, CA4) *542 F2d 1226, 37 ALR Fed 799.*

Only obligor insured in connection with consumer loan transaction is required under Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) to give affirmative written authorization for insurance coverage on disclosure statements, and separate computation of finance charge disclosed to uninsured co-obligor is not required. *Gantt v Commonwealth Loan Co. (1976, ED Mo) 416 F Supp 309,* affd (1978, CA8 Mo) *573 F2d 520.*

Loan company's failure to obtain signature of wife along with that of husband's on Insurance Notice, pursuant to *15 USCS § 1605(b),* amounted to unintentional, bona fide error that came about despite maintenance of procedures reasonably adapted to avoid it, and thus was not violation of Truth in Lending Act (*15 USCS § 1605(b)*) and Regulation Z (*12 CFR § 226.8(b)(3)* [now *12 CFR § 226.4(d)*]). *Bailey v Defenbaugh & Co. (1981, ND Miss) 513 F Supp 232.*

While accident and health insurance premium is not included in contract as finance charge, there is no violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z (*12 CFR § 226.4*) as to purchaser where form was furnished and signed by purchaser which clearly and conspicuously disclosed that health and accident insurance was not required by creditor, and purchaser signed form requesting insurance coverage; however, requirements of Act are not met as to cosigner where cosigner did not sign disclosure form, did not sign request for insurance, and denied knowledge of both. *Ray v Acme Finance Corp. (1979, Miss) 367 So 2d 186.*

**18. Cost of insurance**

Neither Truth in Lending Act (*15 USCS §§ 1601* et seq.) nor Regulation Z explicitly requires disclosure of term of credit life, health, accident, or property insurance; only cost of insurance that is written for sale or loan must be disclosed. *Wright v Tower Loan of Mississippi, Inc. (1982, CA5 Miss) 679 F2d 436.*

Where defendant's disclosure form on its face gave clear written disclosure to plaintiff that insurance was not required as condition of loan to plaintiff and disclosed cost of voluntary life and disability insurance, requirements of *15 USCS § 1605(b)* were not violated. *Fisher v Beneficial Finance Co. (1974, DC RI) 383 F Supp 895.*

Creditor in loan transaction does not violate Truth in Lending Act (*15 USCS §§ 1601* et seq.) by not showing on disclosure statement total cost of combination of health and accident insurance and credit life insurance; although inclusion of insurance premiums in insurance authorization section of disclosure statement is preferable, listing premiums in another section to which insurance authorization section refers satisfies Act. *Gillard v Aetna Fin. Co. (1976, ED La) 414 F Supp 737.*

Defendant's failure to properly disclose cost, type, and term of optional credit life and disability insurance stated claim for which relief could be granted under Truth in Lending Act; but when credit insurance is optional and is clearly noted as such on face of contract, cost of insurance premium is excluded from finance charge under *15 USCS § 1605(b)* and Regulation Z § 226.4, regardless of amount of commission seller makes, even against claim that such commission is unusually large. *Rivera v Dick McFeely Pontiac, Inc. (1977, DC Ill) 431 F Supp 506.*

**19. Term of insurance**

Neither Truth in Lending Act (*15 USCS §§ 1601* et seq.) nor Regulation Z explicitly requires disclosure of term of credit life, health, accident, or property insurance. *Wright v Tower Loan of Mississippi, Inc. (1982, CA5 Miss) 679 F2d*

*436.*

Failure to disclose type and term of optional insurance did not violate regulations under Truth in Lending Act. *Doggett v Ritter Fin. Co. (1974, WD Va) 384 F Supp 150,* affd in part and revd in part on other grounds (1975, CA4 Va) *528 F2d 860.*

Creditor does not violate Act by failing to disclose term of credit life insurance since term need not be separately disclosed where, as here, it is identical to term of loan itself. *Copley v Rona Enters. (1976, SD Ohio) 423 F Supp 979.*

Under *15 USCS § 1605,* no disclosure was required on loan statement or loan contract as to whether credit life insurance was "level term" or "declining term." *Cullers v Home Credit Co. (1973) 130 Ga App 441, 203 SE2d 544.*

**20. Placement of disclosure**

Where issuance of credit life insurance is optional and term of insurance coincides with term of credit obligation, Truth in Lending Act under *15 USCS § 1605(b)* does not require disclosure of term of insurance on face of installment sales contract; disclosure of term of insurance is necessary only in those instances in which term of insurance is less than term of credit obligation. *Philbeck v Timmers Chevrolet, Inc. (1974, CA5 Ga) 499 F2d 971,* reh den (1974, CA5 Ga) *502 F2d 1167.*

Failure to clearly and conspicuously disclose cost of credit life and disability insurance violated *15 USCS § 1605(b)* and *12 CFR § 226.4* (Regulation Z). *Doggett v Ritter Fin. Co. (1974, WD Va) 384 F Supp 150,* affd in part and revd in part on other grounds (1975, CA4 Va) *528 F2d 860.*

Where finance company's disclosure statement excluded insurance cost from finance charge, thus enabling it to make loan look more favorable to borrower by lowering finance charge, and listed such insurance charge in upper left hand corner in midst of boxed figures and also on large box which listed various costs to borrower, but did not list insurance costs in section of statement entitled "Insurance Authorization," there was insufficient disclosure to exempt including insurance charges in finance charge under *15 USCS § 1605(b),* and there was failure to meet conditions of § 226.6 of Regulation Z, which provides that disclosures required to be given shall be made clearly, conspicuously, and in meaningful sequence. *Woods v Beneficial Fin. Co. (1975, DC Or) 395 F Supp 9.*

There was no violation of *15 USCS § 1605(b)* where insurance authorization block, which occupied front left center of financing statement, specifically referred and pointed to itemized sales statement immediately to right thereof and which clearly reflected credit life insurance premiums; Truth in Lending Act does not require that creditor disclose insurance costs in any one particular place on financing statement. *English v MCC Financial Services, Inc. (1975, MD Ga) 403 F Supp 679,* affd without op (1975, CA5 Ga) *520 F2d 941.*

Fact that in agreement for sale of automobile on credit terms, insurance costs were listed on opposite side of agreement from insurance authorization does not constitute violation of *15 USCS § 1605(b)* since purpose of Act is to assure meaningful disclosure of credit terms, and insurance authorization clearly referred to insurance finance charges; there is nothing in Act requiring creditor to disclose insurance costs in any one particular place on financing statement. *English v MCC Financial Services, Inc. (1975, MD Ga) 403 F Supp 679,* affd without op (1975, CA5 Ga) *520 F2d 941.*

Placement of definition of "finance charge" outside grid bar section marked "payment" is not violation since regulations prescribe not location but substance of finance charge definition. *Misher v Household Finance Consumer Discount Co. (1983, ED Pa) 571 F Supp 726.*

To require that terms of credit and disability insurance be shown on face of credit contract when term of such insurance is same as term of credit obligation and such insurance costs are itemized elsewhere in contract would not further meaningful disclosure and is not required by *15 USCS § 1605. National Boulevard Bank v Jackson (1981, 1st Dist) 92 Ill App 3d 928, 48 Ill Dec 327, 416 NE2d 358, 31 UCCRS 781.*

**21. Miscellaneous**

Where disclosure statements say that terms of insurance policies can be found on insurance policies, and lender discloses terms of these policies on policies themselves, this disclosure satisfies requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Wright v Tower Loan of Mississippi, Inc. (1982, CA5 Miss) 679 F2d 436.*

In general, creditor may comply with Regulation Z by making insurance disclosures in format which will insure that customer is aware of cost of insurance before signing insurance authorization. *Wright v Tower Loan of Mississippi, Inc. (1982, CA5 Miss) 679 F2d 436.*

Seller of mobile home on credit violated Truth in Lending Act (*15 USCS §§ 1601* et seq.) by failing to include as part of finance charge cost of credit life insurance where creditor had not clearly disclosed in writing to debtor fact that coverage of debtor by such insurance was not factor in extension of credit, and debtor had not given specific affirmative written indication of his desire to obtain insurance, both of which conditions must be met if cost of insurance is to be left out of finance charge. *Copley v Rona Enters. (1976, SD Ohio) 423 F Supp 979.*

Under *15 USCS § 1605(b)* and Regulation Z § 226.4, defendant did not improperly fail to include in finance charge charges for credit insurance, because credit insurance was not required to be purchased; although plaintiff was presented with credit contract with request for insurance coverage already filled out, her assumption that insurance was thereby required was not enough, because written disclosures under Truth in Lending Act recited that insurance was not required; plaintiff was not entitled to oral disclosure that insurance was not required; plaintiff would have had to prove that creditor specifically and unequivocally informed her that insurance was required in order to contradict recital in contract to contrary. *Mims v Dixie Finance Corp. (1976, ND Ga) 426 F Supp 627, 21 FR Serv 2d 1042.*

Where defendant lender's disclosures did not appear deceptive because insurance "blocks" on disclosure statement were conspicuously portrayed, kind of insurance was identified, amount of premium was specified, plaintiff borrowers were required to sign separately each request for insurance at specified cost to each, insurance application and authorization form disclosed period of coverage, and lender used very forms suggested by Regulation Z it did not appear that borrowers would prevail on their Federal Truth-in-Lending Act, *15 USCS §§ 1601* et seq., claims against lender and affiliated insurer; this fact supported reasonableness of proposed settlement agreement between parties. *Smith v Tower Loan of Miss., Inc. (2003, SD Miss) 216 FRD 338,* affd (2004, CA5 Miss) *91 Fed Appx 952,* cert den (2005, US) *160 L Ed 2d 898, 125 S Ct 972.*

Finance company violated disclosure requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) by including cost of credit life and credit disability insurance in amount financed rather than in amount of finance charge where company failed adequately to disclose either cost of insurance or fact that insurance was not factor in decision of whether to make loan. *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

**III.EXCLUDABLE ITEMS 22. Comparable cash transaction charges**

Since *15 USCS § 1605(a)* provides that finance charge does not include charges of type payable in comparable cash transaction, comparison to cash transactions can aid in determination of whether particular optional term affects credit relationship between parties; however, statute does not imply that any charge that would not occur in cash transaction but could occur in credit transaction is automatically "finance charge." *McGee v Kerr-Hickman Chrysler Plymouth (1996, CA7 Ill) 93 F3d 380, 35 FR Serv 3d 1217.*

Where customer who is buying item on credit is charged higher price than customer who buys same item for cash, credit customer is paying higher "cash" price and such price is part of cost of buying on credit; as such, higher cash price paid by credit customer is part of cost of buying on credit and is finance charge, and must be disclosed to consumer. *Walker v Wallace Auto Sales (1998, CA7 Ill) 155 F3d 927.*

Where borrowers of home mortgage claimed that, because title company allegedly overcharged them for title

insurance, loan should be rescinded on basis that entire amount charged by title company was undisclosed broker's fee, court held that, because debtors admitted that they received title insurance, entire amount could not qualify as finance charge. *Guise v BWM Mortg., LLC (2004, CA7 Ill) 377 F3d 795,* reh den, reh, en banc, den (2004, CA7 Ill) *2004 US App LEXIS 18797.*

Where borrowers of home mortgage claimed that, because title company allegedly overcharged them for title insurance, loan should be rescinded on basis that amount of overcharge was actually hidden, undisclosed finance charge that was additional compensation to mortgage broker, court held that, even if allegation was true, understatement of finance fee was too insignificant, as calculated under *15 USCS § 1605(f)(2)(A),* to entitle debtors to rescission of their loan. *Guise v BWM Mortg., LLC (2004, CA7 Ill) 377 F3d 795,* reh den, reh, en banc, den (2004, CA7 Ill) *2004 US App LEXIS 18797.*

District court properly determined that borrowers' telephone bill and principal overstatement were not part of points and fees and did not trigger additional disclosure requirements of Home Ownership and Equity Protection Act because they were imposed as amount financed, not as charge incident to extension of credit, and were thus payable in comparable cash transaction under *15 USCS § 1605(a)* and excluded from finance charge. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 463 F3d 793.*

Automobile dealer illegally included finance charge within price of automobile where dealer would have accepted much lower amount from cash customer than he charged purchaser who contracted to pay by installments. *Rowe Auto & Trailer Sales, Inc. v King (1975) 257 Ark 484, 517 SW2d 946, 16 UCCRS 424.*

**23. Escrows**

Allegation that defendant's failure to include in its computation amounts required to be paid in escrow for taxes and insurance premiums, constituted failure to disclose true annual percentage interest rate on loans made to plaintiffs, was properly dismissed. *Stavrides v Mellon Nat'l Bank & Trust Co. (1973, CA3 Pa) 487 F2d 953.*

Truth In Lending Act does not require disclosure of noninterest-bearing nature of escrow accounts required by mortgagees for payment of taxes, assessments, and insurance. *Umdenstock v American Mortgage & Inv. Co. (1974, CA10 Okla) 495 F2d 589, 1974-1 CCH Trade Cases P 75039, 18 FR Serv 2d 1075.*

Where plaintiffs financed their home with first mortgage from savings and loan association, and, as part of financing statement, $ 123 was withheld from amount of loan as impound to pay insurance and taxes on property, and plaintiffs were also required to place 1/12 of annual taxes and insurance premiums in impound account each month, impounds were covered within exemption of *15 USCS § 1605(e)(3)* relating to escrow accounts. *Moore v Great Western Sav. & Loan Asso. (1975, CA9 Cal) 513 F2d 688.*

It is not violative of Truth in Lending Act for lending institutions not to deduct certain escrow payments from unpaid principal debt paid balances when calculating interest owed. *Munn v American Gen. Inv. Corp. (1973, SD Tex) 364 F Supp 110.*

Truth in Lending Act does not require disclosure that prepayment of taxes and insurance premiums in advance will not bear interest, nor is exclusion of this understatement of annual percentage rate; periodic statements need not include computation of any funds held in escrow for future payments of real estate taxes or insurance premiums. *Foster v Maryland State Sav. & Loan Asso. (1974, DC Dist Col) 369 F Supp 843.*

Monthly tax payments to mortgage lending institution constituted escrows, so as to be within specific exception, under Truth in Lending Act (*15 USCS § 1605(e)(3)*), from definition of required deposit balances. *Buchanan v Brentwood Federal Sav. & Loan Asso. (1974) 457 Pa 135, 320 A2d 117.*

**24. License and registration fees**

Disclosure statement on which creditor lists charges for tag and title registration under heading of "Official Fees" in "Other Charges" section is not sufficiently itemized to permit exemption from finance charge under *15 USCS § 1605(d)*; while such failure to itemize is miniscule, once violation is found, no matter how technical, court has no discretion with respect to imposition of liability. *Grant v Imperial Motors (1976, CA5 Ga) 539 F2d 506.*

Failure to individually itemize charges for license, title, and fees is violation of Truth in Lending Act since such charges are not fees for services related to sale nor part of finance charge. *Meyers v Clearview Dodge Sales (1976, CA5 La) 539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633; Cenance v Bohn Ford, Inc. (1980, CA5 La) 621 F2d 130,* reh den (1980, CA5 La) *629 F2d 1349* and affd in part and revd in part on other grounds *(1981) 452 US 155, 68 L Ed 2d 744, 101 S Ct 2239.*

Bank did not violate *15 USCS § 1605(a)* or *12 CFR § 226.4(b)* by listing on loan disclosure statement items such as taxes, recordation fees, license fees, certificate of title fees, and dealer documentation fees as "other charges" rather than finance charges, where bank correctly listed total amount financed as consisting of amount of loans plus other charges. *Souife v First Nat'l Bank of Commerce (1980, CA5 La) 628 F2d 480,* op replaced (1981, CA5 La) *653 F2d 142.*

Disclosure statement which neither separately itemizes nor lists as part of finance charge amount needed to cover license, license transfer, title, and registration fee, but rather includes these amounts in cash price, is not sufficiently itemized and disclosed as required by *15 USCS § 1605(d).* *Starks v Orleans Motors (1974, ED La) 372 F Supp 928,* affd without op (1974, CA5 La) *500 F2d 1182.*

While sales agreements parenthetically stated that "cash price" included "Taxes, License Fees, Registration, and Certificate of Title", evidence revealed that only item included in "cash price" was 3 percent state sales tax which need not be included in "finance charge" under *15 USCS § 1605*; in any case, evidence indicated that state sales tax charges were shown to plaintiff to be part of "cash price" of automobile purchased; seller, therefore, had complied with disclosure requirements of Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.). *English v MCC Financial Services, Inc. (1975, MD Ga) 403 F Supp 679,* affd without op (1975, CA5 Ga) *520 F2d 941.*

Section 106 of Truth in Lending Act (*15 USCS § 1605*) [prior to 1980 amendment] exempts from inclusion in finance charge charges for tax, license, title and registration fees only if those charges are itemized and disclosed to customer, and exemption did not apply where seller of automobile in credit transaction did not itemize these charges in manner required by regulations promulgated under Act and did not provide car order and bill of sale before consummating contract in compliance with general rule governing time of making disclosures; difference between price charged to purchasers and average retail price for automobile could not be considered part of finance charge where no evidence had been introduced to indicate true market value of automobile. *Vines v Hodges (1976, DC Dist Col) 422 F Supp 1292.*

Charge for license, title, and registration fees required under state law do not normally have to be included in finance charge under Truth in Lending Act (*15 USCS §§ 1601* et seq.) provided they are itemized on disclosure statement, but where amount listed for such fees was actually more than amount paid to state, difference between amount charged and amount paid was hidden finance charge and failure to include this amount as part of finance charge constituted violation of Act. *Williams v Bill Watson Ford, Inc. (1976, ED La) 423 F Supp 345.*

Bank failed to "itemize" charges as contemplated in *15 USCS § 1605*, where bank had category "official fees" which really included separate fee for license plate, title, and to record sale and mortgage; lending institutions must choose either to include various expenses in finance charge or to itemize them in detail; merely summarizing or categorizing fees and expenses is not adequate disclosure. *Young v Ouachita Nat'l Bank (1977, WD La) 428 F Supp 1323.*

Disclosure statement is not sufficiently itemized where there is lumping of certificate of title fee with charge for recording title since, while 2 charges are to accomplish single purpose, provision of regulations specifically treat

charges differently. *Desselles v Mossy Motors, Inc. (1978, ED La) 442 F Supp 897.*

Car dealership is not liable for 3 alleged violations of Truth in Lending Act (*15 USCS §§ 1601* et seq.), where balance of "license" fee charged to buyer but not paid by dealership to state is not "finance charge" within meaning of § 1605(a), because fee is charged in comparable cash and credit transactions and meets comparable cash transaction exception. *White v Diamond Motors (1997, MD La) 962 F Supp 867, 154 ALR Fed 737.*

**25. Taxes**

Florida intangible tax is not finance charge payable by consumer as incident to extension of credit, since tax is prescribed by law and paid to public official for perfecting security interest. *Veale v Citibank, F.S.B. (1996, CA11 Fla) 85 F3d 577, 10 FLW Fed C 3,* cert den *(1997) 520 US 1198, 137 L Ed 2d 704, 117 S Ct 1556.*

Rescission of consumer credit transaction was not warranted, where lender failed to include in disclosure statement itemization of taxes and fees required by law, but did itemize such fees in settlement statement, because this failure was technical violation and not material nondisclosure. *Malfa v Household Bank, F.S.B. (1993, SD Fla) 825 F Supp 1018, 7 FLW Fed D 249,* affd without op (1995, CA11 Fla) *50 F3d 1037.*

Mortgagee is entitled to summary dismissal of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) claim regarding Florida's intangible tax, even though prior Eleventh Circuit opinion held that tax should have been disclosed as finance charge, where only and most current interpretation of Florida law by state appellate court held that tax should be excluded from disclosure as finance charge under TILA, because tax is actually fee paid for perfecting security interest and is not TILA finance charge. *Nussbaum v Mortgage Serv. Am. Co. (1995, SD Fla) 913 F Supp 1548.*

Car credit corporation is granted summary dismissal of customer's contention that failure to disclose $ 25 ad valorem tax as "finance charge" violates *15 USCS § 1638,* where record reveals that policy is to pass through cost of ad valorem taxes to both cash and credit customers, because court finds that $ 25 ad valorem tax meets comparable cash transaction exception set forth in *15 USCS § 1605(a)* and is properly excluded from "finance charge." *Brown v Coleman Invs. (1998, MD La) 993 F Supp 416.*

**26. Title examination or insurance**

Transfer fee or fee for replacement of lost or defaced certificates of ownership and registration, imposed by state statute, does not constitute finance charge and may be included in cash price which automobile dealer charges purchasers since fees in question are charged in both cash and credit transactions. *St. Germain v Bank of Hawaii (1977, CA9 Hawaii) 573 F2d 572.*

Charge of $ 13 by lender to borrower to clear title to property securing lien of prior lien could not be considered finance charge within meaning of *15 USCS § 1605(a),* since under *12 CFR § 226.4(e)(2),* fees charged for releasing or satisfying security claim are not finance charges, and although $ 13 was never used to clear title to property because prior lienor was no longer in business, under *12 CFR § 226.1(e)* inaccuracy resulting because of event occurring after creditor delivers required disclosures is not violation of regulation. *Smith v Fid. Consumer Disc. Co. (1990, CA3 Pa) 898 F2d 896.*

Creditor did not violate Home Ownership and Equity Protection Act (HOEPA), *15 USCS §§ 1602(aa)(1)(B), 1639(a),* by not including appraisal fee, title insurance fee, phone-bill charge, or principal disbursement in total points and fees of debtors' loan because (1) appraisal and title insurance fees, if bona fide and reasonable, were excluded from HOEPA's definition of total points and fees under *15 USCS § 1605(e)* and *12 CFR § 226.4(c)(7)*; (2) appraisal and title insurance fees were bona fide and reasonable because they did not violate Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2607(b),* as they were paid to unaffiliated third party for services actually performed and creditor derived no benefit from payments; and (3) *15 USCS § 1602(aa)(4)* did not include telephone charge and principal disbursement in total points and fees. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 451 F3d 913.*

District court correctly found that appraisal and title insurance fees did not violate Real Estate Settlement Procedures Act, *12 USCS § 2607(b)*, because they were paid to unaffiliated third party for services actually performed, and, in any event, creditor derived no benefit from payments; therefore, fees were bona fide and reasonable and excluded from definition of total points and fees under Home Ownership and Equity Protection Act, *15 USCS § 1605(e)*. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 463 F3d 793.*

District court did not err in ruling that mortgage lender only had to disclose to mortgagor title insurance overcharge as finance charge under Truth in Lending Act (TILA), rather than whole title insurance fee, because *15 USCS § 1605(f)* did not vary from actual finance charge by more than specified amount, so if lender had not overcharged mortgagor by $ 668, proper "actual finance charge" as calculated under TILA would not have had to include legitimate refinance insurance rate of $ 1719, which was fee for title insurance that lender did provide under *15 USCS § 1605(e)*. *McCutcheon v America's Servicing Co. (2009, CA3 Pa) 560 F3d 143.*

Bankruptcy court properly granted summary judgment against debtors on their Truth in Lending Act, *15 USCS §§ 1601* et seq., damages claim on ground that they failed to create genuine issue of material fact as to whether they had prior title insurance in connection with loan. *Madera v Ameriquest Mortg. Co. (In re Madera) (2009, CA3 Pa) 586 F3d 228.*

Lending institution's alleged failure to disclose to home mortgage loan applicants that applicant's purchase of title insurance through lending institution resulted in 10 percent rebate from insurance company for prompt payment, which rebate lending institution kept, did not violate Truth in Lending Act, because of exemption granted by *15 USCS § 1605(e)(1)*. *Spens v Citizens Federal Sav. & Loan Asso. (1973, ND Ill) 364 F Supp 1161.*

Exclusion, in *15 USCS § 1605(e)(1)*, of title insurance premiums from computation of finance charge should not be narrowly construed as relating solely to mortgagee's title insurance and not to owner's title insurance, title insurance being defined as insurance against loss from defects in title which is taken out by either purchaser or mortgagee; failure to disclose cost of owner's title did not violate provision of Regulation Z (*12 CFR § 226.4*) requiring that charges be bona fide, reasonable in amount, and not for purpose of circumvention or evasion, where there was no proof that requirement of insurance violated Maryland statutory provision prohibiting requirement that borrowers purchase insurance from particular company. *Postow v Oriental Bldg. Ass'n (1975, DC Dist Col) 390 F Supp 1130.*

Where mortgagors asserted that mortgage lender improperly charged mortgagors basic rate for title insurance rather that lower refinance rate which was applicable based on title insurance obtained with regard to prior mortgage loan refinanced by new loan, mortgagors failed to show that lender knew of prior insurance to establish that rate was unreasonable and thus includable as part of finance charge under *15 USCS § 1605(a)* and subject to disclosure under *15 USCS §§ 1602(u), 1638(a)*; there was no credible evidence that mortgagors notified lender of existence of prior title insurance, lender's knowledge that mortgagors had prior mortgage loan did not place lender on notice of such prior insurance, and lender had no duty to inquire concerning existence of prior insurance. Glauser v Deutsche Bank Nat'l Trust Co.(In re Glauser) (2007, BC ED Pa) *365 BR 531*.

Dispute under Truth-in-Lending Act (TILA), *15 USCS §§ 1601* et seq., centered upon whether charge for title insurance was reasonable, *12 CFR § 226.4(c)(7)(i)*, and debtor bore burden of showing existence of factual prerequisites for refinance discount in Manual of Title Insurance Rating Bureau of Pennsylvania (TIRBOP Manual); it was clear that if adversary proceeding had proceed to trial, debtor could not have proved key element of her TILA claim, existence of title insurance. *Madera v Ameriquest Mortg. Co. (In re Madera) (2007, BC ED Pa) 363 BR 718.*

**27. Miscellaneous**

Where credit card holder alleged that petitioners violated Truth in Lending Act, 82 Stat. 146, by failing to classify over-limit fees as "finance charges," petitioners were entitled to dismissal because Court could not conclude that term "finance charge" in *15 USCS § 1605(a)* unambiguously included over-limit fees, and Federal Reserve Board's decision

to exclude over-limit fees from term "finance charge" pursuant to *12 C.F.R. § 226.4(c)(2)* was reasonable. *Household Credit Servs. v Pfennig (2004) 541 US 232, 158 L Ed 2d 450, 124 S Ct 1741, 17 FLW Fed S 228,* on remand, remanded (2004, CA6 Ohio) *103 Fed Appx 861.*

Charges imposed by hospital are legitimate late payment charges rather than finance charges where failure of particular customer to pay his bill on time is not anticipated in any particular case and where hospital takes commercially reasonable efforts to correct delinquency situation both through clear notification to its customer that customer is delinquent and through efforts to collect delinquent account. *Bright v Ball Memorial Hospital Asso. (1980, CA7) 616 F2d 328.*

Requirement of Truth in Lending Act of disclosure of finance charge in consumer credit transaction (*15 USCS § 1632(a)*) was not violated, in financed sale of automobile, through failure to include as part of finance charge $ 3 lien fee charged by state for recording lien on certificate of title of motor vehicle. *Scoran v Chemical Bank (1990, CA2 Conn) 905 F2d 689.*

Seller did not fail to disclose total finance charge when it did not disclose cash rebate that consumers might have received where (1) element of purpose to induce cash payment was absent because, according to seller's employee, rebate was not index of hidden credit charge but simply subsidy from manufacturer that was available only to those not getting subsidized interest rate, (2) seller did not determine eligibility for rebate, and (3) price of vehicle was same on credit or cash terms because, if rebate had been offered, price of vehicle for sales tax purposes would not have been affected. *Virachack v Univ. Ford (2005, CA9 Cal) 410 F3d 579.*

Statutory definition of "finance charge," under *15 USCS § 1605(a),* does not embrace rebate that is withheld. *Virachack v Univ. Ford (2005, CA9 Cal) 410 F3d 579.*

Neither statute nor regulation demands detailed explanation of charges made for "official fees" or requires use of particular term to describe exempted charges, it is not necessary that consumer be informed exactly what law permits charges to be made or to what official payment is made; it suffices if charge is "prescribed by law," and payment is disclosed. *George v General Finance Corp. (1976, ED La) 414 F Supp 33.*

Items contained in disclosure statements for direct loans are sufficiently "itemized and disclosed" as required by *15 USCS § 1605(d)* where disclosure statement lists specific charges using rigid additive form suggested by courts in previous situations. *Souife v First Nat'l Bank of Commerce (1978, ED La) 452 F Supp 818, 25 FR Serv 2d 922,* affd in part and revd in part on other grounds (1980, CA5 La) *628 F2d 480,* op replaced (1981, CA5 La) *653 F2d 142.*

Because assignment fee at issue was neither part of finance charge of mortgage as defined by TILA and Regulation Z nor was it prepayment penalty, that charge did not have to be disclosed prior to entering into loan agreement. *Pechinski v Astoria Fed. S&L Ass'n (2003, SD NY) 238 F Supp 2d 640,* affd (2003, CA2 NY) *345 F3d 78.*

When calculating finance charge to determine whether or not disclosure made by borrower to lender fell within acceptable accuracy range under Truth in Lending Act, *15 USCS §§ 1601* et seq., fees and charges that were actually paid to public officials for determining or processing any security related credit transaction, fees and premiums for title examination or title insurance, and appraisal fees were excluded from calculation; additionally lender could exclude fee lender was charged for verifying or confirming information related to fees. *Frazier v Accredited Home Lenders, Inc. (2009, MD Ala) 607 F Supp 2d 1254.*

7 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1606*

§ 1606. Determination of annual percentage rate [Caution: See prospective amendment note below.]

(a) "Annual percentage rate" defined. The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Board.

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Board as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Computation of rate of finance charges for balances within a specified rate. Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Board determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Board may by regulation require.

(c) Allowable tolerances for purposes of compliance with disclosure requirements. The disclosure of an annual percentage rate is accurate for the purpose of this *title [15 USCS §§ 1601* et seq.] if the rate disclosed is within a tolerance not greater than one-eighth of 1 per centum more or less than the actual rate or rounded to the nearest one-fourth of 1 per centum. The Board may allow a greater tolerance to simplify compliance where irregular payments are involved.

(d) Use of rate tables or charts having allowable variance from determined rates. The Board may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) by not more than such tolerances as the Board may allow. The Board may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) Authorization of tolerances in determining annual percentage rates. In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (d), the Board may authorize other reasonable tolerances.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 107, 82 Stat. 149; March 31, 1980, P.L. 96-221, Title VI, § 607, 94 Stat. 170.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note) substituted subsec. (c) for one which read: "The annual percentage rate may be rounded to the nearest quarter of 1 per centum for credit transactions payable in substantially equal installments when a creditor determines the total finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Board."; in subsec. (e), deleted "(c) or" following "described in subsection"; and deleted subsec. (f) which read: "Prior to January 1, 1971, any rate required under this title to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars.".

**NOTES:**

Code of Federal Regulations:

Federal Deposit Insurance Corporation--Filing procedures, *12 CFR 303.0* et seq.

Related Statutes & Rules:
This section is referred to in *15 USCS §§ 1607, 1611, 1637, 1638, 1640*.

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection §§ 34-37, 40*.
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1*.

Am Jur Proof of Facts:
73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection § 14:60.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.11.

Annotations:
Validity and construction of provisions imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract. *63 ALR3d 50.*

Interpretive Notes and Decisions:
1. Generally 2. Escrows 3. Time from which computation runs

**1. Generally**

Since notary fee for notarization of promissory note required by Georgia law were not specifically exempted by statute or regulation from inclusion in "finance charge" under *16 USCS § 1505*(a), such fee was required to be included in finance charge and hence in "annual percentage rate" under *15 USCS § 1606* which is calculated by complex formulae expressing "finance charge" in percentage form. *Buford v American Finance Co. (1971, ND Ga) 333 F Supp 1243, 15 FR Serv 2d 792.*

Mortgage company was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's claim under *15 USCS § 1640* that *15 USCS § 1606* annual percentage rate (APR) disclosures failed to clearly and conspicuously disclose single APR; because APR was term of art defined in regulations, any perceived inconsistency arose from company's compliance

with TILA requirements. *Velazquez v GMAC Mortg. Corp. (2008, CD Cal) 605 F Supp 2d 1049.*

Borrower's TILA claim for damages against lender failed because claim was barred by one-year limitations period of *15 USCS § 1640(e)*; TILA rescission claim failed because payment schedule including legal obligation of minimum payment could not be basis for violation of Regulation Z and TILA and there were insufficient facts to support violations of claim based on APR disclosure under *15 USCS §§ 1605* and *1606. Conder v Home Sav. of Am. (2010, CD Cal) 680 F Supp 2d 1168.*

**2. Escrows**

Since annual percentage rate is based entirely on finance charge, and escrows are exempted in computation of finance charge, escrows need not be computed into annual percentage charge determined pursuant to *15 USCS § 1606. Umdenstock v American Mortgage & Inv. Co. (1974, CA10 Okla) 495 F2d 589, 1974-1 CCH Trade Cases P 75039, 18 FR Serv 2d 1075.*

Lender properly failed to disclose payment escrow account as finance charge under *15 USCS § 1606(a)(1)(A)*, where borrowers retained apparent title to and benefit of funds, including interest, because account is analogous to pledged account mortgage and thus constitutes "required deposit." *Therrien v Resource Financial Group, Inc. (1989, DC NH) 704 F Supp 322.*

**3. Time from which computation runs**

Since state statute defines "goods" as including coupons exchangeable for goods, department store which sells, on credit, coupon books exchangeable for merchandise, extended credit at time of sale of books for purpose of determining annual percentage rate. *Welmaker v W. T. Grant Co. (1972, ND Ga) 365 F Supp 531, 18 FR Serv 2d 280.*

Car dealer's *Fed. R. Civ. P. 59(e)* motion to alter/amend district court's finding that dealer had violated *15 USCS § 1606(c)* by understating annual percentage rate of interest (APR) in purchase agreement was denied where consummation date of parties' purchase agreement was date purchaser signed agreement and became contractually obligated to its terms, APR disclosed on that date was based on term beginning 10 days earlier, and resultant APR understatement was outside one-eighth of one percent tolerance. *Rucker v Sheehy Alexandria, Inc. (2003, ED Va) 244 F Supp 2d 618.*

Car dealer's *Fed. R. Civ. P. 60(b)(6)* motion for relief from district court's finding that dealer had violated *15 USCS § 1606(c)* by understating annual percentage rate of interest (APR) in purchase agreement by 0.4% was denied where consummation date of parties' purchase agreement was date purchaser signed agreement and became contractually obligated to its terms, APR disclosed on that date was based on term beginning 10 days earlier, and resultant APR understatement was outside one-eighth of one percent tolerance. *Rucker v Sheehy Alexandria, Inc. (2003, ED Va) 244 F Supp 2d 618.*

Even if car dealer and car purchaser had agreed to retroactive effective date for purchase agreement, it did not follow that that date was used to calculate annual percentage rate of interest (APR) for purposes of required APR disclosure under *15 USCS § 1606(c)* where Regulation Z, 12 C.F.R. pt. 226, barred substitution of effective date for consummation date where effective date predated consummation date. *Rucker v Sheehy Alexandria, Inc. (2003, ED Va) 244 F Supp 2d 618.*

8 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1607*

§ 1607. Administrative enforcement [Caution: See prospective amendment note below.]

(a) Enforcing agencies. Compliance with the requirements imposed under this *title [15 USCS §§ 1601* et seq.] shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act [*12 USCS § 1818*], in the case of--

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) [25A] of the Federal Reserve Act [*12 USCS §§ 601* et seq. or *611* et seq.], by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [*12 USCS § 1818*], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.

(3) the Federal Credit Union Act [*12 USCS § 1751* et seq.], by the Director of the Bureau of Federal Credit Unions [National Credit Union Administration Board] with respect to any Federal credit union.

(4) the Federal Aviation Act of 1958 [*49 USCS §§ 40101* et seq.], by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act [*49 USCS §§ 40101* et seq.].

(5) the Packers and Stockyards Act, 1921 [*7 USCS §§ 181* et seq.] (except as provided in section 406 of that Act [*7 USCS §§ 226* and *227*]), by the Secretary of Agriculture with respect to any activities subject to that Act [*7 USCS §§ 181* et seq.].

(6) the Farm Credit Act of 1971 [*12 USCS §§ 2001* et seq.], by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(7) **[Caution: This paragraph is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]** sections 21B and 21C of the Securities Exchange Act of 1934 [*15 USCS §§ 78u-2* and *78u-3*], in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.

The terms used in paragraph (1) that are not defined in this *title [15 USCS §§ 1601* et seq.] or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (*12 U.S.C. 1813(s)*) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (*12 U.S.C. 3101*).

(b) Violations of *15 USCS §§ 1601* et seq. deemed violations of pre-existing statutory requirements; additional agency powers. For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this *title [15 USCS §§ 1601* et seq.] shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this *title [15 USCS §§ 1601* et seq.], any other authority conferred on it by law.

(c) Federal Trade Commission as overall enforcing agency. Except to the extent that enforcement of the requirements imposed under this *title [15 USCS §§ 1601* et seq.] is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [*15 USCS §§ 41* et seq.], a violation of any requirement imposed under this *title [15 USCS §§ 1601* et seq.] shall be deemed a violation of a requirement imposed under that Act [*15 USCS §§ 41* et seq.]. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act [*15 USCS §§ 41* et seq.] are available to the Commission to enforce compliance by any person with the requirements imposed under this *title [15 USCS §§ 1601* et seq.], irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act [*15 USCS §§ 41* et seq.].

(d) Rules and regulations. The authority of the Board to issue regulations under this *title [15 USCS §§ 1601* et seq.] does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this *title [15 USCS §§ 1601* et seq.].

(e) Adjustment of finance charges; procedures applicable, coverage, criteria, etc.

(1) In carrying out its enforcement activities under this section, each agency referred to in subsection (a) or (c), in cases where an annual percentage rate or finance charge was inaccurately disclosed, shall notify the creditor of such disclosure error and is authorized in accordance with the provisions of this subsection to require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be 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. For the purposes of this subsection, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in determining whether a disclosure error has occurred and in calculating any adjustment, (A) each agency shall apply (i) with respect to the annual percentage rate, a tolerance of one-quarter of 1 percent more or less than the actual rate, determined without regard to section 107(c) of this *title [15 USCS § 1606(c)*], and (ii) with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance provided under this subsection for the annual percentage rate; except that (B) with respect to transactions consummated after two years following the effective date of section 608 of the Truth in Lending Simplification and Reform Act each agency shall apply (i) for transactions that have a scheduled amortization of ten years or less, with respect to the annual percentage rate, a tolerance not to exceed one-quarter of 1 percent more or less than the actual rate, determined without regard to section 107(c) of this *title [15 USCS § 1606(c)*], but in no event a tolerance of less than the tolerances allowed under section 107(c) [*15 USCS § 1606(c)*], (ii) for transactions that have a scheduled amortization of more than ten years, with respect to the annual

percentage rate, only such tolerances as are allowed under section 107(c) of this *title [15 USCS § 1606(c)*], and (iii) for all transactions, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerances provided under this subsection for the annual percentage rate.

(2) Each agency shall require such an adjustment when it determines that such disclosure error resulted from (A) a clear and consistent pattern or practice of violations, (B) gross negligence, or (C) a willful violation which was intended to mislead the person to whom the credit was extended. Notwithstanding the preceding sentence, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, an agency need not require such an adjustment if it determines that such disclosure error--

(A) resulted from an error involving the disclosure of a fee or charge that would otherwise be excludable in computing the finance charge, including but not limited to violations involving the disclosures described in sections 106(b), (c) and (d) of this *title [15 USCS § 1605(b)*, (c), and (d)], in which event the agency may require such remedial action as it determines to be equitable, except that for transactions consummated after two years after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, such an adjustment shall be ordered for violations of section 106(b) [*15 USCS § 1605(b)*];

(B) involved a disclosed amount which was 10 per centum or less of the amount that should have been disclosed and (i) in cases where the error involved a disclosed finance charge, the annual percentage rate was disclosed correctly, and (ii) in cases where the error involved a disclosed annual percentage rate, the finance charge was disclosed correctly; in which event the agency may require such adjustment as it determines to be equitable;

(C) involved a total failure to disclose either the annual percentage rate or the finance charge, in which event the agency may require such adjustment as it determines to be equitable; or

(D) resulted from any other unique circumstance involving clearly technical and nonsubstantive disclosure violations that do not adversely affect information provided to the consumer and that have not misled or otherwise deceived the consumer.

In the case of other such disclosure errors, each agency may require such an adjustment.

(3) Notwithstanding paragraph (2), no adjustment shall be ordered--

(A) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but in any such case, the agency may--

(i) require a partial adjustment in an amount which does not have such an impact; or

(ii) require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a)), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act [*12 USCS § 1831o*];

(B) [if] the amount of the adjustment would be less than $ 1, except that if more than one year has elapsed since the date of the violation, the agency may require that such amount be paid into the Treasury of the United States, or

(C) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two years after the violation, or in the case of any other extension of credit, as follows:

(i) with respect to creditors that are subject to examination by the agencies referred to in paragraphs (1) through (3) of section 108(a) of this title [subsec. (a) of this section], except in connection with violations arising from practices identified in the current examination and only in connection with transactions that are consummated after the date of the immediately preceding examination, except that where practices giving rise to violations identified in earlier examinations have not been corrected, adjustments for those violations shall be required in connection with transactions consummated after the date of the examination in which such practices were first identified;

(ii) with respect to creditors that are not subject to examination by such agencies, except in connection with transactions that are consummated after May 10, 1978; and

(iii) in no event after the later of (I) the expiration of the life of the credit extension, or (II) two years after the agreement to extend credit was consummated.

(4) (A) Notwithstanding any other provision of this section, an adjustment under this subsection may be required by an agency referred to in subsection (a) or (c) only by an order issued in accordance with cease and desist procedures

provided by the provision of law referred to in such subsections.

(B) In the case of an agency which is not authorized to conduct cease and desist proceedings, such an order may be issued after an agency hearing on the record conducted at least thirty but not more than sixty days after notice of the alleged violation is served on the creditor. Such a hearing shall be deemed to be a hearing which is subject to the provisions of section 8(h) of the Federal Deposit Insurance Act [*12 USCS § 1818(h)*] and shall be subject to judicial review as provided therein.

(5) Except as otherwise specifically provided in this subsection and notwithstanding any provision of law referred to in subsection (a) or (c), no agency referred to in subsection (a) or (c) may require a creditor to make dollar adjustments for errors in any requirements under this title, except with regard to the requirements of section 165 [*15 USCS § 1666d*].

(6) A creditor shall not be subject to an order to make an adjustment, if within sixty days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account so as to assure that such person will not be 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.

(7) Notwithstanding the second sentence of subsection (e)(1), subsection (e)(3)(C)(i), and subsection (e)(3)(C)(ii), each agency referred to in subsection (a) or (c) shall require an adjustment for an annual percentage rate disclosure error that exceeds a tolerance of one quarter of one percent less than the actual rate, determined without regard to section 107(c) of this *title [15 USCS § 1606(c)*], with respect to any transaction consummated between January 1, 1977, and the effective date of section 608 of the Truth in Lending Simplification and Reform Act [effective March 31, 1980].

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 108, 82 Stat. 150; Oct. 28, 1974, P.L. 93-495, Title IV, § 403, 88 Stat. 1517; March 31, 1980, P.L. 96-221, Title VI, § 608(a), (c), 94 Stat. 171, 173; Oct. 4, 1984, P.L. 98-443, § 9(n) in part, 98 Stat. 1708; Aug. 9, 1989, P.L. 101-73, Title VII, Subtitle C, § 744(k), 103 Stat. 439; Dec. 19, 1991, P.L. 102-242, Title II, Subtitle A, § 212(b), 105 Stat. 2299; Oct. 28, 1992, P.L. 102-550, Title XVI, Subtitle A, § 1604(a)(5), 106 Stat. 4082; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2106, 110 Stat. 3009-402.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (8), Title XIV, Subtitle B, § 1414(b), 124 Stat. 2107, 2108, 2152.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

In subsec. (a)(4), "*49 USCS §§ 40101* et seq." has been inserted in brackets pursuant to § 6(b) of Act July 5, 1994, P.L. 103-272, which appears as a note preceding *49 USCS § 101*. Section 1 of such Act enacted Subtitles II, III, and V-X of Title 49 as positive law, and § 6(b) of such Act provided that a reference to a law replaced by § 1 of such Act is deemed to refer to the corresponding provision enacted by such Act.

The bracketed section number "25A" has been inserted in subsec. (a)(1)(B) as the section probably intended by Congress. Section 25(a) of the Federal Reserve Act (Act Dec. 23, 1913, ch 6) was redesignated as section 25A of such Act by Act Dec. 19, 1991, P.L. 102-242, Title I, § 142(e)(2), 105 Stat. 2281.

The bracketed words "National Credit Union Administration Board" have been inserted in subsec. (a)(3) on the authority of Acts March 10, 1970, P.L. 91-206, § 3, and Nov. 10, 1978, P.L. 95-630, Title V, § 501, which are classified to *12 USCS § 1752a*.

The bracketed word "if" has been inserted in subsec. (e)(3)(B) to indicate the probable intent of Congress to include such word.

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H,

§ 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears, other than in subsec. (a) (as amended by such Act), and inserting "Bureau".

**Amendment of subsecs. (a) and (c), effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(8), 124 Stat. 2108 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended:

"(A) by striking subsection (a) and inserting the following:

" '(a) Enforcing agencies. Subject to subtitle B of the Consumer Financial Protection Act of 2010 [*12 USCS §§ 5511* et seq.], compliance with the requirements imposed under this title shall be enforced under--

" '(1) section 8 of the Federal Deposit Insurance Act [*12 USCS § 1818*], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (*12 U.S.C. 1813(q)*), with respect to--

" '(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

" '(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

" '(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

" '(2) the Federal Credit Union Act [*12 USCS §§ 1751* et seq.], by the Director of the National Credit Union Administration, with respect to any Federal credit union;

" '(3) the Federal Aviation Act of 1958 [see *49 USCS §§ 40101* et seq.], by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

" '(4) the Packers and Stockyards Act, 1921 [*7 USCS §§ 181* et seq.] (except as provided in section 406 of that Act [*7 USCS §§ 226, 227*]), by the Secretary of Agriculture, with respect to any activities subject to that Act;

" '(5) the Farm Credit Act of 1971 [*12 USCS §§ 1131* et seq.], by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

" '(6) subtitle E of the Consumer Financial Protection Act of 2010 [*12 USCS §§ 5561* et seq.], by the Bureau, with respect to any person subject to this title.'; and

"(B) by striking subsection (c) and inserting the following:

" '(c) Overall enforcement authority of the Federal Trade Commission. Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (5) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010 [*12 USCS §§ 5511* et seq.], the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [*15 USCS §§ 41* et seq.], a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act [*15 USCS §§ 41* et seq.] are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act [*15 USCS §§ 41* et seq.].';".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1974. Act Oct. 28, 1974 (effective 10/28/74, as provided by § 416 of such Act, which appears as *15 USCS § 1665a* note), in subsec. (a), deleted former paragraph (4) which provided: "the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.", redesignated former paras. (5) and (6) to be (4) and (5), respectively, and added new para. (6).

1980. Act March 31, 1980 (effective 3/31/80, as provided by § 608(b) of such Act, which appears as a note to this section), added subsec. (e).

Such Act further (effective 3/31/81, as provided by § 608(c) of such Act), in subsec. (e)(1)(A)(i), deleted ", except in the case of an irregular mortgage lending transaction" following "determined without regard to section 107(c) of this title" and in subsec. (e)(7), deleted ", except in the cases of an irregular mortgage lending transaction" following "determined without regard to section 107(c) of this title".

1984. Act Oct. 4, 1984 (effective 1/1/85, as provided by § 9(v) of such Act, which appears as *5 USCS § 5314* note), in subsec. (a)(4), substituted "Secretary of Transportation" for "Civil Aeronautics Board".

1989. Act Aug. 9, 1989, in subsec. (a), substituted para. (2) for one which read: "section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.".

1991. Act Dec. 19, 1991, in subsec. (a), substituted para. (1) for one which read:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of--

"(A) national banks, by the Comptroller of the Currency.

"(B) member banks of the Federal Reserve System (other than national banks), by the Board.

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.",

and added the concluding matter.

1992. Act Oct. 28, 1992 (effective as if included in Act Dec. 19, 1991 on enactment of such Act, as provided by § 1609(a) of Act Oct. 28, 1992, which appears as *12 USCS § 191* note), in subsec. (a)(1)(C), substituted the concluding semicolon for a concluding period.

1996. Act Sept. 30, 1996, in subsec. (e)(3), substituted "ordered--

"(A) if"

for "ordered (A) if", substituted "may-

"(i) require a partial"

for "may require a partial", substituted "; or

"(ii) require"

for ", except that with respect to any transaction consummated after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, the agency shall require", and substituted

"(C) except"

for "(C) except".

Such Act further purported to amend subsec. (e)(3) by substituting "reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a)), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act;

"(B) the"

for "reasonable, (B) the"; however, the substitution was made for "reasonable, (B) if the" in order to effectuate the probable intent of Congress.

2010. Act July 21, 2010 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), in subsec. (a), added para. (7).

Other provisions:

**Effective date of § 608 of the Truth in Lending Simplification and Reform Act.** Act March 31, 1980, P.L. 96-221, Title VI, § 608(b), 94 Stat. 173, provided: "This section shall take effect on the date of enactment of the Truth in Lending Simplification and Reform Act [enacted March 31, 1980].".

**NOTES:**

Code of Federal Regulations:

Federal Deposit Insurance Corporation--Filing procedures, *12 CFR 303.0* et seq.

Related Statutes & Rules:

This section is referred to in *12 USCS § 3806*; *15 USCS §§ 1640*, *1641*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:1, 2, 4, 5.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 116*, *131*, *133*, *134*, *155*, *163*, *165*.

*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1*.

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:

16 Fed Procedural Forms L Ed, Trade Regulation and Unfair Trade Practices §§ 65:136, 264-267.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.09.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections § 2.05.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.1, 62.4.

Texts:
7 Banking Law (Matthew Bender), ch 153, Fair Credit Reporting Act § 153.07.
2 The Law of Advertising (Matthew Bender), ch 15, Federal Remedies Available to Consumers § 15.04.
3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions §§ 52.05, 52.06.

Interpretive Notes and Decisions:
1. Generally 2. Purpose 3. Construction 4. Federal Reserve Board enforcement 5. Federal Trade Commission enforcement 6.--Particular cases 7. Secretary of Transportation enforcement 8. Jurisdiction of courts 9. Restitution

**1. Generally**

Petitioners had waived right to raise contention that Federal Trade Commission improperly judged advertisements by standards of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.), which was not enacted until many months after lending practices in question had ceased; two individuals conducting mortgage loan business were properly held to have engaged in deceptive advertising in violation of *15 USCS § 45*, where advertisements contained specified loan repayment schedules, representing that loan applicant could arrange loan on repayment schedules advertised, but where favorable terms that were advertised were available only to borrowers who qualified for such loans, and few applicants qualified, loans were rarely made at advertised repayment schedules, and most repayment schedules were substantially higher than those advertised. *Cotherman v Federal Trade Com. (1969, CA5) 417 F2d 587, 1969 CCH Trade Cases P 72926.*

*15 USCS § 1607*(c) and *15 USCS § 1681s(a)* do not create kind of clear-cut duty that can properly be enforced by mandamus. *Pendleton v Trans Union Systems Corp. (1977, ED Pa) 430 F Supp 95.*

**2. Purpose**

Purpose of *15 USCS § 1607* is to give various administrative agencies power to act on their own initiative in hope that they would protect unsophisticated consumers. *Ratner v Chemical Bank New York Trust Co. (1969, DC NY) 309 F Supp 983.*

**3. Construction**

Phrase "immediately preceding examination" in *15 USCS § 1607(e)(3)(i)* means most recent examination by

examining agency of any type prior to current examination. *Consolidated Bank, N.A. v United States Dep't of the Treasury, Office of the Comptroller of the Currency (1997, CA11) 118 F3d 1461, 11 FLW Fed C 322.*

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1)*, thus, since plaintiff car buyer failed to plead and could not prove detrimental reliance, his Truth in Lending Act claims against defendant bank failed; *15 USCS § 1607*'s grant of authority to enforcement agencies to seek restitutionary damages did not mean same authority was given to private litigants. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

*15 USCS § 1607*(c), which provides that violation of any requirement imposed under Truth in Lending Act (TILA) will be deemed violation of requirement imposed under Federal Trade Commission Act (*15 USCS §§ 41* et seq.), does not mean that violation of TILA automatically breaches some requirement of Federal Trade Commission Act; rather, it means that violation of TILA is deemed violation of Federal Trade Commission Act for procedural purposes, so that FTC may invoke all of its functions and powers under Federal Trade Commission Act in enforcing TILA violations. *In re Reliable Mortgage Corp. (1990) 113 FTC 816.*

**4. Federal Reserve Board enforcement**

Provisions of *15 USCS § 1607* do not give Federal Reserve Board concurrent jurisdiction with court over private plaintiff's action seeking damages for failure of bank to comply with Truth in Lending Act; even if Board had concurrent jurisdiction, District Court would retain jurisdiction since administrative agency's expertise in particular field was not required. *Ratner v Chemical Bank New York Trust Co. (1969, DC NY) 309 F Supp 983.*

**5. Federal Trade Commission enforcement**

To determine when and how Federal Trade Commission (FTC) may impose civil penalty for violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.), which, by virtue of *15 USCS § 1607(c)*, is to be treated as if it were violation of Federal Trade Commission Act, FTC must meet pre-requisites of penalty provision of Federal Trade Commission Act (*15 USCS § 45*). *United States v Hopkins Dodge, Inc. (1988, CA8) 849 F2d 311*, later proceeding (1989, DC Minn) *707 F Supp 1078.*

Federal Trade Commission has explicit jurisdiction under *15 USCS § 1607(c)* to enforce provisions of Truth in Lending Act (§§ 1601 et seq.), whether or not challenged lending practices are in or affect interstate commerce. *Re Household Finance Corp. (1981) 98 FTC 68.*

*15 USCS § 1607*(c), which provides that violation of any requirement imposed under Truth in Lending Act (TILA) will be deemed violation of requirement imposed under Federal Trade Commission Act (*15 USCS §§ 41* et seq.), does not mean that violation of TILA automatically breaches some requirement of Federal Trade Commission Act; rather, it means that violation of TILA is deemed violation of Federal Trade Commission Act for procedural purposes, so that FTC may invoke all of its functions and powers under Federal Trade Commission Act in enforcing TILA violations. *In re Reliable Mortgage Corp. (1990) 113 FTC 816.*

**6.--Particular cases**

Where retail installment contract form used by corporation and its subsidiaries, which form violated Regulation Z, was discontinued and replaced by revised form, but where such revised form was not free from violations of Regulation, and where other violations of Regulation had occurred subsequent to adoption of new form, such other violations involving incorrect amounts or rates in actual transactions rather than violations inherent in form itself, there was no assurance that corporation and its subsidiaries would not again violate Regulation; hence, order of Federal Trade Commission requiring corporation and subsidiaries to desist from violating Regulation Z was appropriate. *Zale Corp. & Corrigan-Republic, Inc. v FTC (1973, CA5) 473 F2d 1317.*

With respect to automobile dealers who had allegedly violated Truth in Lending Act by advertising credit terms without conforming to Regulation Z regarding full disclosure of all terms, FTC did not meet first pre-requisite of *15 USCS § 45* of sending cease and desist order to dealers where FTC merely furnished dealers copies of 4 of its decisions together with synopsis of these decisions, none of which decisions involved precise practice engaged in by dealers, and FTC's failure to meet this initial pre-requisite of § 45 automatically also constituted failure to meet additional requirement of showing that dealers had actual knowledge that such practice was unfair or deceptive and was unlawful. *United States v Hopkins Dodge, Inc. (1988, CA8) 849 F2d 311,* later proceeding (1989, DC Minn) *707 F Supp 1078.*

Where Federal Trade Commission found that retailer of eye glasses made false representations of easy credit, Commission had power to order retailer to disclose, both orally and in writing, factors relating to credit charges in its installment contract; such order was reasonably related to finding that many of retailer's customers were unsophisticated persons who would not benefit from written disclosure alone. *Tashof v Federal Trade Com. (1970, App DC) 141 US App DC 274, 437 F2d 707, 1971 CCH Trade Cases P 73417.*

**7. Secretary of Transportation enforcement**

Civil Aeronautics Board [now Secretary of Transportation] is obligated to enforce public policy established by Congress for air transportation transactions by ordering cease and desist order to carrier which failed to transmit credit statements within 7 working days to customers owed refunds. Braniff Airways, Refund Procedures, 80-11-64. CAB Adv Dig, Nov, 1980, p 65.

**8. Jurisdiction of courts**

Legislative history of Truth in Lending Act shows that Congress did not intend *15 USCS § 1640* to confer original subject matter jurisdiction in federal courts over claim of violation of credit advertising provisions of Act by private individuals; rather, authority to enforce compliance with credit advertising requirements is delegated to administrative agencies as provided in *15 USCS § 1607*. *Jordan v Montgomery Ward & Co. (1971, CA8 Minn) 442 F2d 78, 11 ALR Fed 808,* cert den *(1971) 404 US 870, 30 L Ed 2d 114, 92 S Ct 78.*

Although Congress intended that compliance with Truth In Lending Act should be enforced by administrative agencies and through regulations issued by Federal Reserve Board, pursuant to *15 USCS § 1607,* where no administrative procedure existed to guarantee enforcement of rescission rights under *16 USCS § 1635,* debtor could bring court action to enforce such rights. *Sosa v Fite (1972, CA5 Tex) 465 F2d 1227.*

**9. Restitution**

Bank which had violated § 106 of Truth in Lending Act (*15 USCS § 1605*) by failing to disclose as part of finance charge fee charged to car-loan borrowers to employ bank-approved attorney to prepare valid chattel mortgage could be required under § 108 of Act (*15 USCS § 1607*) to make restitution of amounts charged to customers where bank admitted to engaging in pattern or practice of failing to disclose charge and, even if bank had acted in good faith, there was no good faith exception under Act, and restitution would be required even though bank did not actually receive attorneys' fees. *First Acadiana Bank v Federal Deposit Ins. Corp. (1987, CA5) 833 F2d 548.*

Restitution is equitable remedy, and agency must fully articulate its findings and conclusions that justify such remedy for Truth in Lending Act violations. *Sentinel Fed. Sav. & Loan Ass'n v Office of Thrift Supervision (1991, CA8) 946 F2d 85.*

9 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1608*

§ 1608. Views of other agencies [Caution: See prospective amendment note below.]

In the exercise of its functions under this *title [15 USCS §§ 1601* et seq.], the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of creditors subject to this *title [15 USCS §§ 1601* et seq.].

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 109, 82 Stat. 150.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:
Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

**NOTES:**

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 131.*
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1.*

Am Jur Proof of Facts:
73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

10 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1609*

§ 1609. [Repealed]

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

This section (Act May 29, 1968, P.L. 90-321, Title I, Ch 1, § 110, 82 Stat. 151) was repealed by Act March 23, 1976, P.L. 94-239, § 3(b)(1), 90 Stat. 253, effective March 23, 1976, as provided by § 708 [707] of such Act which appears as *15 USCS § 1691* note. The section provided for the establishment of an advisory committee. For establishment of a Consumer Advisory Council, see *15 USCS § 1691b*.

11 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1610*

§ 1610. Effect on other laws [Caution: See prospective amendment note below.]

(a) Inconsistent provisions; procedures applicable for determination.

(1) Except as provided in subsection (e), chapters 1, 2, and 3 [*15 USCS §§ 1601* et seq., *1631* et seq., and *1661* et seq.] do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this *title [15 USCS §§ 1601* et seq.], and then only to the extent of the inconsistency. Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Board, the Board shall determine whether any such inconsistency exists. If the Board determines that a State-required disclosure is inconsistent, creditors located in that State may not make disclosures using the inconsistent term or form, and shall incur no liability under the law of that State for failure to use such term or form, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Board, the Board shall determine whether any disclosure required under the law of any State is substantially the same in meaning as a disclosure required under this *title [15 USCS §§ 1601* et seq.]. If the Board determines that a State-required disclosure is substantially the same in meaning as a disclosure required by this *title [15 USCS §§ 1601* et seq.], then creditors located in that State may make such disclosure in compliance with such State law in lieu of the disclosure required by this *title [15 USCS §§ 1601* et seq.], except that the annual percentage rate and finance charge shall be disclosed as required by section 122 [*15 USCS § 1632*], and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 129 [*15 USCS § 1639*].

(b) State credit charge statutes. Except as provided in section 129 [*15 USCS § 1639*], this *title [15 USCS §§ 1601* et seq.] does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or charges, permissible under such laws in connection with the extension or use of credit, nor does this *title [15 USCS §§ 1601* et

seq.] extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply. The provisions of section 129 [*15 USCS § 1639*] do not annul, alter, or affect the applicability of the laws of any State or exempt any person subject to the provisions of section 129 [*15 USCS § 1639*] from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 103(aa) [*15 USCS § 1602(aa)*], except to the extent that those State laws are inconsistent with any provisions of section 129 [*15 USCS § 1639*], and then only to the extent of the inconsistency.

(c) Disclosure as evidence. In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this *title [15 USCS §§ 1601* et seq.] in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Contract or other obligations under State or Federal law. Except as specified in sections 125, 130, and 166 [*15 USCS §§ 1635, 1640,* and *1666e*], this *title [15 USCS §§ 1601* et seq.] and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

(e) Certain credit and charge card application and solicitation disclosure provisions. The provisions of subsection (c) of section 122 [*15 USCS § 1632(c)*] and subsections (c), (d), (e), and (f) of section 127 [*15 USCS § 1637(c),* (d), (e), and (f)] shall supersede any provision of the law of any State relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 127(c) [*15 USCS § 1637(c)*] or any renewal notice which is subject to the requirements of section 127(d) [*15 USCS § 1637(d)*], except that any State may employ or establish State laws for the purpose of enforcing the requirements of such sections.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 111, 82 Stat. 151; Oct. 28, 1974, P.L. 93-495, Title III, § 307(b), 88 Stat. 1516; March 31, 1980, P.L. 96-221, Title VI, § 609, 94 Stat. 173; Nov. 3, 1988, P.L. 100-583, § 4, 102 Stat. 2967; Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 152(e)(2)(B), (C), 108 Stat. 2194.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1974. Act Oct. 28, 1974 (effective "upon the expiration of one year after" 10/28/74, as provided by § 308 of such Act, which appears as *15 USCS § 1666* note), in subsec. (d), substituted "125, 130, and 166" for "125 and 130".

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note) substituted subsec. (a) for one which read: "This title does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this title or regulations thereunder, and then only to the extent of the inconsistency.".

1988. Act Nov. 3, 1988, in subsection (a)(1), substituted "Except as provided in subsection (e), chapters 1, 2, and 3" for "Chapters 1, 2, and 3"; and added subsec. (e).

1994. Act Sept. 23, 1994, in subsec. (a)(2), inserted ", and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 129"; and, in subsec. (b), substituted "Except as provided in section 129, this" for "This" and added the sentence beginning "The provisions of section 129 . . .".

**NOTES:**

Related Statutes & Rules:
This section is referred to in *15 USCS §§ 1612, 1640*.

Research Guide:

Federal Procedure:
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:3, 5.

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection §§ 56, 245-247*.
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1*.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.07, 1.09.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections § 2.05.
1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.03.
5 Debtor-Creditor Law (Matthew Bender), ch 43, Usury § 43.15.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.3.

Annotations:

Validity, Construction, and Application of Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 U.S.C.A. §§ 1602(aa), 1610, 1639,* and *1640* [*15 USCS §§ 1602(aa), 1610, 1639, 1640*]. *198 ALR Fed 631.*

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.03, 152.07.
7 Banking Law (Matthew Bender), ch 153, Fair Credit Reporting Act § 153.10.
8 Banking Law (Matthew Bender), ch 157, Home Mortgage Disclosure Act § 157.07.
8 Banking Law (Matthew Bender), ch 158, Community Reinvestment Act § 158.13.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.15.

Interpretive Notes and Decisions:

1. Generally 2. Preemption of state laws 3.--Inconsistent state law provisions 4. Contract or obligation enforceability or validity 5. Remedies

**1. Generally**

Language of *15 USCS § 1610(b)* is congressional recognition that maximum level of interest rates in consumer credit transactions is not subject matter requiring uniform national rule. *Aldens, Inc. v Packel (1975, CA3 Pa) 524 F2d 38, 20 FR Serv 2d 1173,* cert den *(1976) 425 US 943, 48 L Ed 2d 187, 96 S Ct 1684.*

**2. Preemption of state laws**

District court properly dismissed class action against federal savings association based on federal preemption under *12 C.F.R. § 560.2,* which was promulgated by Office of Thrift Supervision (OTS) pursuant to *12 USCS § 1464*; although consumers' claims under *Cal. Bus. & Prof. Code §§ 17200* and *17500* were predicated on alleged violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., TILA's savings clause under *15 USCS § 1610(b)* did not trump regulations. Silvas v E**Trade Mortg. Corp. (2008, CA9 Cal) 514 F3d 1001.*

Congressional deference to states' regulation of consumer credit interest rates under *15 USCS § 1610(b)* indicates that there is not pre-emption in field of regulation of maximum interest rates allowable in consumer credit transactions and even if such field was area requiring uniform national policy, *15 USCS § 1610(b)* would be redefinition of Congress' power over interstate commerce allowing states to regulate consumer interest rates. *Aldens, Inc. v Ryan (1976, WD Okla) 454 F Supp 465.*

Truth in Lending Act's (*15 USCS §§ 1601* et seq.) preemption of state disclosure laws does not extend to general state statutes prohibiting fraud, where borrower alleged that loan broker misrepresented itself as lender until, at closing, another entity emerged as lender and broker took brokerage fee from finance charges, because Congress did not intend fully to occupy field regulating mortgage credit transactions, and none of broker's or lender's conduct was authorized by Act. *Heastie v Community Bank of Greater Peoria (1988, ND Ill) 690 F Supp 716.*

Given *15 USCS § 1610,* which preserves state court's enforcement of Truth in Lending Act's disclosure requirements, TILA's language indicates that Congress did not deem it important for federal courts to decide all cases that might raise TILA issues. *Evans v Courtesy Chevrolet II, LP (2006, SD Tex) 423 F Supp 2d 669.*

Plaintiffs' California's Unfair Competition Law (UCL) claims were not preempted by Truth in Lending Act (TILA) because plaintiffs invoked UCL solely for additional remedies offered thereunder; additional penalties were not

inconsistent with TILA, but merely provided greater protection to consumers. *Monaco v Bear Stearns Residential Mortg. Corp. (2008, CD Cal) 554 F Supp 2d 1034.*

Mortgagors' claims under California's Unfair Competition Law (UCL) were not preempted under *15 USCS § 1610(a)(1)* where UCL did not relate to disclosure of information in connection with credit transactions, and fact that UCL allowed claim to be brought within four years or may have provided remedies not available under Truth in Lending Act, *15 USCS §§ 1601* et seq., simply provided additional level of protection for consumers. *Plascencia v Lending 1st Mortg. (2008, ND Cal) 583 F Supp 2d 1090.*

Borrower's remand motion was granted because district court properly should not exercise federal question jurisdiction over her suit against auto title loan lender: (1) borrower alleged that lender violated *Wis. Stat. § 422.202(2s)(a)(3)*, (3), of Wisconsin Consumer Act, Wis. Stat. chs. 421-427, by adding cost of required roadside assistance program to her loan principal amount, instead of treating program cost as finance charge, which meant that her loan disclosure form was incorrect as it did not properly reflect annual percentage rate for her loan, and that inaccurate disclosure form violated *Wis. Stat. 422.301*; (2) lender asserted that suit was removable because borrower's claims arose under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; (3) borrower did not directly assert any TILA claims in her complaint, and gravamen of her claim was based on lender's treatment of program cost, in violation of state law; (4) mere fact that *Wis. Stat. 422.301* incorporated TILA disclosure requirements did not mean that substantial, disputed question of federal law was necessary element of borrower's claims; and (5) *15 USCS § 1610* stated that TILA did not preempt state law claims that implicated TILA's disclosure requirements. *Wagner v Wis. Auto Title Loans, Inc. (2008, ED Wis) 584 F Supp 2d 1123.*

**Unpublished Opinions**

Unpublished: *15 USCS § 1610(a)(1)* does not necessarily preempt claims under California's Unfair Competition Law, *Cal. Bus. & Prof. Code § 17200. Amparan v Plaza Home Mortg. (2008, ND Cal) 2008 US Dist LEXIS 109148.*

Unpublished: Bankruptcy debtor's claims against a mortgage lender for violation of state fraud and consumer protection laws in connection with a mortgage loan transaction were not preempted by the Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., since *15 USCS § 1610(a)(1)* only precluded claims based on state law which were inconsistent with TILA, supplemental state-law remedies did not conflict with TILA, and TILA was not meant to preempt the field of laws relating to consumer lending practices. *Orr v Ameriquest Mortg. Co. (In re Hollis) (2009, BC DC NJ) 2009 Bankr LEXIS 3020.*

**3.--Inconsistent state law provisions**

Display of state "contract rate" on disclosure statement along with required disclosures of Truth in Lending Act (*15 USCS §§ 1601* et seq.) without distinguishing or separating state mandated disclosure from federal mandated disclosure, with result that debtors were likely to become confused as to what credit charges were, violated provision of § 111 of Act (*15 USCS § 1610*) pre-empting inconsistent state law. *Mason v General Fin. Corp. (1976, CA4) 542 F2d 1226, 37 ALR Fed 799.*

Contrary to assertions of internet payday lender, *Kan. Stat. Ann. § 16a-1-201* did not violate Commerce Clause by subjecting it to inconsistent state regulation; lender could not meet standard of showing that internet payday lending specifically represented type of commerce that should only be subject to nationally uniform standards and not to inconsistent state regulation; the lender's regulated conduct consisted of making loan with Kansas resident after solicitation in Kansas; such conduct was directed specifically toward particular state and did not necessarily implicate other states, and *15 USCS § 1610(b)* was congressional recognition that maximum level of interest rates in consumer credit transactions was not subject requiring uniform national rule. *Quik Payday, Inc. v Stork (2007, DC Kan) 509 F Supp 2d 974.*

Bank was granted summary judgment on bank customers' negligence claim to extent it was based on Electronic Funds Transfer Act because that statute did not apply to transaction at issue and to extent it was based on Fair Credit Reporting Act duties or bank's credit reporting practices because customer could not use negligence claim to end-run statutory caps on liability under *15 USCS §§ 1681n, 1681o, 1681h(e)*; bank was denied summary judgment to extent customers argued that bank was negligent in violating Truth in Lending Act (TILA) because pursuant to *15 USCS §§ 1610(a)(1), 1666j(a)*, TILA did not preempt state laws except to extent that they were inconsistent with it. *Shames-Yeakel v Citizens Fin. Bank (2009, ND Ill) 677 F Supp 2d 994.*

Federal reserve system is authorized to determine inconsistency between federal and state laws relating to disclosure of information in connection with consumer credit transactions; if board determines that state-required disclosure is inconsistent with federal law, state law is pre-empted to extent of inconsistency; for purposes of determining whether state law is inconsistent, state law is deemed to require use of specific terminology in state disclosures if statute uses certain terminology in disclosure provision, and pre-emption occurs only in those transactions in which actual inconsistency exists between state law and federal law; state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none. Federal Reserve System, Truth In Lending Determinations of Effect on Miss., N.J., Okla., and S.C. State Laws, *48 Fed Reg 43672.*

Creditor is required to place federal disclosures above state-required disclosures and to identify federal disclosures by clear and conspicuous heading that they are made in compliance with federal law; state disclosures must appear below clear demarcation line indicating that state disclosures are inconsistent with disclosure requirements of federal Truth In Lending Act (*15 USCS §§ 1601* et seq.). *Trustees Loan & Discount Co. v Carswell (1983, Ala Civ App) 435 So 2d 114.*

Where state law requiring determination of annual percentage rate in accordance with actuarial method of computation is inconsistent with Regulation Z, *12 CFR § 226.5*, Truth in Lending Act (*15 USCS §§ 1601* et seq.) requires retailers to follow federal standards of disclosure. *Johnson v Sears Roebuck & Co. (1973, 1st Dist) 14 Ill App 3d 838, 303 NE2d 627.*

Interjection of state law concerning tolling of statute of limitations and ancillary matters would impermissibly impinge upon constitutional power granted to Congress and would create needless diversity in application of Truth in Lending Act (*15 USCS §§ 1601* et seq.); in determining validity of consumer's Truth in Lending defense to lenders' action in assumpsit on loan, Federal law rather than state law governs applicability of limitation period. *Household Consumer Discount Co. v Vespaziani (1978) 255 Pa Super 367, 387 A2d 93*, revd on other grounds *(1980) 490 Pa 209, 415 A2d 689.*

**4. Contract or obligation enforceability or validity**

Validity or enforceability of credit contracts which violate provisions of Truth In Lending Act (*15 USCS §§ 1601* et seq.) is determined by applicable state and federal law; disclosure violation of itself does not void contract, but does not limit application of state law. *Peoples Trust & Sav. Bank v Humphrey (1983, Ind App) 451 NE2d 1104.*

Under *15 USCS § 1610(d)*, failure of creditor to properly notify consumer of his right to rescind could not affect validity or enforceability of any contract or obligation, but rather consumer was limited to remedy provided in Consumer Credit Protection Act; therefore, defense based on Act could not stand in action against homeowner to foreclose mortgage because of homeowner's failure to make required payments. *Gillis v Fisher Hardware Co. (1974, Fla App D1) 289 So 2d 451.*

Truth in Lending Act provides for its own penalties upon violation thereof, under *15 USCS § 1640*, and does not affect validity or enforceability of valid legal obligations. *Grandway Credit Corp. v Brown (1974, Fla App D3) 295 So 2d 714.*

Fact that debtors' suit against creditor in federal court for violation of Truth in Lending Act was settled for twice finance charge did not estop debtors from contending that loan contract was void in creditor's action against debtors to collect amount due under loan contract, in view of language of *15 USCS § 1610(d)* which provides that statute and regulations do not affect validity or enforceability of any contract or obligation under state or federal law. *Hobbiest Financing Corp. v Spivey (1975) 135 Ga App 353, 217 SE2d 613.*

*15 USCS § 1610* does not intend to prohibit Truth in Lending Act being (*15 USCS § 1601* et seq.) claims from being pleaded in defensive posture; instead language is used by Congress sought to make clear that TILA violation, acceptances are limited circumstances, could not be basis for avoiding underlying contract, which would render entire agreement unenforceable. *Appeal of Signal Delivery Service, Inc. (1980, Minn) 288 NW2d 707.*

Since under *15 USCS § 1610(d)* validity or enforceability of underlying loan transaction is not affected by violation of Truth in Lending Act, claim of violation can never constitute defense to lender's action on debt, regardless of fact that claims of borrower and lender both arise from same transaction. *Household Consumer Discount Co. v Vespaziani (1978) 255 Pa Super 367, 387 A2d 93,* revd on other grounds *(1980) 490 Pa 209, 415 A2d 689.*

**5. Remedies**

Credit purchasers of automobile could recover damages for both wrongful repossession of automobile under District of Columbia law and statutory damage award under Truth in Lending Act (*15 USCS §§ 1601* et seq.) since nothing in Truth in Lending Act suggests that provision for statutory damages and traditionally available common law remedies were meant to be mutually exclusive. *Vines v Hodges (1976, DC Dist Col) 422 F Supp 1292.*

Under *15 USCS § 1610(d),* failure of creditor to properly notify consumer of his right to rescind could not affect validity or enforceability of any contract or obligation, but rather consumer was limited to remedy provided in Consumer Credit Protection Act; therefore, defense based on Act could not stand in action against homeowner to foreclose mortgage because of homeowner's failure to make required payments. *Gillis v Fisher Hardware Co. (1974, Fla App D1) 289 So 2d 451.*

Language of *15 USCS § 1610(a),* stating that Truth-in-Lending Act does not annul, alter, affect, or exempt any creditor from complying with state law relating to disclosure of information in connection with credit transactions, creates parallel remedies and permits debtor to recover damages under *15 USCS § 1640* as well as under state law. *Public Finance Corp. v Riddle (1980, 3d Dist) 83 Ill App 3d 417, 38 Ill Dec 712, 403 NE2d 1316.*

12 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1611*

§ 1611. Criminal liability for willful and knowing violation [Caution: See prospective amendment note below.]

Whoever willfully and knowingly
(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this *title [15 USCS §§ 1601* et seq.] or any regulation issued thereunder,
(2) uses any chart or table authorized by the Board under section 107 [*15 USCS § 1606*] in such a manner as to consistently understate the annual percentage rate determined under section 107(a)(1)(A) [*15 USCS § 1606(a)(1)(A)*], or
(3) otherwise fails to comply with any requirement imposed under this *title [15 USCS §§ 1601* et seq.],

shall be fined not more than $ 5,000 or imprisoned not more than one year, or both.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 112, 82 Stat. 151.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:
Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

**NOTES:**

Related Statutes & Rules:
This section is referred to in *15 USCS § 1640*.

Research Guide:

Federal Procedure:
7 Fed Proc L Ed, Consumer Credit Protection § 15:14.

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection §§ 116, 162, 163, 165*.
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1*.

Criminal Law and Practice:
6 Business Crime (Matthew Bender), ch 33, Consumer Fraud P 33.06.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.4.

Texts:
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.06.
7 Banking Law (Matthew Bender), ch 154, Equal Credit Opportunity Act § 154.04.
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.09.

Interpretive Notes and Decisions:

Standard required for establishing criminal liability under *15 USCS § 1611* is knowing and willful violation; this is in contrast to use of term "intentional" in *15 USCS § 1640(c)* which is designed to describe voluntary, deliberate acts and omissions and does not refer to intent to violate act itself. *Haynes v Logan Furniture Mart, Inc. (1974, CA7 Ill) 503 F2d 1161, 19 FR Serv 2d 205, 27 ALR Fed 592* (superseded by statute as stated in *Marshall v Security State Bank (1990, BC CD Ill) 121 BR 814).*

Failure to make proper disclosures does not render note unenforceable under Truth in Lending Act (*15 USCS §§ 1601* et seq.); although, under *15 USCS §§ 1611, 1640*, criminal and civil penalties may be imposed for failure to properly disclose, note itself is still valid and enforceable. *Charter Finance Co. v Henderson (1975) 60 Ill 2d 323, 326 NE2d 372.*

13 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1612*

§ 1612. Effect on government agencies [Caution: See prospective amendment note below.]

(a) Consultation requirements respecting compliance of credit instruments issued to participating creditor. Any department or agency of the United States which administers a credit program in which it extends, insures, or guarantees consumer credit and in which it provides instruments to a creditor which contain any disclosures required by this *title [15 USCS §§ 1601* et seq.] shall, prior to the issuance or continued use of such instruments, consult with the Board to assure that such instruments comply with this *title [15 USCS §§ 1601* et seq.].

(b) Inapplicability of Federal civil or criminal penalties to Federal, State, and local agencies. No civil or criminal penalty provided under this *title [15 USCS §§ 1601* et seq.] for any violation thereof may be imposed upon the United States or any department or agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

(c) Inapplicability of Federal civil or criminal penalties to participating creditor where violating instrument issued by United States. A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under this *title [15 USCS §§ 1601* et seq.] in any case in which the violation results from the use of an instrument required by any such department or agency.

(d) Applicability of State penalties to violations by participating creditor. A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under the laws of any State (other than laws determined under section 111 [*15 USCS § 1610*] to be inconsistent with this *title [15 USCS §§ 1601* et seq.]) for any technical or procedural failure, such as a failure to use a specific form, to make information available at a specific place on an instrument, or to use a specific typeface, as required by State law, which is caused by the use of an instrument required to be used by such department or agency.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 113, 82 Stat. 151; March 31, 1980, P.L. 96-221, Title VI, § 622(a), 94 Stat. 184.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note) substituted this section for one which read: "No civil or criminal penalty provided under this title for any violation thereof may be imposed upon the United States or any agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.".

**NOTES:**

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection § 15:6.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 166.*

*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1.*

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.09.

Texts:
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.03, 152.04.

Interpretive Notes and Decisions:
1. Generally 2. Application to particular agencies

**1. Generally**

United States claim under mortgage cannot be modified by Chapter 13 debtor under *11 USCS § 1322(b)(2)* for government's violation of Truth-In-Lending Act (*15 USCS § 1612(b)*), because government is statutorily immune from penalties under Act. *In re Caster (1987, BC ED Pa) 77 BR 8, 16 BCD 680.*

**2. Application to particular agencies**

District court properly granted summary judgment in favor of United States, acting on behalf of Department of Health and Human Services, in its action seeking to collect amount of Health Education Assistance Loan indebtedness that debtor incurred while she was student at dental school; although Government committed timing violation as to disclosure of annual percentage rate as required under Truth in Lending Act (TILA), *15 USCS § 1638*, and under *12 CFR §§ 226.17(i)*, and *226.18(e)*, debtor was not entitled to recoupment because she did not establish actual damages under *15 USCS § 1640* and because Government was immune under *15 USCS § 1612(b)* from any civil or criminal penalties for violations of TILA's provisions. *United States v Petroff-Kline (2009, CA6 Ohio) 557 F3d 285, 2009 FED App 79P.*

Where electric power customer sought monetary damages upon allegation that, by billing residential customers upon "net" and "gross" rate basis, gross rate being 10 percent in excess of net rate and payable if customer did not pay net bill within 10 days of billing date, Tennessee Valley Authority and state power board engaged in failure to disclose in violation of Truth-in-Lending Act, defendants' motion to dismiss complaint would be sustained, since both civil and criminal penalties of Truth-in-Lending Act are expressly made inapplicable to agencies of federal and state governments under *15 USCS § 1612*. *Ferguson v Electric Power Board (1974, ED Tenn) 378 F Supp 787*, affd without op (1975, CA6 Tenn) *511 F2d 1403.*

Federal Deposit Insurance Corporation acting in its corporate capacity is agency of Federal Government and, therefore, is not subject to any claims concerning defendant's violation of Truth in Lending Law. *FDIC v Webb (1978, ED Tenn) 464 F Supp 520.*

Court lacks subject-matter jurisdiction over suit by borrowers to halt alleged illegal collection of $ 8 monthly fee by now-insolvent savings and loan institution for servicing home loan, because (1) all funds were provided by federal government pursuant to program administered by city, and thus institution was not creditor, and (2) neither city nor FSLIC as institution's receiver are subject to penalty under *15 USCS § 1612(b)*. *Mitchell v Major Federal Sav. & Loan Asso. (1987, SD Ohio) 687 F Supp 1164.*

Federal National Mortgage Association (FNMA) is subject to Truth in Lending Act (*15 USCS §§ 1601-1667e*) notwithstanding that *15 USCS § 1612(b)* provides that no civil or criminal penalty under Act may be imposed on United States or any department or agency thereof because, although FNMA was originally governmental agency within Department of Housing and Urban Development, it was transferred to private sector by *12 USCS § 1717(a)(1)*, (2). *In re Werts (1984, BC ED Pa) 36 BR 799*, affd in part and revd in part on other grounds (1985, ED Pa) *48 BR 980.*

14 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1613*

§ 1613. Annual reports to Congress by Board [Caution: See prospective amendment note below.]

Each year the Board shall make a report to the Congress concerning the administration of its functions under this *title [15 USCS §§ 1601* et seq.], including such recommendations as the Board deems necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements imposed under this *title [15 USCS §§ 1601* et seq.] is being achieved.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 1, § 114, 82 Stat. 151; March 31, 1980, P.L. 96-221, Title VI, § 610(a), 94 Stat. 174, Dec. 21, 1982, P.L. 97-375, Title II, § 209(b), 96 Stat. 1825.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:
Section 504(a) of Act May 29, 1968, which appears as *15 USCS § 1601* note, provides that this section shall take effect upon its enactment on May 29, 1968.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note) substituted "Each year" for "Not later than January 3 of each year after 1969,".

1982. Act Dec. 21, 1982 substituted "Each year the Board shall make a report to the Congress concerning the administration of its functions under this title, including such recommendations as the Board deems necessary or appropriate." for "Each year the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate.".

**NOTES:**

Related Statutes & Rules:
This section is referred to in *12 USCS § 247*.

Research Guide:

Am Jur:
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1*.

Texts:
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.03.

15 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1614*

§ 1614. [Repealed]

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

This section (Act May 29, 1968, P.L. 90-321, Title I, Chapter 1, § 115, as added Oct. 28, 1974, P.L. 93-495, Title IV, § 413(a), 88 Stat. 1520) was repealed by Act March 31, 1980, P.L. 96-221, Title VI, § 616(b), 94 Stat. 182, effective 2 years and 6 months after the date of enactment on March 31, 1980, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note. It provided for liability of assignees. For similar provisions, see *15 USCS § 1641*.

16 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1615*

§ 1615. Prohibition on use of "Rule of 78's" in connection with mortgage refinancings and other consumer loans

(a) Prompt refund of unearned interest required.
(1) In general. If a consumer prepays in full the financed amount under any consumer credit transaction, the creditor shall promptly refund any unearned portion of the interest charge to the consumer.
(2) Exception for refund of de minimus [minimis] amount. No refund shall be required under paragraph (1) with respect to the prepayment of any consumer credit transaction if the total amount of the refund would be less than $ 1.
(3) Applicability to refinanced transactions and acceleration by the creditor. This subsection shall apply with respect to any prepayment of a consumer credit transaction described in paragraph (1) without regard to the manner or the reason for the prepayment, including--
(A) any prepayment made in connection with the refinancing, consolidation, or restructuring of the transaction; and
(B) any prepayment made as a result of the acceleration of the obligation to repay the amount due with respect to the transaction.

(b) Use of "Rule of 78's" prohibited. For the purpose of calculating any refund of interest required under subsection (a) for any precomputed consumer credit transaction of a term exceeding 61 months which is consummated after September 30, 1993, the creditor shall compute the refund based on a method which is at least as favorable to the consumer as the actuarial method.

(c) Statement of prepayment amount.
(1) In general. Before the end of the 5-day period beginning on the date an oral or written request is received by a creditor from a consumer for the disclosure of the amount due on any precomputed consumer credit account, the creditor or assignee shall provide the consumer with a statement of--
(A) the amount necessary to prepay the account in full; and
(B) if the amount disclosed pursuant to subparagraph (A) includes an amount which is required to be refunded under this section with respect to such prepayment, the amount of such refund.

(2) Written statement required if request is in writing. If the customer's request is in writing, the statement under paragraph (1) shall be in writing.

(3) 1 free annual statement. A consumer shall be entitled to obtain 1 statement under paragraph (1) each year without charge.

(4) Additional statements subject to reasonable fees. Any creditor may impose a reasonable fee to cover the cost of providing any statement under paragraph (1) to any consumer in addition to the 1 free annual statement required under paragraph (3) if the amount of the charge for such additional statement is disclosed to the consumer before furnishing such statement.

(d) Definitions. For the purpose of this section--

(1) Actuarial method. The term "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) Consumer, credit. The terms "consumer" and "creditor" have the meanings given to such terms in section 103 of the Consumer Credit Protection Act [*15 USCS § 1602*].

(3) Creditor. The term "creditor"--

(A) has the meaning given to such term in section 103 of the Consumer Credit Protection Act [*15 USCS § 1602*]; and

(B) includes any assignee of any creditor with respect to credit extended in connection with any consumer credit transaction and any subsequent assignee with respect to such credit.

**HISTORY:**

(Oct. 28, 1992, P.L. 102-550, Title IX, Subtitle A, § 933, 106 Stat. 3891.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The bracketed word "minimis" has been inserted in subsec. (a)(2) to indicate the word probably intended by Congress.

This section was enacted as part of Act Oct. 28, 1992, P.L. 102-550, popularly known as the Housing and Community development Act of 1992, and not as part of Act May 29, 1968, P.L. 90-321, 82 Stat. 146, popularly known as the Consumer Credit Protection Act, which generally comprises this chapter.

Effective date of section:

This section is effective on enactment, as provided by § 2 of Act Oct. 28, 1992, which appears as *42 USCS § 5301* note.

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1639*.

Research Guide:

Am Jur:

*15A Am Jur 2d, Commerce § 48.*
*17 Am Jur 2d, Consumer and Borrower Protection § 101.*
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 1.*

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.01.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections § 2.04.
1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit §§ 6.02, 6.03.
1A Debtor-Creditor Law (Matthew Bender), ch 10, Repossessions § 10.09.

Texts:
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.04.

Interpretive Notes and Decisions:

Bank retained no unearned interest under *15 USCS § 1615* because flat finance charge on refund anticipation loan was not interest charge and court interpreted § 1615 as not requiring bank to refund portion of finance charge. *Davis v Pac. Capital Bank (2008, CA9 Cal) 550 F3d 915.*

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1)*, thus, since plaintiff car buyer failed to plead and could not prove detrimental reliance, his Truth in Lending Act claims against defendant bank failed; that *15 USCS §§ 1615*, *1635*, *1639*, specifically provided for rescission and restitution-type remedies did not imply that detrimental reliance was not required to recover actual damages for disclosure violations. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

17 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1616*

§ 1616. Board review of consumer credit plans and regulations

(a) Required review. Not later than 2 years after the effective date of this Act and every 2 years thereafter, except as provided in subsection (c)(2), the Board shall conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market, including--

(1) the terms of credit card agreements and the practices of credit card issuers;

(2) the effectiveness of disclosure of terms, fees, and other expenses of credit card plans;

(3) the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans; and

(4) whether or not, and to what extent, the implementation of this Act and the amendments made by this Act has affected--

(A) cost and availability of credit, particularly with respect to non-prime borrowers;

(B) the safety and soundness of credit card issuers;

(C) the use of risk-based pricing; or

(D) credit card product innovation.

(b) Solicitation of public comment. In connection with conducting the review required by subsection (a), the Board shall solicit comment from consumers, credit card issuers, and other interested parties, such as through hearings or written comments.

(c) Regulations.

(1) Notice. Following the review required by subsection (a), the Board shall publish a notice in the Federal Register that--

(A) summarizes the review, the comments received from the public solicitation, and other evidence gathered by the Board, such as through consumer testing or other research; and

(B) either--

(i) proposes new or revised regulations or interpretations to update or revise disclosures and protections for

consumer credit cards, as appropriate; or

(ii) states the reason for the determination of the Board that new or revised regulations are not necessary.

(2) Revision of review period following material revision of regulations. In the event that the Board materially revises regulations on consumer credit card plans, a review need not be conducted until 2 years after the effective date of the revised regulations, which thereafter shall be treated as the new date for the biennial review required by subsection (a).

(d) Board report to the Congress. The Board shall report to Congress not less frequently than every 2 years, except as provided in subsection (c)(2), on the status of its most recent review, its efforts to address any issues identified from the review, and any recommendations for legislation.

(e) Additional reporting. The Federal banking agencies (as that term is defined in section 3 of the Federal Deposit Insurance Act [*12 USCS § 1813*]) and the Federal Trade Commission shall provide annually to the Board, and the Board shall include in its annual report to Congress under section 10 of the Federal Reserve Act, information about the supervisory and enforcement activities of the agencies with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations, including--

(1) this Act, the amendments made by this Act, and regulations prescribed under this Act and such amendments; and

(2) section 5 of the Federal Trade Commission Act [*15 USCS § 45*], and regulations prescribed under the Federal Trade Commission Act, including part 227 of title 12 of the Code of Federal Regulations, as prescribed by the Board (referred to as "Regulation AA").

**HISTORY:**

(May 22, 2009, P.L. 111-24, Title V, § 502, 123 Stat. 1755.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"This Act", referred to in this section, is Act May 22, 2009, P.L. 111-24. For full classification of such Act, consult USCS Tables volumes.

"The Board", as referred to in this section, is the Board of Governors of the Federal Reserve System, pursuant to § 2 of Act May 22, 2009, P.L. 111-24, which appears as *15 USCS § 1602* note.

"Section 10 of the Federal Reserve Act", referred to in subsec. (e), is § 10 of Act Dec. 23, 1913, ch 6, which appears generally as *12 USCS §§ 241* et seq. For full classification of such section, consult USCS Tables volumes.

Explanatory notes:

This section was enacted as part of Act May 22, 2009, P.L. 111-24, and not as part of Act May 29, 1968, P.L. 90-321, which generally comprises this chapter.

Effective date of section:

This section took effect 9 months after enactment of Act May 22, 2009, P.L. 111-24, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note.

**NOTES:**

Research Guide:

Texts:
9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

18 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS prec § 1631*

Preceding § 1631

**NOTES:**

Related Statutes & Rules:
This part is referred to in *15 USCS § 1610*.

19 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1631*

§ 1631. Disclosure requirements [Caution: See prospective amendment note below.]

(a) Duty of creditor or lessor respecting one or more than one obligor. Subject to subsection (b), a creditor or lessor shall disclose to the person who is obligated on a consumer lease or a consumer credit transaction the information required under this *title [15 USCS §§ 1601* et seq.]. In a transaction involving more than one obligor, a creditor or lessor, except in a transaction under section 125 [*15 USCS § 1635*], need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

(b) Creditor or lessor required to make disclosure. If a transaction involves one creditor as defined in section 103(f) [*15 USCS § 1602(f)*], or one lessor as defined in section 181(3) [*15 USCS § 1667(3)*], such creditor or lessor shall make the disclosures. If a transaction involves more than one creditor or lessor, only one creditor or lessor shall be required to make the disclosures. The Board shall be regulation specify which creditor or lessor shall make the disclosures.

(c) Estimates as satisfying statutory requirements; basis of disclosure for per diem request. The Board may provide by regulation that any portion of the information required to be disclosed by this *title [15 USCS §§ 1601* et seq.] may be given in the form of estimates where the provider of such information is not in a position to know exact information. In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.

(d) Tolerances for numerical disclosures. The Board shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances. The Board shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this *title [15 USCS §§ 1601* et seq.].

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 121, 82 Stat. 152; Oct. 28, 1974, P.L. 93-495, Titles III, IV, §§ 307(c),(d), 409, 88 Stat. 1516; Jan. 2, 1976, P.L. 94-205, § 11, 89 Stat. 1159; March 31, 1980, P.L. 96-221, Title VI, § 611 in part, 94 Stat. 174; Sept. 30, 1995, P.L. 104-29, § 3(b), 109 Stat. 273.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Amendments:

1974. Act Oct. 28, 1974 (effective "upon the expiration of one year after" 10/28/74, as provided by §§ 308 and 416 of such Act, which appear as notes to *15 USCS §§ 1666* and *1665a*, respectively) in subsec. (a), deleted "and upon whom a finance charge is or may be imposed" following "extended", and inserted "or chapter 4"; in subsec. (b), inserted "or chapter 4"; and added subsec. (c).

1976. Act Jan. 2, 1976 (effective 1/2/76, as provided by § 12 of such Act, which appears as *12 USCS § 2602* note), deleted subsec. (c) which read:

"(c) For the purpose of subsection (a), the information required under this chapter shall include a full statement of closing costs to be incurred by the consumer, which shall be presented, in accordance with the regulations of the Board--

"(1) prior to the time when any downpayment is made, or

"(2) in the case of a consumer credit transaction involving real property, at the time the creditor makes a commitment with respect to the transaction.

"The Board may provide by regulation that any portion of the information required to be disclosed by this section may be given in the form of estimates where the provider of such information is not in a position to know exact information.".

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted this section for one which read:

"(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended, the information required under this chapter or chapter 4.

"(b) If there is more than one obligor, a creditor need not furnish a statement of information required under this chapter or chapter 4 to more than one of them.".

1995. Act Sept. 30, 1995, in subsec. (c), added "In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this title if the

disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.".

Other provisions:

**Effective date of Chapters 2 and 3 of Act May 29, 1968.** Act May 29, 1968, Title V, § 504(b), 82 Stat. 167, provided: "Chapters 2 and 3 of title I [*15 USCS §§ 1631-1641, 1661-1665a*] take effect on July 1, 1969.".

**Supersedure of former subsec. (c) by Real Estate Settlement Procedures Act.** A provision of the Real Estate Settlement Procedures Act (*12 USCS § 2605(e)*) provided that the provisions of that Act (*12 USCS §§ 2601* et seq.) were to supersede the provisions of subsec. (c) of this section insofar as subsec. (c) applied to federally related mortgage loans, as such loans are defined in *12 USCS § 2602*. Subsec. (c) has since been repealed (see the 1976 Amendment note to this section).

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1638*.

Research Guide:

Federal Procedure:

5 Fed Proc L Ed, Bankruptcy § 9:1787.
5B Fed Proc L Ed, Bankruptcy § 9:1787.
7 Fed Proc L Ed, Consumer Credit Protection § 15:5.

Am Jur:

*9D Am Jur 2d, Bankruptcy § 3727*.
*11 Am Jur 2d, Bills and Notes § 44*.
*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 16, 22, 24, 25, 124, 146, 163*.
*67 Am Jur 2d, Sales § 283*.
*68A Am Jur 2d, Secured Transactions §§ 174, 217*.

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:

2A Am Jur Pl & Pr Forms (2010), Architects, § 60.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.05.

3 Debtor-Creditor Law (Matthew Bender), ch 26, Confession of Judgment § 26.03.

Corporate and Business Law:

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.12.

Annotations:

Financing of insurance premiums as constituting "business of insurance" within § 2 of McCarran-Ferguson Act (*15 USCS § 1012*), excluding application of Truth in Lending Act (*15 USCS §§ 1601* et seq.) to such financing. *51 ALR Fed 743.*

Right to Private Action Under State Consumer Protection Act--Preconditions to Action. *117 ALR5th 155.*

Construction and effect of disclosure statutes requiring one extending credit or making loan to give statement showing terms as to amounts involved and charges made. *14 ALR3d 330.*

Creditor's failure to disclose correct amount due as affecting sufficiency of debtor's tender of amount which debtor believes to be due, but which is less than amount actually due. *82 ALR3d 1178.*

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.03, 152.06, 152.07.

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act § 156.08.

2 The Law of Advertising (Matthew Bender), ch 15, Federal Remedies Available to Consumers § 15.04.

Law Review Articles:

Ellis. The Applicability of the Statute of Limitations to Truth-in-Lending Counterclaims. 19 Am Business LJ 471, Winter 1982.

Griffith. The truth and nothing but the truth: confronting the challenge in the Truth in Lending Act and Regulation Z. *40 Hous L Rev 345,* Summer 2003.

Cook; Kincaid. The Procedural Relationship Between Truth in Lending Disclosure Claims and Creditor Contract Claims. 12 Loyola U LJ 647, Summer 1981.

Truth in Lending Disclosure Requirements--Security Interest in After-Acquired Consumer Goods. *42 Mo L Rev 675,* Fall 1977.

Boyd. The Federal Consumer Credit Protection Act--A Consumer Perspective. *45 Notre Dame Law 171, 1970.*

Interpretive Notes and Decisions:

1. Generally 2. Relationship with other laws 3. Persons required to disclose 4.--Multiple creditors or lessors 5. Multiple obligors 6. Time for disclosure 7. Particular disclosures 8. Miscellaneous

**1. Generally**

Disclosure is term of art under Truth In Lending Act (*15 USCS §§ 1601* et seq.), and Act and Regulation Z (12 CFR §§ 226 et seq.) provide that as incident to extension of credit, creditor must, in most instances, furnish credit customer with separate disclosure statement which sets forth, in straightforward manner and in meaningful sequence, certain of

terms under which credit is extended so that credit customer will be better equipped to choose credit contract that best fits his needs and his ability to repay loan. *Johnson v McCrackin-Sturman Ford (1975, CA3 Pa) 527 F2d 257, 34 ALR Fed 450.*

Appellate court reversed district court's decision that reversed magistrate judge's grant of defendants' motion to compel arbitration and stay pending litigation in accordance with terms of dispute resolution agreement signed by plaintiffs during purchase and financing of automobiles from defendants; district court erred in setting aside magistrate judge's order so that it could receive further evidence because applicable legal principles required that dispute that alleged violations of Iowa Code §§ 531.1101-537.7103 and *15 USCS § 1631* et seq. be submitted to arbitration. *Madol v Dan Nelson Auto. Group (2004, CA8 Iowa) 372 F3d 997.*

"Disclosure" under Truth in Lending Act is term of art referring to manner in which creditor must convey certain information to consumer; requirements of disclosure do not apply to all information that creditor might furnish to customer but only to information which Act requires to be disclosed to customer. *Jones v East Hills Ford Sales, Inc. (1975, WD Pa) 398 F Supp 402,* affd without op (1976, CA3 Pa) *532 F2d 746.*

Mere fact that judicial interpretations of Truth in Lending Act have been inconsistent, as claimed by plaintiffs, does not make Act unconstitutional under due process clause of Fifth Amendment to Constitution on theory that statutes are too vague to enable persons to determine whether or not their actions violate law. *Franklin v First Money (1976, ED La) 427 F Supp 66,* affd (1979, CA5 La) *599 F2d 615.*

Disclosure provisions of *15 USCS § 1631* are remedial in nature and must be strictly enforced to afford customers of credit expansive protection envisioned by Congress; as general principle all ambiguities in disclosure statement are construed against lender as one upon whom burden of compliance lies and as one who drafted disclosure statement. *First Sav. & Loan Asso. v Kern (1977, 3d Dist) 55 Ill App 3d 838, 13 Ill Dec 299, 370 NE2d 1326.*

**2. Relationship with other laws**

Nothing in Truth in Lending Act or its legislative history suggests that Congress intended Act's disclosure regime to provide maximum protection to which borrowers are entitled nationwide; states remain free to impose greater protections for borrowers. *Williams v First Gov't Mortg. & Investors Corp. (1999, App DC) 336 US App DC 71, 176 F3d 497.*

Requirement of § 1-201 of Uniform Commercial Code that for writing to be conspicuous, it must be in larger type or contrasting type or color, could not be read into definition of "conspicuous" as used in Truth in Lending Act (*15 USCS §§ 1601* et seq.); instead, all that is necessary is that statement convey necessary information in lucid terms, be located in logical proximity with other provisions of contract, and be set out in such manner so as to draw customer's attention to it. *National Republic Bank v Proctor (1978, 1st Dist) 66 Ill App 3d 534, 23 Ill Dec 283, 383 NE2d 1310, 26 UCCRS 567.*

**3. Persons required to disclose**

Where transaction between pawnbroker and customer is determined to be loan, pawnbroker violates Truth in Lending Act by failing to disclose financing terms. *Burnett v Ala Moana Pawn Shop (1993, CA9 Hawaii) 3 F3d 1261, 93 CDOS 6506, 93* Daily Journal DAR 11172.

Based on clear language of *12 CFR §§ 226.2(17)(a), 225.17, 226.18,* and in conjunction with language in *15 USCS § 1631(b),* creditor, and only creditor, can make disclosures required by Truth in Lending Act, including disclosures regarding exclusion of debt cancellation coverage premium amount from finance charge calculations on loan covering purchase of vehicle. *Vallies v Sky Bank (2006, CA3 Pa) 432 F3d 493.*

Under regulations, when credit sale is involved, that is, when seller extends or arranges for extension of credit, it is

seller who is responsible for required disclosure under Truth in Lending Act; lender was not required to disclose such information where automobile dealer arranged for extension of credit to buyer and thus was required to make credit sales disclosure. *Manning v Princeton Consumer Discount Co. (1975, ED Pa) 397 F Supp 504,* affd (1976, CA3 Pa) *533 F2d 102,* cert den *(1976) 429 US 865, 50 L Ed 2d 144, 97 S Ct 173,* reh den *(1976) 429 US 933, 50 L Ed 2d 303, 97 S Ct 342* and (superseded by statute as stated in *In re Brown (1991, BC ED Pa) 134 BR 134).*

Automobile dealer which arranged for credit to be extended to automobile purchaser from automobile manufacturer was creditor within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and therefore had duty to make disclosures required under Act to debtor. *Lauletta v Valley Buick (1976, WD Pa) 421 F Supp 1036.*

Lender must make disclosure to consumer debtor; if existing extension of credit is refinanced, transaction is considered "new transaction" subject to disclosure requirements; where commercial loan to builder is assumed by consumer who purchases house, transaction is considered new transaction and purchasers are entitled to disclosures; lender's characterization of loans as "assumptions" of previous loans is not controlling. *Adiel v Chase Federal Sav. & Loan Asso. (1984, SD Fla) 586 F Supp 866.*

Law firm's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' claim that law firm violated Truth in Lending Act, *15 USCS §§ 1601* et seq., by failing to provide material disclosures was granted because complaint did not contain any allegations creating inference that law firm was creditor in borrowers' refinancing transaction who was required to make appropriate disclosures to borrowers pursuant to *15 USCS § 1631(a). Smith v Argent Mortg. Co., LLC (2006, DC Colo) 447 F Supp 2d 1194.*

Where organization which gave first and second mortgages to homeowners had its transactions closed by closing attorney (either organization's general counsel or attorney chosen by him), and where closing attorney received statement of brokerage fee from any broker involved in transaction, knowledge of broker's fee was imputable to organization through attorney acting as its agent, and organization was responsible for disclosing broker's fee as finance charge on organization's Truth in Lending disclosure statement; this would be true despite organization's letter to its closing attorneys advising that it would not authorize them to pay any broker's fee, because attorneys paid such fees out of loan proceeds in accordance with organization's further statement that borrower's directions to withhold given sum from loan proceeds (with which to pay broker) should be honored. *Re Security Industrial Loan Asso. (1977, FTC) 90 FTC 186.*

**4.--Multiple creditors or lessors**

Under *15 USCS § 1631*, whenever there are multiple creditors in credit-sale transaction, seller, who is arranger of credit, has duty of making all disclosures required under Regulation Z (*12 CFR § 226.8*) [now contained in *12 CFR § 226.5*] and other creditor, as extender of credit, has duty of making those disclosures required by Regulation Z which are within his knowledge and purview of his relationship with customer. *Jennings v Edwards (1979, CA4 NC) 598 F2d 614.*

Before finding one particular creditor among multiple creditors liable under Truth In Lending Act (*15 USCS §§ 1601* et seq.) for failure to make required disclosures, it must be determined that information withheld was within his knowledge, and that information withheld was within purview of his relationship with customer. *Williams v Bill Watson Ford, Inc. (1976, ED La) 423 F Supp 345.*

Failure of disclosure statement, on its face, to identify finance company as creditor where interest of co-defendant, vendor of merchandise, was limited to sale of goods, where prior approval of finance company was obtained before consummation of sale, and where whole transaction contemplated that finance company would be actual extender of credit, violated Truth in Lending Act since both defendants were creditors within meaning of *15 USCS § 1602(f)* and Regulation Z (*12 CFR § 226.2*). *Bird v Goddards Discount Furniture (1978, SD Ill) 443 F Supp 422.*

Where there were no allegations that either defendant credit card network ever extended any type of credit to

cardholders, neither could be considered creditor obligated to provide disclosure to plaintiff cardholders under Truth in *Lending Act. In re Currency Conversion Fee Antitrust Litig. (2003, SD NY) 265 F Supp 2d 385, 2003-2 CCH Trade Cases P 74099.*

If 2 or more creditors make joint disclosures, each creditor shall be separately identified; joint disclosure statement issued by entity which identified itself merely by tradename and not by name of any legal entity is insufficient disclosure; when multiple creditors make joint disclosure, each is responsible only for those disclosures which are within his knowledge and purview of his relationship with customer, and credit company cannot be held responsible to know whether seller of automobile and arranger of credit properly registered its partnership name. *Rainey v Credithrift of America # 5, Inc. (1983, La App 4th Cir) 441 So 2d 278.*

**5. Multiple obligors**

Multiple customer exception set forth in *15 USCS § 1631* does not control or limit disclosures which must be made to assuming parties. *Dryden v Lou Budke's Arrow Fin. Co. (1981, CA8 Mo) 661 F2d 1186.*

Provision of *15 USCS § 1631* that if debtors are jointly liable, creditor need furnish only one disclosure statement to one debtor, was persuasive that where husband and wife had financed purchase of mobile home and had received faulty disclosure statement as family unit rather than as two separate debtors, husband and wife were not entitled to recover two separate statutory penalties under *15 USCS § 1640(a). St. Marie v Southland Mobile Homes (1974, ED La) 376 F Supp 996.*

Although husband had received required disclosure statement and notice of right to rescind from lender in connection with loan to husband and wife, lender's failure to supply such statement and notice to wife constituted violation of Consumer Credit Protection Act, so that, after husband's death, wife was entitled, under *15 USCS § 1640*, to recover $ 1,000 in her own right against lender and $ 1,000 as administratrix of her husband's estate; although intent of *15 USCS § 1631(b)* is to require creditor to furnish disclosure statement to only one of customers, Federal Reserve Board has authority to make exception to this general rule in case of rescindable transactions under § 1635, since each customer is entitled individually to rescind transaction. *Simmons v American Budget Plan (1974, ED La) 386 F Supp 194.*

Where plaintiff signed note as co-maker, creditor was not required to furnish her with disclosure statement, in view of provisions of *15 USCS § 1631. Allen v Beneficial Finance Co. (1975, ND Ind) 393 F Supp 1382*, affd (1976, CA7 Ind) *531 F2d 797, 33 ALR Fed 736*, cert den *(1976) 429 US 885, 50 L Ed 2d 166, 97 S Ct 237* and (superseded by statute as stated in *Greisz v Household Bank (Ill.) (1998, ND Ill) 1998 US Dist LEXIS 12620).*

**6. Time for disclosure**

Protection of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is not to be denied to consumers where they could not read, speak or understand English, on basis that no amount of disclosure would have informed them of credit terms, where objective standard is to be used to determine violations of Act, based on representations contained in relevant disclosure documents, and it is unnecessary to inquire as to subjective deception or misunderstanding of particular consumers. *Zamarippa v Cy's Car Sales, Inc. (1982, CA11 Fla) 674 F2d 877.*

Creditor offering mortgages complied with requirement of Regulation Z, that in residential mortgage transactions subject to Real Estate Settlement Procedures Act *(12 USCS §§ 1601* et seq.), creditor must make necessary disclosures before consummation, or within three business days after creditor receives consumer's written application, whichever is earlier, where it was conceded that required disclosures were mailed by creditor within 3 days after receipt of consumer's loan application, notwithstanding consumer's contention that loan was "consummated" earlier, when consumer signed rate and discount agreement stating that if consumer's loan was approved within 30 days creditor agreed to lend money at interest rate specified in agreement regardless of state of interest rates at time of loan's approval, since this rate and discount agreement did not obligate either party as to making of loan. *Clark v Troy &*

*Nichols, Inc. (1989, CA5 La) 864 F2d 1261,* reh den (1989, CA5) *1989 US App LEXIS 4735* and reh den, en banc (1989, CA5 La) *874 F2d 812.*

Although document executed on October 1 called for payments of balance due on automobile sale on October 3, and thus was not binding contract, but contemplated credit sale on October 3, automobile dealer was obliged to make credit disclosure on October 1, in view of its close relation with credit company through which dealer arranged financing. *Gonzalez v Schmerler Ford (1975, ND Ill) 397 F Supp 323.*

Defendant creditor's contention that plaintiff was informed orally prior to execution of retail installment contract that such contract would be sold to finance company did not satisfy requirement that creditor be identified since disclosures under Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z must be made in context of transaction itself and not by oral disclosures in advance nor written disclosures following disclosures made when credit transaction was consummated. *Bird v Goddards Discount Furniture (1978, SD Ill) 443 F Supp 422.*

Disclosure relating to mortgage loan was timely, under Federal Truth in Lending Act, where such disclosure was made at time of closing. *Farrell v Lincoln Nat'l Bank (1974, 1st Dist) 24 Ill App 3d 142, 320 NE2d 208.*

**7. Particular disclosures**

Since nothing in Truth in Lending Act requires disclosure of noninterest-bearing nature of escrow accounts, *15 USCS § 1631* was not violated by lenders' extending new credit without disclosing noninterest-bearing nature of escrow accounts. *Umdenstock v American Mortgage & Inv. Co. (1974, CA10 Okla) 495 F2d 589, 1974-1 CCH Trade Cases P 75039, 18 FR Serv 2d 1075.*

Common sense approach, rather than technical approach, is used in determining whether there has been meaningful disclosure of identity of creditor. *Brooks v Maryville Loan & Finance Co. (1982, CA11 Ga) 679 F2d 837.*

Incidental interests in property, such as waivers of homestead exemptions, need not be disclosed by creditors under Truth in Lending Act (*15 USCS §§ 1601*, et seq.). *McCoy v Harriman Utility Bd. (1986, CA6 Tenn) 790 F2d 493.*

Where plaintiffs' second contract with auto dealer was forged, and they based their TILA action on such contract, district court properly dismissed action for failure to state claim upon which relief could be granted, because forged contract was nullity and absolutely void, and as such, created no obligation, such that TILA does not apply thereto. *Jensen v Ray Kim Ford, Inc. (1990, CA7 Ill) 920 F2d 3.*

With respect to "payday loans," lender does not violate TILA or its implementing regulations by referring to postdated check as security, because such check gives lender rights in addition to those provided by loan agreement itself. *Hahn v McKenzie Check Advance of Ill., LLC (2000, CA7 Ill) 202 F3d 998.*

Although disclosures required by Truth in Lending Act (*15 USCS §§ 1601* et seq.) should be strictly required and enforced by courts, courts should not condone or give credence to suits which attempt to subvert Act into instrument of harassment and oppression of lending industry; where disclosure statement issued in connection with financing of automobile indicated on its face that retail installment agreement would be assigned to credit company, failure to disclose such credit company by means of descriptive appellation of "creditor" did not violate *15 USCS § 1631* or Regulation Z (*12 CFR § 226.6*) [now *12 CFR § 226.18*] since plaintiffs were apprised of all credit terms and fact that credit paper would be assigned to credit company and to permit plaintiffs to prevail on complaint that credit company was described as assignee rather than as creditor would subvert substance of Act to form imposed by court rather than statutory regulation. *Sharp v Ford Motor Credit Co. (1978, SD Ill) 452 F Supp 465,* affd (1980, CA7 Ill) *615 F2d 423.*

Requirement of disclosure under *15 USCS § 1631* extends to side loan given to finance down payment on automobile purchased under successive installment agreements. *Marcano v Northwestern Chrysler-Plymouth Sales, Inc. (1982, ND Ill) 550 F Supp 595, 37 FR Serv 2d 690.*

Plaintiff consumers' truth in lending suit was dismissed on summary judgment, where discounts were offered to both cash and credit purchasers and were not part of finance charge that was not disclosed to consumers. *Virachack v Univ. Ford (2003, SD Cal) 259 F Supp 2d 1089*, affd (2005, CA9 Cal) *2005 US App LEXIS 9219.*

Homeowner's claim that mortgage broker and loan officer failed to make disclosures to her in connection with rental property refinance as required by Truth in Lending Act (TILA), *15 USCS § 1631* failed as matter of law where undisputed evidence before court demonstrated that homeowner was not only informed about pay down of second mortgage, but that she made informed decision to make such payment for purpose of restructuring her debt; moreover, court did not have jurisdiction over homeowner's claim because pursuant to *15 USCS § 1640(e)*, where there was civil liability for violation of TILA, action had to be brought within one year from date of occurrence of violation, and homeowner filed her complaint over 18 months after alleged violation of TILA occurred. *Sanborn v Am. Lending Network (2007, DC Utah) 506 F Supp 2d 917.*

Where mortgage companies did not allege that third-party defendants were "creditors" pursuant to *15 USCS §§ 1631, 1635*, third-party defendants had no statutory duty to deliver proper Notice of Right to Cancel forms to companies' borrowers; because companies did not identify any plausible source of third-party defendants' duty, companies' negligence claims were dismissed. *Ameriquest Mortg. Co. v Northwest Title & Escrow Corp. (In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.) (2008, ND Ill) 589 F Supp 2d 987.*

Written financial disclosures were not required in transaction where defendants bought mobile home for purpose of repairing and reselling it, with no intent to live in it, since they were not "consumers" and transaction was not "consumer credit transaction" within meaning of Consumer Credit Protection Act (*15 USCS §§ 1602(h), 1631(a)*). *Anderson v Rocky Mountain Fed. Sav. & Loan Ass'n (1982, Wyo) 651 P2d 269.*

**8. Miscellaneous**

All disclosures required by Truth-In-Lending Act and Regulation Z must be in writing, and although oral disclosures are found to be accurate, such finding does not lessen liability for failure to reduce disclosures to writing. *Dryden v Lou Budke's Arrow Fin. Co. (1981, CA8 Mo) 661 F2d 1186.*

Although TILA does not mandate any minimum type size, this does not mean that type size is irrelevant to determination of whether disclosure is conspicuous; if term "conspicuous" is to retain any meaning at all, it cannot be met, as matter of law, by type disproportionately small to that in rest of document, and which is itself barely legible. *Lifanda v Elmhurst Dodge, Inc. (2001, CA7 Ill) 237 F3d 803.*

There was no compelling reason to extend federal common law to allow claim for equitable indemnity or contribution for alleged Truth In Lending Act (TILA) disclosure violations. *Ameriquest Mortg. Co. v Northwest Title & Escrow Corp. (In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.) (2008, ND Ill) 589 F Supp 2d 987.*

Although failure to comply with disclosure requirements of Regulation Z may constitute violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., Regulation Z was merely implementing regulation and did not authorize private cause of action, *12 CFR § 226.1(e). Smith v Jenkins (2009, DC Mass) 626 F Supp 2d 155.*

Organization which gave first and second mortgages to homeowners, sometimes obtaining its customers through brokers, would not be liable under Truth in Lending Act when precise amount of total broker's fee was unknown in any particular instance, or where organization was aware that final fee might differ from fee reported by broker, provided that organization complied with requirements of regulation Z § 226.6(f) and made reasonable effort to ascertain correct amount. *Re Security Industrial Loan Asso. (1977, FTC) 90 FTC 186.*

20 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1632*

§ 1632. Form of disclosure; additional information [Caution: See prospective amendment note below.]

(a) Information clearly and conspicuously disclosed; "annual percentage rate" and "finance charge"; order of disclosures and use of different terminology. Information required by this *title [15 USCS §§ 1601* et seq.] shall be disclosed clearly and conspicuously, in accordance with regulations of the Board. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identity of the creditor. Except as provided in subsection (c), regulations of the Board need not require that disclosures pursuant to this *title [15 USCS §§ 1601* et seq.] be made in the order set forth in this *title [15 USCS §§ 1601* et seq.] and, except as otherwise provided, may permit the use of terminology different from that employed in this *title [15 USCS §§ 1601* et seq.] if it conveys substantially the same meaning.

(b) Optional information by creditor or lessor. Any creditor or lessor may supply additional information or explanation with any disclosures required under chapters 4 and 5 [*15 USCS §§ 1666* et seq. and *1667* et seq.] and, except as provided in sections 127A(b)(3) and 128(b)(1) [*15 USCS §§ 1637a(b)(3)* and *1638(b)(1)*] under this chapter [*15 USCS §§ 1631* et seq.].

(c) Tabular format required for certain disclosures under *15 USCS § 1637(c)*.

(1) In general. The information described in paragraphs (1)(A), (3)(B)(i)(I), (4)(A), and (4)(C)(i)(I) of section 127(c) [*15 USCS § 1637(c)*] shall be--

(A) disclosed in the form and manner which the Board shall prescribe by regulations; and

(B) placed in a conspicuous and prominent location on or with any written application, solicitation, or other document or paper with respect to which such disclosure is required.

(2) Tabular format.

(A) Form of table to be prescribed. In the regulations prescribed under paragraph (1)(A) of this subsection, the Board shall require that the disclosure of such information shall, to the extent the Board determines to be practicable and appropriate, be in the form of a table which--

(i) contains clear and concise headings for each item of such information; and

(ii) provides a clear and concise form for stating each item of information required to be disclosed under each such heading.

(B) Board discretion in prescribing order and wording of table. In prescribing the form of the table under subparagraph (A), the Board may--

(i) list the items required to be included in the table in a different order than the order in which such items are set forth in paragraph (1)(A) or (4)(A) of section 127(c) [*15 USCS § 1637(c)*]; and

(ii) subject to subparagraph (C), employ terminology which is different than the terminology which is employed in section 127(c) [*15 USCS § 1637(c)*] if such terminology conveys substantially the same meaning.

(C) Grace period. Either the heading or the statement under the heading which relates to the time period referred to in section 127(c)(1)(A)(iii) [*15 USCS § 1637(c)(1)(A)(iii)*] shall contain the term "grace period".

(d) Additional electronic disclosures.

(1) Posting agreements. Each creditor shall establish and maintain an Internet site on which the creditor shall post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan.

(2) Creditor to provide contracts to the board. Each creditor shall provide to the Board, in electronic format, the consumer credit card agreements that it publishes on its Internet site.

(3) Record repository. The Board shall establish and maintain on its publicly available Internet site a central repository of the consumer credit card agreements received from creditors pursuant to this subsection, and such agreements shall be easily accessible and retrievable by the public.

(4) Exception. This subsection shall not apply to individually negotiated changes to contractual terms, such as individually modified workouts or renegotiations of amounts owed by a consumer under an open end consumer credit plan.

(5) Regulations. The Board, in consultation with the other Federal banking agencies (as that term is defined in section 603 [*15 USCS § 1681a*]) and the Federal Trade Commission, may promulgate regulations to implement this subsection, including specifying the format for posting the agreements on the Internet sites of creditors and establishing exceptions to paragraphs (1) and (2), in any case in which the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 122, 82 Stat. 152; Oct. 28, 1974, P.L. 93-495, Title III, §§ 307(e), (f), 88 Stat. 1516; March 31, 1980, P.L. 96-221, Title VI, § 611 in part, 94 Stat. 175; Nov. 3, 1988, P.L. 100-583, § 2(b), (c), 102 Stat. 2966; Nov. 23, 1988, P.L. 100-709, § 2(d), 102 Stat. 4731.)

(As amended May 22, 2009, P.L. 111-24, Title II, § 204, 123 Stat. 1746; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (3), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (3), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau", and by striking "Federal Trade Commission" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1974. Act Oct. 28, 1974 (effective "upon the expiration of one year after" 10/28/74, as provided by § 308 of such Act, which appears as *15 USCS § 1666* note), in subsecs. (a) and (b), inserted "or chapter 4".

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted this section for one which read:

"(a) Regulations of the Board need not require that disclosures pursuant to this chapter or chapter 4 be made in the order set forth in this chapter or chapter 4, and may permit the use of terminology different from that employed in this chapter or chapter 4 if it conveys substantially the same meaning.

"(b) Any creditor may supply additional information or explanations with any disclosures required under this chapter or chapter 4.".

1988. Act Nov. 3, 1988 (effective as provided by § 7 of such Act, which appears as a note to this section), in subsec. (a), substituted "Except as provided in subsection (c), regulations" for "Regulations"; and added subsec. (c).

Act Nov. 23, 1988 (effective and applicable as provided by § 7 of such Act, which appears as *15 USCS § 1637a* note), in subsec. (b), substituted "sections 127A(b)(3) and 128(b)(1)" for "section 128(b)(1)".

2009. Act May 22, 2009 (effective 9 months after enactment, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note), added subsec. (d).

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1610, 1637*.

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 17, 18, 21, 49, 51, 53, 55, 56, 85, 86.*

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:

24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection § 46.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.04, 1.05.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections § 2.03.
1A Debtor-Creditor Law (Matthew Bender), ch 10, Repossessions § 10.02.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.12.

Texts:
3 Banking Law (Matthew Bender), ch 83, Banking Provisions of the Federal Trade Commission Act § 83.03.
9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

Law Review Articles:
Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

Interpretive Notes and Decisions:
1. Generally 2. "Annual percentage rate" and "finance charge: 3. Precise terminology 4. Distinguishing type 5. Size of type 6. Placement or location of disclosure 7.--Reverse side of sheet 8. Multiple sheet usage 9. Additional information 10. Former "meaningful sequence" requirement 11. Particular cases

**1. Generally**

Whether particular disclosures are "clear" is issue of fact, for extent to which one piece of paper obscures another varies, and clarity depends on what particular borrower would observe. *Smith v Check-N-Go, Inc. (1999, CA7 Ill) 200 F3d 511.*

When lender employs model form recommended by Federal Reserve, isolated circle or mark cannot create liability. *Smith v Check-N-Go, Inc. (1999, CA7 Ill) 200 F3d 511.*

Consumers may not recover statutory damages under *15 USCS § 1640(a)* for violations of *15 USCS § 1632(a)* and its corresponding regulations, *12 C.F.R. § 226.17(a)(22). McDonald v Checks-N-Advance, Inc. (In re Ferrell) (2008, CA9) 539 F3d 1186.*

**2. "Annual percentage rate" and "finance charge:**

Allegation that particular disclosure is more conspicuous than finance charge or annual percentage rate states claim on which relief may be granted. *Smith v Check-N-Go, Inc. (1999, CA7 Ill) 200 F3d 511.*

*15 USCS § 1637*(c)(1)(A)(i), part of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., required credit card provider to disclose certain information in direct mail applications and solicitations, including annual percentage rates (APR), and *15 USCS § 1632(a)*, (c), required that annual percentage rates had to clearly and conspicuously disclosed in tabular format; thus, where defendant bank's credit card solicitation, stated in so-called "Schumer Box" only that fixed annual percentage rate (APR) could change for nonpayment or account closure, consumer could have reasonably concluded that APR could be changed only under those listed circumstances and adequacy of disclosures should have proceeded to trial. *Roberts v Fleet Bank (2003, CA3 Pa) 342 F3d 260.*

Plaintiff consumers' truth in lending suit was dismissed on summary judgment, where discounts were offered to both cash and credit purchasers and were not part of finance charge that was not disclosed to consumers. *Virachack v Univ. Ford (2003, SD Cal) 259 F Supp 2d 1089,* affd (2005, CA9 Cal) *2005 US App LEXIS 9219.*

Debtor was not entitled to summary judgment under *Fed. R. Civ. P. 56(c), Fed. R. Bankr. P. 7056*, on claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS §§ 1639* et seq., because when debtor's loan closed in July, 1997, *12 C.F.R. § 226.32* did not require disclosure of balloon payments, and annual percentage rate and monthly payment were clearly disclosed; thus, as matter of law there were no violations of *15 USCS §§ 1632, 1637, 1638(a)*, (b), 1639. *Lewis v Delta Funding Corp. (In re Lewis) (2003, BC ED Pa) 290 BR 541* (criticized in *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962).*

**3. Precise terminology**

Creditor involved in loan transaction which took place before Board promulgated regulations prescribing wording of disclosure statement satisfied disclosure requirements of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) where language of its disclosure statement substantially complied with regulations. *Herbst v First Federal Sav. & Loan Asso. (1976, CA7 Wis) 538 F2d 1279.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z promulgated thereunder call for precise, uniform, nationwide disclosures rather than approximations or terminology devised by each individual creditor, and creditor violated Act by failing to use precise terms in credit agreement. *Barber v Kimbrell's, Inc. (1976, WD NC) 424 F Supp 42,* affd in part and revd in part on other grounds (1978, CA4 NC) *577 F2d 216, 25 FR Serv 2d 815,* cert den *(1978) 439 US 934, 58 L Ed 2d 330, 99 S Ct 329* and (criticized in *Strang v JHM Mortgage Sec. Ltd. Partnership (1995, ED Va) 890 F Supp 499)* and (superseded by statute as stated in *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841).*

Disclosure of premiums by credit life and credit disability was not clear and conspicuous within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) where cost of insurance was typed in two of many boxes at top of disclosure statement and boxes were designated "Credit Life" and "Credit Dis." which terms are not clear to laymen for whose protection Act is meant. *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

**4. Distinguishing type**

Loan agreement violates Truth in Lending Act (*15 USCS §§ 1601* et seq.) requirement of conspicuousness although terms "finance charge" and "annual percentage rate" are printed in lower and upper case letters, they are approximately same size as other printed items in agreement, and though 2 terms are in bold face type, numerous other headings on page also are in bold face type; cost terms are not more conspicuous than many other disclosures on printed agreement, and would not particularly catch borrower's attention. *Dixey v Idaho First Nat'l Bank (1982, CA9 Idaho) 677 F2d 749.*

Notice that required disclosures are printed upon reverse side of periodic statements does not necessitate use of particular print style formats; whatever print style creditor adopts must disclose notice provision clearly and conspicuously. *Gambardella v G. Fox & Co. (1983, CA2 Conn) 716 F2d 104.*

Defendant did not violate Truth in Lending Act by using term "TOTAL FINANCE CHARGE," rather than term

"Total FINANCE CHARGE." *Mims v Dixie Finance Corp. (1976, ND Ga) 426 F Supp 627, 21 FR Serv 2d 1042.*

**5. Size of type**

Although TILA does not mandate any minimum type size, this does not mean that type size is irrelevant to determination of whether disclosure is conspicuous; if term "conspicuous" is to retain any meaning at all, it cannot be met, as matter of law, by type disproportionately small to that in rest of document, and which is itself barely legible. *Lifanda v Elmhurst Dodge, Inc. (2001, CA7 Ill) 237 F3d 803.*

Credit card issuer violated *15 USCS § 1632(a)* by failing to disclose on its monthly periodic billing statement term "Annual Percentage Rate" in conspicuous manner, because while one term required to be "conspicuous" was of print size, pitch and degree of boldness different in comparison to other required disclosure terms, "Annual Percentage Rate" was not. *Schmidt v Citibank (South Dakota) N.A. (CBSD) (1987, DC Conn) 677 F Supp 687.*

**6. Placement or location of disclosure**

Creditor did not comply with disclosure requirements where it placed truth-in-lending disclosures above and separate from disclosure of state-prescribed computation but did not clearly and conspicuously label truth-in-lending disclosures as such and did not indicate state law requirement with clear and conspicuous heading. *Mason v General Finance Corp. (1975, ED Va) 401 F Supp 782,* affd in part and revd in part on other grounds (1976, CA4) *542 F2d 1226, 37 ALR Fed 799.*

Car seller's motion for summary judgment on buyer's claim that seller's disclosures as to retention of portion of charge for service contract did not meet Truth in Lending Act's, *15 USCS §§ 1601* et seq., "conspicuousness" requirement was granted because placement of retention disclosure on first page of retail installment sales contract was such that reasonable consumer would notice it, and was thus conspicuous as matter of law. *Harper v Lindsay Chevrolet Oldsmobile, LLC (2002, ED Va) 212 F Supp 2d 582.*

Written disclosures relating to insurance premiums are among those which must appear on same side of either note evincing debt or some separate disclosure statement under Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

**7.--Reverse side of sheet**

Pretransaction statement issued to plaintiff borrower by defendant creditor pursuant to open end account violated predecessor to *15 USCS § 1632* because there appeared on reverse side of pretransaction statement clause relating to collection of attorneys' fees and acceleration of unpaid balance in event of default. Hall v Sheraton Galleries of Atlanta (1974, ND Ga) CCH CCG P 98737.

Credit card issuer's monthly billing statement violated Truth-in-Lending Act, where statement inadequately described "Average Daily Balance" method of finance charge application and failed to define "Daily Balance" and "Average Daily Balance," and where statement noted on back that consumer should write to issuer concerning dispute in billing in order to preserve rights under law, but invited telephone inquiries on front, because (1) *15 USCS § 1637(b)(7)* requires periodic billing statement setting forth balance on which finance charge was computed and statement of how balance was determined, and (2) *15 USCS §§ 1632(a)* and *1637(b)(10)* require clear and conspicuous disclosure of address to which consumer billing inquiries should be sent. *Schmidt v Citibank (South Dakota) N.A. (CBSD) (1987, DC Conn) 677 F Supp 687.*

Fact that acceleration clause in connection with credit sale of automobile appeared on reverse side of contract did not violate disclosure requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and regulations promulgated thereunder where state law required rebate of unearned interest to debtor after acceleration and where method of rebating unearned interest upon prepayment was disclosed on front of instrument. *United States ex rel. Hornell v One*

*1976 Chevrolet Station Wagon (1976, DC NM) 425 F Supp 550,* affd in part and revd in part on other grounds (1978, CA10 NM) *585 F2d 978.*

Even if it be assumed that heading on reverse side of installment sales contract ("Continuation of Terms and Conditions from Front") is substantial compliance with requirement that each side bear "notice" advising customer to "See other side for important information," where requirement that, if both sides of document are used, signature lines must follow full content, has been violated, such lack of compliance precludes consideration by court of recitals on reverse side which are neither above nor adjacent to customer's signature. *McDonald v Savoy (1973, Tex Civ App San Antonio) 501 SW2d 400.*

**8. Multiple sheet usage**

Whether particular disclosures are "clear" is issue of fact, for extent to which one piece of paper obscures another varies, and clarity depends on what particular borrower would observe. *Smith v Check-N-Go, Inc. (1999, CA7 Ill) 200 F3d 511.*

Intent of Truth in Lending Act is that all disclosures be made on same side of single page; hence, defendants may not meet requirements by disclosing required and important information on documents accompanying principal disclosure statement. *Pedro v Pacific Plan (1975, ND Cal) 393 F Supp 315.*

**9. Additional information**

Court will not reject entire loan agreement because of confusing use of one phrase or absence of signature when main intention of parties is manifestly clear. *Pridegon v Gates Credit Union (1982, CA7 Ill) 683 F2d 182, 34 UCCRS 717.*

State law provision for determining cost of credit as percentage per month of unpaid balance, which method is described as "contract rate" or "agreed rate of charge," is inconsistent with requirements of Truth in Lending Act, which prescribes format for disclosure of finance charge; such inconsistent state requirement must be disclosed in accordance with prescribed format of Truth in Lending Act. *Mason v General Finance Corp. (1975, ED Va) 401 F Supp 782,* affd in part and revd in part on other grounds (1976, CA4) *542 F2d 1226, 37 ALR Fed 799.*

Creditor's disclosure of its rights in event of default was not part of description of type of security interest taken and was not required by statute or regulation and fact that such remedies were disclosed on reverse side of instrument was not violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Olson v Holmes (1978, Tex Civ App Austin) 571 SW2d 211,* writ ref n r e (1979, Tex) *587 SW2d 678.*

**10. Former "meaningful sequence" requirement**

Lender violated "meaningful sequence" by failing to make due date disclosures in close proximity to default disclosures. Pollock v Avco Financial Services, Inc. (1974, ND Ga) CCH CCG P 98766.

Creditor satisfied requirement of Truth in Lending Act (predecessor to *15 USCS § 1632*) that required disclosures be in meaningful sequence where on disclosure statement creditor grouped together terms which were logically related in series of 10 paragraphs, arranged them in logically sequential order emphasizing most important terms, and presented terms in logical progression of arithmetic computations or thought with result that figures and terms presented were displayed to borrower in clear, concise, and logical manner and in arithmetically logical sequence. *Gennuso v Commercial Bank & Trust Co. (1976, WD Pa) 425 F Supp 461,* revd on other grounds (1977, CA3 Pa) *566 F2d 437.*

Meaningful sequence of disclosure requirement is met where it is unclear that superior arrangement of information exists and form promotes goals of act by making clear terms of loan and affording consumer opportunity to use credit in knowing and responsible fashion. *Misher v Household Finance Consumer Discount Co. (1983, ED Pa) 571 F Supp*

*726.*

Disclosure statement did not attain purpose of statute nor comply with its letter, where items were disclosed in sequence such that attempt to understand them required one to search for related items, and even then uncertainty and confusion remained as result of its desultory composition: specifically, statement grouped together certain terms which were neither arithmetically nor logically related and failed to present sensibly those terms which were related. *Conrad v Beneficial Finance Co. (1977, 4th Dept) 57 App Div 2d 91, 394 NYS2d 923.*

Insurance disclosures on disclosure statements were not in meaningful sequence within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) where boxes containing insurance costs were at top of page while written explanation that insurance was optional was contained in paragraphs at bottom of page with unrelated material between insurance costs and written explanations and where there was not even any reference in written text to boxes of information at top of page. *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

Counterclaim by debtor for alleged violation by lender of predecessor to *15 USCS § 1632* requiring that information on disclosure statement be in meaningful sequence would not be allowed where although form in question had some sequential deficiencies, lender had substantially complied with Act and Regulation Z promulgated thereunder. *GAC Finance Corp. v Burgess (1977) 16 Wash App 758, 558 P2d 1386.*

**11. Particular cases**

Truth-In-Lending disclosure statement did not create unnecessary confusion by stating different interest rates and principal amounts than stated on note where perceived inconsistency arose from lender's compliance with truth-in-lending requirements, where amount financed differed from principal amount of loan and difference was clearly explained in disclosure. *Smith v Anderson (1986, CA4 Va) 801 F2d 661.*

Lender's disclosure to borrower that borrower was granting lender security interest in borrower's real estate satisfied TILA (*15 USCS §§ 1601* et seq.) where both disclosure form and "notice of right to cancel" given by lender to borrower indicated clearly and conspicuously that lender was taking security interest in borrower's residence, and it did not render disclosures inadequate that deed signed by borrower conveying his home to lender's parent corporation was never recorded. *Smith v Fid. Consumer Disc. Co. (1990, CA3 Pa) 898 F2d 896.*

Insertion of creditor's store number rather than actual address of store, in blank labeled "sellers place of business," is not meaningful disclosure and serves to confuse customer. *Welmaker v W. T. Grant Co. (1972, ND Ga) 365 F Supp 531, 18 FR Serv 2d 280.*

Plaintiff borrowers seeking penalty provided by *15 USCS § 1640* for violation of Truth in Lending Act [predecessor to *15 USCS § 1632*] must show that disclosures were confusing or misleading, not merely that clarity could have been improved; violation of *15 USCS § 1631* and Regulation Z (*12 CFR § 226.6*) merely by proving that clarity of particular disclosure was not best possible. *Sanders v Auto Associates, Inc. (1978, DC SC) 450 F Supp 900.*

Appearance on credit contract of phrase "with interest after maturity at maximum lawful rate" is clear and easily understood by average consumer and complies with disclosure requirements of *15 USCS § 1631* and Regulation Z (*12 CFR § 226.6*), even though such phrase may not tell borrower what current maximum is. *Greeson v Lexington State Bank (1980, MD NC) 497 F Supp 301.*

Lender violated Truth in Lending Act (TILA), *15 USCS §§ 1632* and *1638(b)* by failing to clearly and conspicuously disclose and segregate information relating to loan's payment schedule, by failing to clearly disclose loan's annual percentage rate and its variable interest rate feature, and by including information not directly related to required information in its disclosure statement. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 240 FRD 612.*

Lender did not violate Truth in Lending Act (TILA), *15 USCS § 1632* with respect to its disclosure of possibility of

negative amortization because, while lender did not use precise language recommended in regulations, it did inform borrowers as to what would occur if they made only minimum monthly payments. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 240 FRD 612.*

Borrowers who sought delaration that they had right to rescind mortgage loan because lender violated Truth in Lending Act (TILA), *15 USCS §§ 1632* and *1638(b)*, could represent class under *Fed. R. Civ. P. 23* because borrowers otherwise met class action requirements. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 240 FRD 612.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded; one-year statute of limitations under *15 USCS § 1640(e)* barred borrower's damages claim based on alleged disclosure violations under *15 USCS §§ 1632* and *1638*. *Saldate v Wilshire Credit Corp. (2010, ED Cal) 2010 US Dist LEXIS 21034*, complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220*, complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051*.

Considering gross discrepancies between two contracts regarding number of payments and date first payment was to be made, there was failure to clearly and conspicuously disclose material terms of loan. *Armstrong v Nationwide Mortg. Plan/ Trust (In re Armstrong) (2003, BC ED Pa) 288 BR 404.*

Copy of notice of right to rescind given to debtor's wife required only debtor's signature and was not addressed to wife, who was not obligated on loan but who had granted mortgage on debtor's and wife's home, thus, notice was unclear under *15 USCS §§ 1632(a), 1635(a), 12 C.F.R. § 226.17(a)*, and period for rescission was extended to three years, and loan could be rescinded. *Apgar v Homeside Lending, Inc. (In re Apgar) (2003, BC ED Pa) 291 BR 665.*

LLC that seized Chapter 13 debtor's car 16 hours before debtor declared bankruptcy was ordered to pay debtor $ 1,000 in damages, pursuant to *15 USCS § 1640(a)(2)(A)*, because it violated *15 USCS § 1632(a)* when it prepared Motor Vehicle Pawn Contract for debtor to sign before it loaned her $ 2,078 and took title lien on her car; although contract debtor signed included information about finance charge, amount financed, and total payments, it did not provide annual percentage rate in more conspicuous manner than other contract terms. *Spinner v Cash In A Hurry, LLC (In re Spinner) (2008, BC ND Ga) 398 BR 84.*

Under regulation Z § 226.6, consumer leasing disclosures need not be more conspicuous than nonrequired contract provisions where lease and disclosure statement are combined. Board of Governors of Federal Reserve System Official Staff Interpretation FC-0084, *42 Fed Reg 35147.*

Failure to include term "unpaid balance," despite fact that figure representing term is identical to figure of "amount financed" which was disclosed on contract, constitutes violation of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.). *Ed Marling Stores, Inc. v Miracle (1981) 6 Kan App 2d 175, 627 P2d 352.*

21 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1633*

§ 1633. Exemption for State-regulated transactions [Caution: See prospective amendment note below.]

The Board shall by regulation exempt from the requirements of this chapter [*15 USCS §§ 1631* et seq.] any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter [*15 USCS §§ 1631* et seq.], and that there is adequate provision for enforcement.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 123, 82 Stat. 152.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:
This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

**NOTES:**

Research Guide:

Am Jur:
*11 Am Jur 2d, Banks and Financial Institutions § 1007.*
*17 Am Jur 2d, Consumer and Borrower Protection § 248.*

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection § 14:44.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection § 18.

Interpretive Notes and Decisions:
1. Generally 2. Effect of exemption 3. Miscellaneous

**1. Generally**

Under *15 USCS § 1633*, court is not authorized to determine whether state's transactions were exempt from federal disclosure requirements; exemption can be granted only by Federal Reserve Board after proper application to and review by that agency. *Sosa v Fite (1972, CA5 Tex) 465 F2d 1227.*

**2. Effect of exemption**

Where state had adopted disclosure requirements in credit transactions substantially similar to those in Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) state statute was exempted from Federal Act except for provision in Federal Act for civil liability; Federal District Court, therefore, retained jurisdiction in case alleging failure to disclose, but there was but one cause of action and thus but one recovery for nondisclosure. *Hinkle v Rock Springs Nat'l Bank (1976, CA10 Wyo) 538 F2d 295.*

Where Federal Reserve Board, in accordance with *15 USCS § 1633*, exempted transactions in Connecticut from requirements of Federal Truth in Lending Act, with proviso that exemption should not be construed to affect concurrent jurisdiction of federal and state courts, federal court retained subject matter jurisdiction over lending transaction in Connecticut; exemption applied only to federal administration of statute and did not pertain to civil liability provisions of Act. *Whitman v Connecticut Bank & Trust Co. (1975, DC Conn) 400 F Supp 1341.*

Effect of exemption from Truth in Lending Act (*15 USCS §§ 1631* et seq.) is to make creditors other than federally charted institutions subject solely to state law and enforcement rather than comparable federal law and enforcement; whether creditor operating in exempt state must follow state rather than federal law depends on scope of exemption and class of creditors and transactions affected by it, and scope of exemption is set forth in notice in which Federal Reserve Board grants exemption. Board of Governors of Federal Reserve System Exemption Determinations R-0415, *47 Fed Reg 36962.*

**3. Miscellaneous**

Claim that open-end credit agreement was in violation of Truth in Lending Act is cognizable in Federal District Court even if agreement is also alleged to violate Connecticut legislation. *Solevo v Aldens, Inc. (1975, DC Conn) 395 F*

*Supp 861.*

Where there has been no determination, official or otherwise, by Federal Reserve Board that under Texas law particular type of credit transaction is subject to requirements "substantially similar" to those imposed by Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.), contention that particular transaction upon which plaintiff's claim is based is exempt from provisions of Act is without merit; as practical matter, it would seem that in order to be entitled to exemption, state would have to adopt federal Act in its entirety as well as Regulation Z. *McDonald v Savoy (1973, Tex Civ App San Antonio) 501 SW2d 400.*

22 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1634*

§ 1634. Effect of subsequent occurrence

If information disclosed in accordance with this chapter [*15 USCS §§ 1631* et seq.] is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter [*15 USCS §§ 1631* et seq.].

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 124, 82 Stat. 152.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

**NOTES:**

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 26.*

Am Jur Proof of Facts:
73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.09.

Interpretive Notes and Decisions:
1. Interest rate increase 2. Miscellaneous

**1. Interest rate increase**

District Court properly held that 2 interest rate increases, implemented pursuant to variable rate provisions in mortgage note, constituted new transactions within meaning of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z, rather than subsequent occurrences, and that defendant lending institution violated Act and Regulation Z by failing to accompany new transactions with required disclosures, where letter sent mortgagees informed them only of rate increases and new payment amounts, without mentioning annual percentage rate or waiver of prepayment penalty during 4-month notice period. *Brown v Marquette Sav. & Loan Ass'n (1982, CA7 Wis) 686 F2d 608.*

Increase in interest rate pursuant to variable rate provision in mortgage note does not qualify as subsequent occurrence under *15 USCS § 1634*, where lender's original disclosure statement failed to set forth conditions under which rate could be changed and used term "interest rate" rather than term "annual percentage rate," as required by § 1638, so that subsequent increase in rate constituted new transaction, requiring issuance of new disclosure statement. *Nash v First Financial Sav. & Loan Asso. (1983, CA7 Wis) 703 F2d 233.*

**2. Miscellaneous**

Car purchaser's Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claim against car dealer was dismissed because dealer's refusal to provide financing and failure to remit to state license and registration fees paid by purchaser did not violate TILA; purchaser did not allege that financing disclosures were inaccurate when made, and disclosures did not violate TILA if they became inaccurate due to subsequent events. *Scroggins v Ltd, Inc. (2003, ED Va) 251 F Supp 2d 1277.*

After original pawn transaction, debtor's subsequent series of "loan transactions" were not new obligations under *15 USCS § 1634* requiring new disclosures; later transactions were merely extensions of original pawn transaction and thus, dismissal of claims against defendant pawnbroker was affirmed. *Gunn v TitleMax of Ala., Inc (In re Gunn) (2008, MD Ala) 387 BR 856.*

Generally, under *15 USCS § 1634*, events subsequent to consumer loan transaction did not affect validity of initial disclosures or require creditor to make further disclosures, and where mortgage modification stated that it amended and supplemented original mortgage, and that it was not satisfaction of original loan which remained unchanged except as modified, it was not refinancing under *12 C.F.R. § 226.20(a)*, and thus, no disclosures were required; debtor and his non-debtor wife were not entitled to rescission under *15 USCS § 1635(e)(2)*. *Sheppard v GMAC Mortg. Corp. (In re Sheppard) (2003, BC ED Pa) 299 BR 753.*

23 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1635*

§ 1635. Right of rescission as to certain transactions [Caution: See prospective amendment note below.]

(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 *title [15 USCS §§ 1601* et seq.], whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, 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), 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 *title [15 USCS §§ 1601* et seq.] 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 Board 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 103(w) [*15 USCS § 1602(w)*];

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

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

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

(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 chapter [*15 USCS §§ 1631* et seq.] have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this *title [15 USCS §§ 1601* et seq.] 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 section 125 [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 130 [*15 USCS § 1640*] for violations of this *title [15 USCS §§ 1601* et seq.] 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 Board, 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 139 [*15 USCS § 1649*], and subject to the time period provided in subsection (f), 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 Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) Tolerance for disclosures. Notwithstanding section 106(f) [*15 USCS § 1605(f)*], and subject to the time period provided in subsection (f), 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 *title [15 USCS §§ 1601* et seq.].

(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 the date of the enactment of the Truth in Lending Act Amendments of 1995 [enacted Sept. 30, 1995].

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 125, 82 Stat. 152; Oct. 28, 1974, P.L. 93-495, Title IV, §§ 404, 405, 412, 88 Stat. 1517, 1519; March 31, 1980, P.L. 96-221, Title VI, § 612(a)(1), (3)-(6), 94 Stat. 175; Oct. 17, 1984, P.L. 98-479, Title II, § 205, 98 Stat. 2234; Sept. 30, 1995, P.L. 104-29, §§ 5, 8, 109 Stat. 274, 275.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1974. Act Oct. 28, 1974 (effective 10/28/74, as provided by § 416 of such Act, which appears as *15 USCS § 1665a* note), in subsec. (a), substituted ", including any such interest arising by operation of law, is or will be" for "is"; in subsec. (b), inserted ", including any such interest arising by operation of law,"; in subsec. (e), added "or to a consumer credit transaction in which an agency of a State is the creditor" at the end thereof; and added subsec. (f).

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted subsec. (a) for one which read: "Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any real property which is used or is expected to be used as the residence 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 disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and

conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section."; in subsec. (b) substituted "20 days" for "ten days" and inserted "The procedures prescribed by this subsection shall apply except when otherwise ordered by a court."; in subsec. (c), inserted "information, forms, and"; substituted subsecs. (e) and (f) for ones which read:

"(e) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling or to a consumer credit transaction in which an agency of a State is the creditor.

"(f) 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 earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the obligor.".

Such Act further added subsec. (g).

1984. Act Oct. 17, 1984, in subsec. (e), deleted "(1)" following "(e)", redesignated former subparas. (A)-(D) as paras. (1)-(4) respectively, and deleted former para. (2) which read: "The provisions of paragraph (1)(D) shall cease to be effective 3 years after the effective date of the Truth in Lending Simplification and Reform Act.".

1995. Act Sept. 30, 1995 added subsecs. (h) and (i).

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1605, 1610, 1631, 1639, 1640, 1641, 1649*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:5-13, 16, 18.

12 Fed Proc L Ed, Evidence § 33:95.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 135-142, 144-147, 155, 164*.

Forms:

1 *Bender's Federal Practice Forms, Form 8(II):102*, Federal Rules of Civil Procedure.

8 *Bender's Federal Practice Forms, Form 36:180*, Federal Rules of Civil Procedure.

6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:111, 126-129, 132, 134, 135, 138-143, 145-148.

16 Fed Procedural Forms L Ed, Trade Regulation and Unfair Trade Practices § 65:265.

2A Am Jur Pl & Pr Forms (2010), Architects, § 60.

17C Am Jur Pl & Pr Forms (2006), Moneylenders and Pawnbrokers, § 9.

24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection §§ 4, 85, 89.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.05, 1.08, 1.09.

1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections §§ 2.03, 2.05.

1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.07.

3 Debtor-Creditor Law (Matthew Bender), ch 26, Confession of Judgment § 26.03.

Corporate and Business Law:

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 58, Direct Sales and Mail Order Marketing § 58.7.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.1, 62.12-62.14.

Annotations:

Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141.*

Civil remedies of consumer for violations of Truth In Lending Act (*15 USCS §§ 1601-1665*). *11 ALR Fed 815.*

Obligations of the parties under § 125(b) of Truth in Lending Act *(15 USCS § 1653*(b)) upon rescission of credit transaction involving real estate. *61 ALR Fed 839.*

Civil remedies of consumer for violations of credit transactions provisions of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.), as amended by Truth in Lending Simplification and Reform Act of 1982. *113 ALR Fed 173.*

What constitutes violation of requirements of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) concerning disclosure of information in credit transactions--civil cases. *113 ALR Fed 197.*

Right to Private Action Under State Consumer Protection Act--Preconditions to Action. *117 ALR5th 155.*

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.02-152.04, 152.06, 152.08.

10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.07, 174.15.

Law Review Articles:

Truth-In-Lending: Judicial Modification of the Right of Rescission. *1974 Duke L J 1227.*

Private Remedies Under the Truth-In-Lending Act: The Relationship Between Rescission and Civil Liability. *57 Iowa L Rev 199, 1971-72.*

Judicial Erosion of the Rescission Right Under Truth in Lending. *35 Wash & Lee L Rev 979,* Fall 1978.

Consumer Protection: Judicial Approaches to Rescission and Restoration Under Truth in Lending Act. *53 Wash L Rev 301,* Feb 1978.

Truth In Lending: Problems with the Right of Rescission. *7 Willamette L J 119, 1971.*

Truth In Lending--Right of Rescission. *1975 Wis L Rev 192.*

Interpretive Notes and Decisions:

**I.IN GENERAL** 1. Generally 2. Relationship with other laws 3. "Security interest" in property used as principal dwelling 4.--Confession of judgment as security interest 5. "Principal dwelling" 6. Material disclosures or nondisclosures 7. Technical violations 8. Notice of rescission 9.--Filing of complaint as notice 10. Finance or other charge liability 11. Rebuttable presumption of delivery of disclosures 12. Modification or waiver of rights 13.

Exemptions 14.--Arranger of credit 15.--Business or commercial credit transactions 16.--Refinancing 17. Foreclosure rescission rights 18. Arbitration 19. Miscellaneous

**II.NOTICE OF RIGHT TO RESCIND** 20. Generally 21. Number of copies of notice 22. To whom notice is given; co-obligors 23. Particular cases

**III.TIME FOR RESCISSION**

**A.In General** 24. Generally 25. Consummation of transaction 26. Bankruptcy 27. Fraudulent concealment

**B.Expiration of Right to Rescind**

**1.In General** 28. Generally

**2.Three Years After Consummation of Transaction** 29. Generally 30. Particular cases

**IV.RETURN OR TENDER OF MONEY OR PROPERTY** 31. Creditor's duties 32.--Forfeitures 33.--Setoffs 34.--Ignoring or refusing to honor obligor's notice of rescission 35. Obligor's duty to return or tender property 36.--Reasonable value in lieu of in-kind return 37. Conditions placed on rescission 38.--Court-ordered conditions

**V.PRACTICE AND PROCEDURE** 39. Parties 40.--Assignees 41.--Class actions 42. Statute of limitations 43. Defenses 44. Dismissals 45. Summary judgment 46. Election of remedies 47. Attorney's fees and costs 48. Miscellaneous

**I.IN GENERAL 1. Generally**

Regulation promulgated by Federal Reserve Board providing that within three days of consummation of any credit transaction in which security interest is or will be retained or acquired in customer's residence, customer shall have right to rescind transaction, and that creditor is required to notify customer of his right to rescind when there is probability that lien on his home will arise by operation of law, even though he has not executed indenture on his property, is reasonable and consistent with legislative purpose and hence valid. *Gardner & North Roofing & Siding Corp. v Board of Governors (1972, App DC) 150 US App DC 329, 464 F2d 838.*

As matter of law, rescission under *15 USCS § 1635(a)* is not subject to revival. *Chapman v Mortgage One Corp. (2005, ED Mo) 359 F Supp 2d 831.*

**2. Relationship with other laws**

*15 USCS § 1603*(1) agricultural purpose exemption applies to right-of-rescission provision of § 1635. Farmer v First Bank (N.A.)-*Pipestone (1985, CA8 Minn) 760 F2d 872.*

Judgment debt is avoidable under *11 USCS § 522(f)(1)* and is not excepted on basis that avoidance would constitute fraud where (1) creditor had held mortgage on debtor's property (2) loan transaction had violation requirements of Truth-in-Lending Act (*15 USCS § 1635*), (3) debtors had exercised right to rescind transactions, receiving relief of mortgage and refund of interests, but had not repaid loan principles, (4) creditor had obtained judgment lien on outstanding principles, and (5) debtors had filed Chapter 7 petition, claimed real estate as exempt property to which no objections were filed and filed adversary proceeding against creditor to avoid judgment lien. *Krajci v Mt. Vernon Consumer Discount Co. (1981, ED Pa) 16 BR 462.*

Although Home Ownership Equity Protection Act (HOEPA) provides harsher penalties for statutory violations than does Truth in Lending Act, those enhanced penalties are for statutory damages only; nothing in HOEPA suggests that it is intended to diminish creditor's right to tender of its legal due under *15 USCS § 1634(b). Ray v CitiFinancial, Inc.*

*(2002, DC Md) 228 F Supp 2d 664.*

In part due to recognition that damages provisions of Fair Debt Collection Practices Act (FDCPA), *15 USCS §§ 1692* et seq., were modeled after damages provisions of Truth-in-Lending Act (TILA), *15 USCS § 1635*, and fact that courts had found that cases under TILA survived death of plaintiff, debtor's cause of action under FDCPA survived death of wrongdoer; co-trustees of defendant law firm's deceased representative's trust were substituted as successors-in-interest as defendants under *Fed. R. Civ. P. 15, 25. Bracken v Harris & Zide, L.L.P. (2004, ND Cal) 219 FRD 481.*

Sanctions were imposed against borrower's attorney, pursuant to *Fed. R. Civ. P. 11*, because attorney asserted that mortgage company had not responded in earlier action to borrower's notice of recission, which was not accurate statement where court, in earlier action, had granted mortgage company additional time to respond to recission notice and had not issued final ruling on pending issues when complaint was filed. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 221 FRD 28, 58 FR Serv 3d 753.*

In case arising under Truth in Lending Act, *15 USCS §§ 1601* et seq., in which borrowers' exercise of their rescission rights was untimely, their claims for damages arising from mortgage company's failure to honor that rescission were likewise untimely. *McMillian v AMC Mortg. Servs. (2008, SD Ala) 560 F Supp 2d 1210.*

Violation of *12 CFR § 226.23(b)(1)* and 209 Mass. Code Regs. § 32.23(2)(a), by failing to provide both borrowers with two copies of "Notice of Right to Cancel," allowed borrowers to rescind refinancing in keeping with terms of Mass. Gen. Law ch. 140D, § 10(b), which mirrored *15 USCS § 1635(b). Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449.*

Pursuant to *15 USCS § 1602(u)*, "material disclosures" are defined to include disclosures required by *15 USCS § 1639(a)*, and if debtors' contention was correct, then right to rescind continued until latter of three days after those material disclosures were provided or until three years after consummation of transaction under *15 USCS § 1635(a)* and (f). *Merriam v Chase Manhattan Mortg. Corp. (In re Merriam) (2005, BC WD NY) 333 BR 22.*

As part of legal action to judicially enforce consumer's right of rescission under Truth in Lending Act, court may determine amount of consumer's liability to creditor, as well as enter money judgment against creditor under *15 USCS § 1640. Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541.*

*15 USCS § 1635*(g) was added as amendment to Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., in 1980 and states that in any action in which it is determined that creditor has violated *15 USCS § 1635*, in addition to rescission, court may award relief under *15 USCS § 1640* for violations of TILA not relating to right to rescind; neither language nor legislative history of this amendment support concept that § 1635(g) was intended to extend one-year statute of limitations of *15 USCS § 1640(e). Wentz v Saxon Mortg. (In re Wentz) (2008, BC SD Ohio) 393 BR 545.*

Since, under Ohio law, creditor who accepts cognovit note as payment obtains security interest in obligor's residence within meaning of Truth in Lending Act, where purchaser of automobile pursuant to installment contract was sued by seller on cognovit note, and where purchaser alleged that seller had violated *15 USCS § 1635* by failing to disclose purchaser's right to rescind contract, contract was rescinded and purchaser relieved of his duty to make monthly payments thereunder; purchaser was also entitled to keep automobile and to recover damages under *15 USCS § 1640. Hank's Auto Sales, Inc. v Fisher (1973, Cuyahoga Co) 38 Ohio App 2d 1, 67 Ohio Ops 2d 62, 310 NE2d 259.*

**3. "Security interest" in property used as principal dwelling**

Right to rescind is not available where transaction is structured as sale of residence rather than as loan and is evidenced by warranty deed absolute on its face with option to repurchase. *Redic v Gary H. Watts Realty Co. (1985, CA4 NC) 762 F2d 1181,* cert den *(1985) 474 US 920, 88 L Ed 2d 257, 106 S Ct 249.*

Rights to rescind under federal Truth In Lending Act (TILA) extend to obligors only; mortgagee, who had pledged her property to secure loan taken out by her ex-husband, did not have statutory recission rights under TILA because she had never signed loan note and was not, therefore, obligor on it. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 319 F Supp 2d 268.*

Right to rescission under *15 USCS § 1635* and § 226.9 [now *12 CFR § 226.15*] of Regulation Z applies only to credit transactions for which security interest is or will be retained in specified real [deleted by 1980 amendment]property and does not apply unless there has been security interest arising under and created simultaneously with credit transaction; hence, such provisions do not apply to written membership agreements in health spa; although lien obtained against members' residence following money judgment would constitute "security interest," such interest is not created simultaneously with credit transaction. *Holiday of Smith Haven, Inc. v Pollizze (1975) 82 Misc 2d 1097, 371 NYS2d 43.*

**4.--Confession of judgment as security interest**

Under § 226.2 of Regulation Z, defining security interest as any interest in property which secures payment or performance of obligation, and under § 226.202, stating that security interest is defined to include confessed liens whether or not recorded, withholding of real estate deeds by seller and seller's use of judgment notes in credit transactions with buyers constitute security interest within meaning of *15 USCS § 1635(a)* and regulations. *Charnita, Inc. v FTC (1973, CA3) 479 F2d 684.*

Where confession of judgment acts as security interest, right to rescission under *15 USCS § 1635(a)* attaches only where confession of judgment applies to real [deleted by 1980 amendment] property used or expected to be used as debtor's principal residence; where lien on residence is expressly excluded by words of note, *15 USCS § 1635(a)* and § 226.9 [now *12 CFR § 226.18*] of Regulation Z are not applicable. *Douglas v Beneficial Fin. Co. (1971, DC Alaska) 334 F Supp 1166.*

Since, under Ohio law, creditor who accepts cognovit note as payment obtains security interest in obligor's residence within meaning of Truth in Lending Act, where purchaser of automobile pursuant to installment contract was sued by seller on cognovit note, and where purchaser alleged that seller had violated *15 USCS § 1635* by failing to disclose purchaser's right to rescind contract, contract was rescinded and purchaser relieved of his duty to make monthly payments thereunder; purchaser was also entitled to keep automobile and to recover damages under *15 USCS § 1640*. *Hank's Auto Sales, Inc. v Fisher (1973, Cuyahoga Co) 38 Ohio App 2d 1, 67 Ohio Ops 2d 62, 310 NE2d 259.*

**5. "Principal dwelling"**

Action under Consumer Credit Protection Act was improperly dismissed where insufficient facts had been presented to court to enable it to determine factual question as to whether, for purposes of rescission provision of Act (*15 USCS § 1635*), purchaser had purchased real estate which was used or expected to be used as principal residence. *Sarter v Mays (1974, CA5 Ala) 491 F2d 675.*

Right of rescission only applies to loans secured by debtor's principal place of residence, and, therefore, loans secured by livestock, farm products, equipment, and mortgage are not entitled to right of rescission. *Wilson v Prudential Ins. Co. (1984, CA8 Neb) 749 F2d 502.*

Under *15 USCS § 1635*, consumers have right to rescind security interest in property which is their principal dwelling only if they possess ownership in dwelling and thus have right to convey security interest, and debtors did not have right in property allowing them to convey security interest after they had filed petition in bankruptcy under Chapter 7 of Bankruptcy Code since at commencement of bankruptcy proceeding, property passed by operation of law to Chapter 7 estate. *In re Crevier (1987, CA9 Cal) 820 F2d 1553.*

Since plaintiff only lived at property in question for one summer, such property was not his principal dwelling

within meaning of § 1635(a); thus, plaintiff, who reached age of majority two days before closing, was not entitled to notice of his right to rescind mortgage involving property that had been transacted by his stepmother in her capacity as plaintiff's successor custodian. *Scott v Long Island Sav. Bank (1991, CA2 NY) 937 F2d 738, 19 FR Serv 3d 1389.*

One selling real property on credit is required to inform purchaser of right to rescind if seller knows or has reason to know that buyer intends to use property as principal place of residence according to *15 USCS § 1635* and regulations promulgated thereunder; where acquisition agreement contained question concerning purpose for which buyer intended to use property, and buyer answered that he intended to use it as vacation residence and investment, seller neither knew nor had reason to know that buyer intended to use property as principal residence and was not required to notify him of right to rescind. *Glover v Doe Valley Development Corp. (1975, WD Ky) 408 F Supp 699.*

Debtor's Federal Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., complaint against movants, which sought to rescind loans made by movants to mortgage broker to finance her purchase of debtor's property, was dismissed under *Fed. R. Civ. P. 12(b)(6)* for failure to state claim because debtor was not entitled to receive TILA disclosures when property was principal dwelling of debtor and not broker, person to whom credit was extended, and because HUD-1 statement established that loans constituted residential mortgage transactions exempt from recission under *15 USCS § 1635(e)(1). Figueroa v Smith (In re Figueroa) (2006, BC SD Fla) 20 FLW Fed B 400.*

Right of rescission is applicable only when property securing loan is borrower's principal residence; borrower's representation to lender that property securing loan is not residence renders right of rescission inapplicable. *Fleming v Federal Land Bank (1983) 167 Ga App 326, 306 SE2d 332.*

**6. Material disclosures or nondisclosures**

In order for nondisclosure to be material for rescission purposes under *15 USCS § 1635* consumer must show that nondisclosure of which he complains is that which reasonable consumer would view as significantly altering total mix of information made available, and failure to break down "other charges" figure into its component parts or to adequately describe type of security interest created by agreement did not prevent consumers from making otherwise fully-informed credit choice, where both items were disclosed in agreement itself, which was executed simultaneously with extensions of credit. *Davis v Federal Deposit Ins. Corp. (1980, CA5 La) 620 F2d 489.*

Promissory note which contained no reference to mechanic's lien interest which could arise by operation of law was material nondisclosure under *15 USCS § 1638(a)(10)* and Regulation Z (*12 CFR § 226.8*) [now *12 CFR § 226.18*], and debtors thereby had right to rescind credit transaction under *15 USCS § 1635(a). Rudisell v Fifth Third Bank (1980, CA6 Ohio) 622 F2d 243* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Credit company's retention of unearned interest resulted in understatement of finance charge on second loan which was material nondisclosure, giving borrower right to rescind second loan on ground that credit company materially understated its cost, because any understatement of finance charge is of some significance to reasonable consumer and therefore material, where credit company charged unearned interest on refinancing loan by rounding original loan period up. *Steele v Ford Motor Credit Co. (1986, CA11 Ga) 783 F2d 1016.*

Failure to disclose all third-party lenders was not material nondisclosure in closed end transaction where there were multiple creditors, since only creditor making disclosures need be identified on disclosure statement, and therefore borrower could not rescind loan secured by deed of trust on borrower's home. *King v California (1986, CA9 Cal) 784 F2d 910,* cert den and app dismd *(1987) 484 US 802, 98 L Ed 2d 11, 108 S Ct 47,* reh den *(1987) 484 US 971, 98 L Ed 2d 412, 108 S Ct 474* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Payton v New Century Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366).*

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1),* thus, since plaintiff car buyer failed to plead and could not prove detrimental reliance, his Truth in Lending Act claims against defendant bank failed; that *15 USCS §§ 1615, 1635, 1639,* specifically provided for

rescission and restitution-type remedies did not imply that detrimental reliance was not required to recover actual damages for disclosure violations. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

Term "material disclosures" in *15 USCS § 1635(a)* means pertinent disclosures, and liability under this section is limited to only those nondisclosures which reasonable consumer would view as significantly altering "total mix" of information made available; omission, however, need not be so important that reasonable consumer would probably change creditors; where total of payments disclosed by defendants differed from actual total of installments by $ 11.30, this error was not "material" within meaning of statute. *Ivey v United States Dep't of Hous. & Urban Dev. (1977, ND Ga) 428 F Supp 1337,* affd without op (1979, CA5 Ga) *607 F2d 1004.*

In determining commencement of time period for 3-day right of rescission under *15 USCS § 1635(a),* "material disclosures" were made where, under Regulation Z (15 CFR § 226.8), lender's disclosure statement clearly reflected amount of loan, finance charge, number, frequency, and amount of payments, annual percentage rate, and total of payments was easily ascertainable. *Harvey v Housing Development Corp. & Information Center (1978, WD Mo) 451 F Supp 1198.*

Obligor's attempt to rescind transaction more than 3 days after its consummation, but within 3-year period allowed for rescission under *15 USCS § 1635* if material disclosures are never made, is valid, as there is material nondisclosure where creditor failed to disclose that certain other property was mortgaged; money paid by obligor on behalf of estate of second obligor is therefore required to be returned under § 1635 to obligor and estate in equal half shares, as both were obligors, and estate must return portion of its share to creditor as value of improvements made to house. *Pearson v Colonial Fin. Serv. (1981, MD Ala) 526 F Supp 470.*

In order to warrant rescission remedy, nondisclosure must be material; objective standard is utilized to determine whether nondisclosure is material; test of materiality is whether disclosure violation relates to information which would be important to consumer's decision to obtain credit from particular lender; failure of lender to utilize term "finance charge" and failure to disclose total of payments information on one side of form constitutes material nondisclosure; description of security interest contained in disclosure statement which does not clearly identify property to be covered is material nondisclosure. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

Buyers of house siding are entitled to rescission of contract, cancellation of finance charges, and voiding of security interest in their home, where siding company did not give buyers copy of deed of trust and buyers did not realize they signed deed of trust, company did not give buyers proper notice of right to rescind, and violations could not be termed clerical errors in view of company's attempts to conceal buyer's rights from them and company's total inaction when buyers attempted to rescind transaction. *Cole v Lovett (1987, SD Miss) 672 F Supp 947,* affd (1987, CA5 Miss) *833 F2d 1008.*

Borrower had less incentive to rescind loan where borrower believed that, following rescission, borrower would still owe something under loan and lender would still retain security interest because borrower received wrong rescission disclosure rights form from lender; therefore, wrong form could not clearly and conspicuously disclose borrower's rescission rights as required by *15 USCS § 1635(a). Gibbons v Interbank Funding Group (2002, ND Cal) 208 FRD 278.*

Based on undisputed facts, it was clear that borrower was provided with incomplete disclosure statement and that this constituted violation of Truth in Lending Act; thus, borrower was entitled to rescission of her mortgage under *15 USCS § 1635* and bank, even as assignee of mortgage, was liable for statutory damages as set out in *15 USCS § 1640. Lippner v Deutsche Bank Nat'l Trust Co. (2008, ND Ill) 544 F Supp 2d 695.*

An alleged failure by defendant loan originator to adequately disclose risk of negative amortization was not "material" disclosure for *15 USCS § 1635(a)* to extend Truth in Lending Act's limitations period for plaintiff borrowers' rescission to three years, since disclosure stated loan contained variable-rate feature. *Jordan v Paul Fin., LLC (2009,*

*ND Cal) 644 F Supp 2d 1156.*

Borrowers failed to state claim for rescission under *15 USCS § 1635(a)* based on alleged failure under *15 USCS § 1638* by mortgage lender and loan servicer to disclose loan's finance charge, amount financed, and annual percentage rate; however, borrowers did sufficiently allege that they were not provided with number of copies of disclosures required under *12 CFR §§ 226.23(b)* and *226.17(d)*. *Seldon v Home Loan Servs. (2009, ED Pa) 647 F Supp 2d 451, 74 FR Serv 3d 235.*

Borrower's TILA claim for damages against lender failed because claim was barred by one-year limitations period of *15 USCS § 1640(e)*; TILA rescission claim under *15 USCS § 1635* failed because payment schedule including legal obligation of minimum payment could not be basis for violation of Regulation Z and TILA and there were insufficient facts to support violations of claim based on APR disclosure under *15 USCS §§ 1605* and *1606*. *Conder v Home Sav. of Am. (2010, CD Cal) 680 F Supp 2d 1168.*

Where lender failed to provide required disclosures and debtor timely notified lender of intent to rescind transaction, debtor was permitted to rescind transaction, but lender retained lien against debtor's home. *Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

Lender's rescission statement was not defective under Truth in Lending Act (*15 USCS § 1635*), notwithstanding statement recited that transaction was entered into on April 7, 1980 and that borrower had until midnight on April 10, 1980 to rescind transaction, where note was actually signed on April 11, 1980, since rescission statement included provision that borrower had 3 days from date recited in statement or "any later date" on which all material disclosures required under Act have been given, and borrower was not confused or misled by obvious mistake in date. *Bank of Evening Shade v Lindsey (1983) 278 Ark 132, 644 SW2d 920.*

**7. Technical violations**

Technical violation of Truth in Lending Act does not entitle debtors to relief under *15 USCS § 1635*, as nondisclosure must be material; failure of disclosure statement to identify real property securing loan and to include cost of credit life and disability insurance in finance charge does not constitute material nondisclosure under § 1635 so as to provide debtor continued right to rescission where there was simultaneous execution of deed of trust and reference to deed of trust in disclosure statement, and procedure followed for securing authorization of insured for insurance was not defective, thereby making setting out of insurance cost as separate charge in disclosure statement proper under *15 USCS § 1605* and *12 CFR § 226.4*. *Jones v Fitch (1982, CA5 Miss) 665 F2d 586.*

Court may not judicially carve out equitable exception to right of rescission provided by *15 USCS § 1635* on ground that if mistake occurred it was made in good faith and was purely technical, notwithstanding that rescission itself is equitable remedy. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

Debtor is not entitled to rescind loan transaction in which she placed her principal place of residence as security for loan, even though creditor failed to disclose in Truth in Lending Act disclosure statement that residence also secured future advances, where as part of single transaction, parties executed disclosure statement and deed evincing security interest, where extent of security interest is clearly contained in deed, and where disclosure, although technically in violation of Act, is not so material as to give debtor right to rescind. *In re Smith (1984, CA11 Ga) 737 F2d 1549.*

Lender's technical violation of Truth in Lending Act (*15 USCS § 1635*), consisting of omission of expiration date of rescission right as required by Regulation Z, imposed liability on creditor and entitled borrower to rescind, even though facts were unsympathetic and borrowers were not in need of protection. *Semar v Platte Valley Fed. Sav. & Loan Ass'n (1986, CA9 Cal) 791 F2d 699.*

Rescission of consumer credit transaction was not warranted, where lender failed to include in disclosure statement itemization of taxes and fees required by law, but did itemize such fees in settlement statement, because this failure was

technical violation and not material nondisclosure. *Malfa v Household Bank, F.S.B. (1993, SD Fla) 825 F Supp 1018, 7 FLW Fed D 249,* affd without op (1995, CA11 Fla) *50 F3d 1037.*

Class actions are not superior method for adjudicating technical disclosure violation claims under Truth in Lending Act where remedy sought is rescission. *Jefferson v Security Pac. Fin. Servs. (1995, ND Ill) 161 FRD 63* (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Latham v Residential Loan Ctrs. of Am., Inc. (2004, ND Ill) 2004 US Dist LEXIS 7993).*

Debtors who prevailed on truth-in-lending claims and received award of statutory damages pursuant to *15 USCS § 1640(2)(A)(iii)* in adversary proceeding in Chapter 13 bankruptcy case were entitled to attorney fees under § 1640(a)(3), although they did not obtain rescission; fee award is mandatory when plaintiff brings successful action under *15 USCS § 1635*. *Mourer v Equicredit Corp. of Am. (In re Mourer) (2004, BC WD Mich) 313 BR 701.*

**8. Notice of rescission**

Purchasers of home sufficiently notified developers from whom home was purchased and who provided additional financing through second mortgage on home, evidenced by 2 notes bearing no interest if timely paid, of intention to rescind second mortgage transaction under *15 USCS § 1635*, by tendering check in amount of one note to attorney representing developers in suit to recover on second note, and by letter to attorney offering to tender amount of second note and informing him of intention to rescind, since rescission requirements of § 1635 are to be construed liberally in favor of consumer. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

As matter of law, lender's notice of right to cancel complied with applicable requirements under Truth in Lending Act (TILA) because average consumer would not have found notice confusing, and borrower's statutory right to rescind expired three days after she received notice; thus, district court did not err in dismissing her TILA claim as time-barred. *Palmer v Champion Mortg. (2006, CA1 Mass) 465 F3d 24.*

Obligor is only required to notify creditor of his or her intention to rescind, and obligor need not specify any or which disclosure violation which entitles her to rescission. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

Although notice of right to cancel form signed by borrowers may have technically been wrong form, notice was not defective because form did inform borrowers of their right to cancel agreements within three-day period. *Mills v Equicredit Corp. (2003, ED Mich) 294 F Supp 2d 903.*

In action by mortgagors, alleging violations of notice of right to rescind requirement of Truth in Lending Act, defendants were granted summary judgment because mortgagors were not able to provide evidence to rebut presumption that they received requisite notice; presumption of receipt was established by production of form signed by mortgagors acknowledging receipt of notice of right to rescind. *Jackson v New Century Mortg. Corp. (2004, ED Mich) 320 F Supp 2d 608.*

Where mortgagors claimed in their action alleging violations of notice of right to rescind requirement of Truth in Lending Act that, even if they received requisite notice of right to rescind, notice did not contain date of closing transaction or date on which right to rescind expired they similarly could not prove that they did not receive copies that contained appropriate dates because mortgagors were unable to rebut presumption that they received signed copies of notice. *Jackson v New Century Mortg. Corp. (2004, ED Mich) 320 F Supp 2d 608.*

In borrowers' suit regarding second mortgage that mortgage company immediately assigned to assignee, on assignee's motion to dismiss, borrowers could not state claim under Federal Truth in Lending Act, *15 USCS § 1601* et seq., based upon mortgage company's designation of assignee as recipient of borrowers' rescission notice because technical violation of Federal Reserve Board Regulation Z, 12 C.F.R. pt. 226 (2004), was minor deviation with no potential for actual harm; however, borrowers' claim regarding assignee's purported practice of presenting both notice

form and confirmation form at time of closing survived dismissal. *Rodrigues v Members Mortg. Co. (2004, DC Mass) 323 F Supp 2d 202.*

Deposition testimony of property owners and blank copy of notice produced by owners were insufficient to rebut presumption of receipt of notice of right to rescind disclosures under *15 USCS § 1635*; thus, question of fact as to whether owners timely received properly completed notice remained, and summary judgment was inappropriate. *Briggs v Provident Bank (2004, ND Ill) 349 F Supp 2d 1124.*

Mortgage lender was denied summary judgment on individual's claim under *15 USCS § 1635* where forms describing his right to cancel within three days and confirming that he was not canceling transaction included statements contradictory to individual's right to rescind under Truth in Lending Act, *15 USCS § 1601* et seq., and by signing forms, individual likely would have assumed that he had given up his right to rescind deal. *Adams v Nationscredit Fin. Servs. Corp. (2004, ND Ill) 351 F Supp 2d 829.*

Individual was denied summary judgment on his claim that he was required to sign both form describing his right to cancel within three days and form confirming that he was not canceling transaction at closing, in violation of Truth in Lending Act, *15 USCS § 1601* et seq., where there was issue of fact as to whether he was actually required to sign confirmation at closing. *Adams v Nationscredit Fin. Servs. Corp. (2004, ND Ill) 351 F Supp 2d 829.*

Notification provided to original lender does not operate to give notice to lender's assignees that borrower intends to exercise his or her right to rescind loan under *15 USCS § 1635*; both *15 USCS § 1635(a)* and *12 CFR § 226.23(a)(2)* state that borrower should notify "creditor," i.e. original lender, to effectuate rescission, and even though there is no explicit reference to assignees in rescission notice provision, there is nothing to indicate that assignee, who has interest in applicable loan and is otherwise subject to same claims and defenses as creditor under *15 USCS § 1641(d)(1)*, is not entitled to receive recission notice, just like original lender. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Although borrowers' claims for damages under *15 USCS § 1604(a)* were barred by one-year limitations period of *15 USCS § 1640(e)*, borrowers had to allege that they were not provided notice of their right to rescind and that lender failed to make material disclosures so as to plead claim for rescission under *15 USCS § 1635(a)*. *Kelley v Mortgage Elec. Registration Sys. (2009, ND Cal) 642 F Supp 2d 1048.*

Borrower's claim for rescission failed to state claim because borrower did not indicate ability to tender as required under *Fed. R. Civ. P. 11* and Truth in Lending Act (TILA), *15 USCS § 1635*, and her claim for damages under TILA and Regulation Z failed to state claim because claim was time barred under *15 USCS § 1640* and borrower showed no basis for tolling for fraud or extraordinary circumstances. *Garcia v Wachovia Mortg. Corp. (2009, CD Cal) 676 F Supp 2d 895* (criticized in *Valdez v America's Wholesale Lender (2009, ND Cal) 2009 US Dist LEXIS 118241).*

Borrowers sufficiently alleged TILA claim for recission in that they alleged that they would tender proceeds and that they had ability to do so as was required for rescission under *15 USCS § 1635(b)*. *Olivera v Am. Home Mortg. Servicing, Inc. (2010, ND Cal) 689 F Supp 2d 1218.*

Debtor-borrower was entitled to rescission, damages, costs, and attorney's fees, pending evidentiary hearing, where lender failed to provide second copy of consumer right of rescission under Regulation Z, 12 C.F.R. part 226, and other disclosures required by law. *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602.*

Although *15 USCS § 1635(b)* provides for immediate voiding of security interest and return of money within twenty days of notice of rescission, this assumes that notice of rescission was proper in first place; since borrower was not entitled to extended three-year rescission period, his notice of rescission was out of time and was, therefore, ineffective. *Groat v Carlson (In re Groat) (2007, BAP8) 369 BR 413.*

**9.--Filing of complaint as notice**

Filing of court complaint constitutes statutory notice of rescission. *Taylor v Domestic Remodeling (1996, CA5 Miss) 97 F3d 96.*

Service of complaint does not satisfy requirement of *15 USCS § 1635(b)* that claimant first present claim for rescission to lender by means of written communication, because filing of complaint initiates lawsuit that statute is expressly intended to defer. *Jefferson v Security Pac. Fin. Servs. (1995, ND Ill) 162 FRD 123,* summary judgment gr, dismd (1995, ND Ill) *1995 US Dist LEXIS 14226* and (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *Pulphus v Sullivan (2003, ND Ill) 2003 US Dist LEXIS 7080)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26).*

Filing of Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., complaint itself can, in rescission action, constitute notice for purposes of *15 USCS § 1635*, and no prior request for rescission is necessary. *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26* (criticized in *Morris v Wachovia Sec., Inc. (2004, ED Va) 223 FRD 284, 59 FR Serv 3d 169)* and (criticized in *Bell v Ameriquest Mortg. Co. (2004, ND Ill) 2004 US Dist LEXIS 24289)* and (criticized in *Murry v America's Mortg. Banc, Inc. (2005, ND Ill) 2005 US Dist LEXIS 11751).*

Undisputed material facts established that first owner did not have ownership interest in property prior to loan, and that even if first owner became owner of property through loan, loan was "residential mortgage transaction" as to him and thus exempt under *15 USCS § 1635(e)*; therefore, first owner was not entitled to disclosures under Truth in Lending Act, *15 USCS § 1601* et seq., and bank and corporation's motion for summary judgment was granted as to all claims for damages by first owner. *Briggs v Provident Bank (2004, ND Ill) 349 F Supp 2d 1124.*

Although filing of complaint generally constituted notice, for *15 USCS § 1635* purposes, that four borrowers intended to seek recission of two loans (because borrowers made clear that they were seeking recission as relief and allegations in complaint sufficiently identified entities responsible for rescinding loans), complaint had to be timely filed and served not only as to credit company that was original lender, but also as to all of company's assignees, who held interests in two loans; service of complaint on company did not constitute notice to all assignees, and one bank did not receive timely notice, as it was not added to suit until after three year time limit for providing notice of recission under § 1635(f) had expired. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Northern District of Illinois, Eastern Division, court agrees with those courts that have held that timely filing of complaint can constitute notice that borrower is exercising his or her recission rights under *15 USCS § 1635*, which notice is required by *12 CFR § 226.23(a)(2)*, provided that complaint clearly states borrower's intent to rescind and specifically names party to whom demand for rescission is addressed; there is nothing to prevent sued lender from taking action required under *15 USCS § 1635(b)* and *12 CFR § 226.23(d)(2)* within 20 days of being served copy of complaint, which action will have effect of mooting recission claim against it. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

**10. Finance or other charge liability**

District Court does not have equitable jurisdiction to alter statute by requiring borrower to repay principal and interest in Truth in Lending Act (*15 USCS §§ 1601* et seq.) rescission, since statute states in plain language that borrower is not liable for any finance charge (*15 USCS § 1635*), and interest is considered finance charge (*15 USCS § 1605*). *Semar v Platte Valley Fed. Sav. & Loan Ass'n (1986, CA9 Cal) 791 F2d 699.*

Mortgagors' action against lender must fail, even though finance charge listed in their copy of loan disclosures was inaccurate, where amount listed as finance charge in their copy was greater than actual finance charge closed in loan, because disclosures provided mortgagors, although inaccurate, are "treated as being accurate for purposes of" Truth in Lending Act (*15 USCS §§ 1601* et seq.) under §§ 1635(i)(2) and 1649(a). *Moore v Flagstar Bank (1997, ED Va) 6 F Supp 2d 496.*

Borrower is denied rescission of mortgage loan under *15 USCS § 1635*, where his principal submission is that $

1,273 premium for life insurance policy was not included as finance charge in calculation and disclosure of annual percentage rate on his loan, because (1) he has not established that policy was for credit life insurance since lender was not designated as beneficiary, and (2) he gave clear testimony that he purchased insurance voluntarily, knowing it was not required. *Williams v First Gov't Mortg. & Investors Corp. (1997, DC Dist Col) 974 F Supp 17.*

Mortgagors who were entitled to rescind loan transaction based on mortgagee's technical violation of *15 USCS § 1635(b)* also were entitled to recover all finance and interest charges associated with mortgage, including overcharge for appraisal, charge for forced place insurance, and closing-related costs such as broker fees and origination fees. *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326.*

Where customer validly rescinded offer from lender on home mortgage, *15 USCS § 1635(b)* did not absolve customer from paying mortgage broker's fees; while § 1635(b) protected customer from lender's fees upon rescission, it did not protect customer from brokerage fees. *The Mortgage Source, Inc. v Strong (2003) 2003 MT 205, 317 Mont 37, 75 P3d 304,* reh den (2003, Mont) *2003 Mont LEXIS 408.*

**11. Rebuttable presumption of delivery of disclosures**

Congressional policy, as expressed in *15 USCS § 1635(c),* precludes granting defendant creditor summary judgment on basis of receipt acknowledgement alone, where plaintiffs deny by affidavit that they received disclosures required by Act; where plaintiffs' affidavits rebut defendant's protestations of delivery, court cannot conclude that there is no genuine issue as to fact of delivery which would entitle defendant to summary judgment as matter of law. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

In action brought under Consumer Credit Protection Act of 1968 (*15 USCS §§ 1601* et seq.) alleging failure of defendant creditors to give financial disclosure statement required by Regulation Z (*12 CFR §§ 226.1* et seq.), failure of plaintiffs to controvert by affidavit their receipt of financial disclosure statement as indicated by their signature on loan document entitled defendants to summary judgment as to issue of such receipt. *Whitlock v Midwest Acceptance Corp. (1977, ED Mo) 76 FRD 190, 24 FR Serv 2d 463,* revd on other grounds (1978, CA8 Mo) *575 F2d 652.*

Rebuttable presumption of delivery of required disclosures is created by borrower's written acknowledgment of receipt and argument is incorrect that loan statements do no more than raise rebuttable presumption so that there is issue for trial. *Kicken v Valentine Production Credit Asso. (1984, DC Neb) 628 F Supp 1008,* affd without op (1984, CA8 Neb) *754 F2d 378.*

Although homeowners' written acknowledgment of receipt of required disclosures in connection with mortgage loan created rebuttable presumption that disclosures were delivered, presumption was rebutted and summary judgment for lender was precluded by homeowners' testimony that disclosures were not given. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

Where mortgagor was not given two sets of separate notices of his right to rescind his mortgage transaction within three days of closing, his right to rescind nonetheless terminated when mortgaged property was sold at foreclosure sale. *Worthy v World Wide Fin. Servs. (2004, ED Mich) 347 F Supp 2d 502.*

Mortgagee's argument that mortgagors' complaint rested entirely on alleged nonreceipt of documents at closing was rejected where complaint contained allegations that mortgagee misrepresented certain terms of refinancing their mortgage. *Kajitani v Downey Sav. & Loan Ass'n (2008, DC Hawaii) 647 F Supp 2d 1208.*

Mortgagors had raised genuine issue of fact as to whether they had received required documents at closing where, in addition to their own declarations that they had not received documents, they submitted declaration of third-party witness who corroborated mortgagors' assertions. *Kajitani v Downey Sav. & Loan Ass'n (2008, DC Hawaii) 647 F Supp 2d 1208.*

Defendants' failure to deliver Notice of Right to Cancel, if proven, provided basis to rescind transaction; although executed delivery receipt was hurdle to borrowers' ultimate success on merits, it was not absolute bar to relief, but established only presumption of delivery which could be rebutted upon sufficient evidentiary showing. *Glucksman v First Franklin Fin. Corp. (2009, ED NY) 601 F Supp 2d 511.*

Chapter 13 debtor's signature on Notice of Right to Cancel, acknowledging receipt of notice created rebuttable presumption that debtor was provided with required notice, but debtor testified that her husband was given folder with loan documents and that she was given no documents at closing, and thus, creditor bank did not comply with Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and debtor was entitled to rescission. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Debtor husband's testimony was sufficient for summary judgment purposes to rebut presumption under *15 USCS § 1635(c),* that debtors' signatures on mortgage and loan documents acknowledged receipt of required number of copies of notice of right to rescind and disclosure notice under *15 USCS § 1631(a)*; it created issue of fact for trial. *Jones v Novastar Mortg., Inc. (In re Jones) (2003, BC DC Kan) 298 BR 451.*

Trial court correctly denied defendant's motion to strike motion to dismiss his counterclaim based on allegations that plaintiff failed to notify him of right under *15 USCS § 1635* to rescind contract, where mere allegation in defendant's motion to strike is insufficient to rebut presumption of notice evidenced by receipt signed by defendant acknowledging he had received 2 copies of notice, although affidavit of nondelivery from defendant would have sufficed to create material issue of fact. *Award Lumber & Constr. Co. v Humphries (1982, 1st Dist) 110 Ill App 3d 119, 65 Ill Dec 676, 441 NE2d 1190.*

Under Truth in Lending Act, creditor's evidence, including receipt for copy of disclosure statement signed by makers, constituted prima facie proof of delivery, and issue was properly resolved in favor of creditor, where one maker testified that he had no recollection of transaction, while other maker testified that although she kept all papers relative to transaction, she had found no copy of disclosure statement, but neither of makers denied having received copy of statement. *College Park Credit Corp. v Aitkens (1975, La App 1st Cir) 317 So 2d 238.*

**12. Modification or waiver of rights**

Under *15 USCS § 1635(d),* existence of "bona fide" emergency is required in order for waiver, and where borrowers stated in waiver statement that they needed money because they were close to foreclosure, they faced no bona fide immediate personal financial emergency, since foreclosure was not possible for more than 2 months. *Ljepava v M. L. S. C. Properties (1975, CA9 Cal) 511 F2d 935.*

Where debtor's bankruptcy petition was filed on October 11, 2003, and right to rescind--effectuated through giving of notice to rescind pursuant to *15 USCS § 1635(f)*--did not expire until three days later on October 14, 2003, extension in *11 USCS § 108(b)* was applicable because right to rescind was effected on October 14th, within 60 days after date of order for relief (*11 USCS § 301*); therefore, bankruptcy court's decision dismissing as untimely debtor's adversary proceeding complaint was reversed and case was remanded. *Thomas v GMAC Residential Funding Corp. (2004, DC Md) 309 BR 453.*

Though lender had failed to comply with notice requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) debtor did not forfeit all rights to further repayment by debtor under Chapter 13 plan since plan itself already modified rights of lender and in bankruptcy proceeding statutory procedures of Truth in Lending Act may properly be altered to impart equity for both debtor and creditor in order to harmonize interest of both statutes. *In re Chancy (1983, BC ND Okla) 33 BR 355* (criticized in *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664).*

Borrowers' execution of emergency waiver of rescission rights constituted was valid notwithstanding that lender's loan officer did not assist borrowers in determining whether or not they faced genuine personal emergency and notwithstanding contention that under Truth in Lending Act (*15 USCS §§ 1601* et seq.) lender has independent duty to

investigate facts underlying debtor's waiver of rescission rights, since defendants were experienced borrowers and at their own initiative executed emergency waiver in their own words for facially plausible reasons which they but not lender knew were false. *Mortgage Mint Corp. v Morgan (1985) 76 Or App 174, 708 P2d 1177.*

**13. Exemptions**

Language of predecessor to *15 USCS § 1635(e)* applies only to "dwelling" and not to mere sale of land. *Charnita, Inc. v FTC (1973, CA3) 479 F2d 684.*

Mobile home purchasers' suit against bank is summarily dismissed, where bank lent purchasers money to have mobile home installed on their real property, because 3-day rescission right, which bank allegedly failed to disclose to purchasers, does not apply to loan for predominant purpose of enabling borrower to acquire or erect new residential structure. *Heuer v Forest Hill State Bank (1989, DC Md) 728 F Supp 1199.*

Loan that borrowers took out two years after their acquisition of property in order to complete construction of home was residential mortgage transaction under *15 USCS § 1602(w)*, part of Truth in Lending Act (TILA), and loan was therefore nonrescindable under *15 USCS § 1635(e)(1)*; as result, borrowers' TILA claims were time-barred under *15 USCS § 1640(e)* because they were brought more than one year after loan transaction. *Perkins v Cent. Mortg. Co. (2006, ED Pa) 422 F Supp 2d 487.*

In case in which two home owners sued bank alleging violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., to extent that they recited claim for rescission, residential mortgage transactions were excluded from right of rescission. *Ortiz v Accredited Home Lenders, Inc. (2009, SD Cal) 639 F Supp 2d 1159.*

Chapter 13 debtors could not seek rescission of their home mortgage loan under *15 USCS § 1635* because, pursuant to § 1635(e)(1), right to rescission did not apply to residential mortgage transaction. *Figard v PHH Mortg. Corp. (In re Figard) (2008, BC WD Pa) 382 BR 695.*

Lack of notice that borrower may rescind credit transaction is not actionable where debtor waives right to rescind transaction on date of loan. *Burrill v First Nat'l Bank, N.A. (1984, Mo App) 668 SW2d 116.*

Predecessor to *15 USCS § 1635(e)*, exempting first lien against dwelling from Truth-in-Lending Act, is inapplicable to mobile home lot since lot is not "dwelling" as defined under *12 CFR § 226.2(p)*. *Kovalik v Delta Inv. Corp. (1980, App) 125 Ariz 602, 611 P2d 955.*

**14.--Arranger of credit**

Debtor is not entitled to rescission of loan contract and statutory damages for automobile seller's alleged violations of Truth In Lending Act, where seller, who was not arranger of credit, was not obligated to comply with disclosure requirements of *15 USCS § 1638*. *In re Solis (1984, BC ED Pa) 38 BR 293.*

Right of rescission does not apply to cash contract for home improvement if contractor is not arranger of credit, so contractor need not give notice or delay performance until after related credit transaction is consummated. FC-0106, *42 Fed Register 46916.*

**15.--Business or commercial credit transactions**

Business nature of mortgage transaction which exempted transaction from operation of Truth-in-Lending Act by *15 USCS § 1603(1)* also prevents relief under *15 USCS § 1635*. *Sapenter v Dreyco, Inc. (1971, ED La) 326 F Supp 871,* affd (1971, CA5 La) *450 F2d 941,* cert den *(1972) 406 US 920, 32 L Ed 2d 120, 92 S Ct 1775.*

Debtor-borrower was entitled to rescission, damages, costs, and attorney's fees, pending evidentiary hearing, where lender failed to provide second copy of consumer right of rescission under Regulation Z, 12 C.F.R. part 226, and other

disclosures required by law. *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602.*

Right of rescission of loan transaction secured by residential mortgages does not apply to commercial loan made to business corporation, notwithstanding parties agreed that loan would be consummated in accordance with Truth-In-Lending Act (*15 USCS §§ 1601* et seq.), where borrowers defaulted after making 21 monthly payments and claimed right to rescind based on minor technical nondisclosures, since (1) borrowers were not damaged by trivial, immaterial omissions, (2) lender substantially performed its obligation under contract, and (3) agreement merely specified manner in which loan was to be consummated and did not provide remedies of Act for breach which were inconsistent with principles of contract law. *First Mortg. Co. v Carter (1982) 306 Pa Super 498, 452 A2d 835.*

**16.--Refinancing**

Since loans secured by security agreement are refinancing transactions, they are exempt from right of rescission under Truth In Lending Act (*15 USCS § 1635(3)(1)(b)*), even if, as plaintiffs allege, they are secured by plaintiffs' principal residence. *Kucera v Citizens Bank & Trust Co. (1985, CA8 Neb) 754 F2d 280.*

With respect to refinancing, right to rescind under § 1635(e) is limited when earlier loan was already secured by security interest in home; thus, where lender satisfies old mortgage and takes new mortgage in borrower's home, transaction is refinancing and not new loan. *In re Porter (1992, CA3 Pa) 961 F2d 1066, CCH Bankr L Rptr P 74544.*

On appeal from lenders' successful *Fed. R. Civ. P. 12(b)(6)* motion to dismiss, court presumed that plaintiff home owners' allegation was correct--that home owners received new money advance as part of their refinance and, therefore, exemption from rescission provisions of *15 USCS § 1635(e)(2)* did not apply. *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Borrower is excused from further liability on promissory notes, and is awarded $ 3,000 plus her costs and attorney fees, where creditor refinanced borrower's small consumer loan 3 times in 2 years but failed to release record mortgages or disclose their retention in connection with each separate refinancing transaction, because borrower had right to rescind and receive statutory damages for creditor's violations of Truth in Lending Act (*15 USCS §§ 1635(b), 1640(a)(2)(A)(i),* and *1640(a)(3)*). *Gill v Mid-Penn Consumer Discount Co. (1987, ED Pa) 671 F Supp 1021,* affd without op (1988, CA3 Pa) *853 F2d 917* and (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Plaintiffs alleged that loan would "straighten out" previous loan, and there were no allegations that any "new money" was involved in transaction; thus, bank was correct that loan should be considered refinancing; accordingly, right to rescission and associated rescission disclosure requirements, including security interest disclosures, were inapplicable. *Gray v First Century Bank (2008, ED Tenn) 547 F Supp 2d 815.*

Mortgagors were not entitled to rescission under *15 USCS § 1635* as they had refinanced their loan, and under applicable judicial precedent, refinance ended right to rescission. *Plascencia v Lending 1st Mortg. (2008, ND Cal) 583 F Supp 2d 1090.*

Modification exemption applied, and therefore recission notice consistent with 12 CFR § 226, app. H-9, had to be provided to three borrowers pursuant to *15 USCS § 1635(a)* when they refinanced prior original loan and borrowed larger sum of money, even though original lender had assigned its interest in original loan before refinancing occurred and even though fourth borrower had been added to refinanced loan; *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)* defined "creditor" as person to whom debt arising from consumer credit transaction was initially payable, and original lender did not relinquish its status as "creditor" when it assigned its interest in original loan to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Modification exemption applies to loans that are refinanced for higher loan amount, and therefore recission notice consistent with 12 CFR § 226, app. H-9, has to be provided in order to comply with *15 USCS § 1635(a)* requirements,

even if original lender has assigned its interest in original loan prior to time refinancing occurs, because *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)* define "creditor" as person to whom debt arising from consumer credit transaction is initially payable, and original lender does not relinquish its status as "creditor" when it assigns its interest in original loan to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Lender is "creditor" as defined in *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)*, with regard to *15 USCS 1635* recission regulation if it is originator of loan, even it subsequently assigns its interest in loan to third party; modification exemption set out in *12 CFR § 226.23(f)(2)*, applies when borrower refinances, for increased amount, loan that lender has originated, regardless of whether, at time of refinancing, that loan has been assigned by lender to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Generally, under *15 USCS § 1634*, events subsequent to consumer loan transaction did not affect validity of initial disclosures or require creditor to make further disclosures, and where mortgage modification stated that it amended and supplemented original mortgage, and that it was not satisfaction of original loan which remained unchanged except as modified, it was not refinancing under *12 C.F.R. § 226.20(a)*, and thus, no disclosures were required; debtor and his non-debtor wife were not entitled to rescission under *15 USCS § 1635(e)(2)*. *Sheppard v GMAC Mortg. Corp. (In re Sheppard) (2003, BC ED Pa) 299 BR 753.*

**17. Foreclosure rescission rights**

Mortgagor was not entitled to rescind under Truth in Lending Act on ground that tolerance should have been $ 35 under *15 USCS § 1635(i)(2)* because $ 35 tolerance was inapplicable as mortgagee did not follow through on its notice of foreclosure sent pursuant to *35 Pa. Stat. Ann. § 1680.403c* and actually initiate foreclosure. *McCutcheon v America's Servicing Co. (2009, CA3 Pa) 560 F3d 143.*

Mortgagors' action against lender must fail, even though finance charge listed in their copy of loan disclosures was inaccurate, where amount listed as finance charge in their copy was greater than actual finance charge closed in loan, because disclosures provided mortgagors, although inaccurate, are "treated as being accurate for purposes of" Truth in Lending Act (*15 USCS §§ 1601* et seq.) under §§ 1635(i)(2) and 1649(a). *Moore v Flagstar Bank (1997, ED Va) 6 F Supp 2d 496.*

Plaintiff borrowers' Truth in Lending Act claim survived motion to dismiss because complaint rested on allegation that judicial foreclosure process was commenced against property, which under *15 USCS § 1635(i)(2)*, reduced rescission tolerance level to $ 35; fact that defendants had not filed summons and complaint for foreclosure was not dispositive. *Glucksman v First Franklin Fin. Corp. (2009, ED NY) 601 F Supp 2d 511.*

"Amount Financed" under *15 USCS § 1635(i)(2)* properly did not include amounts for title insurance and amounts for endorsements to same. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Where defendant in action seeking to foreclose mortgage asserted counterclaim alleging that plaintiff had violated Truth in Lending Act, defendant had burden of proving facts alleged in such counterclaim, and it was erroneous to place upon plaintiff burden of negating counterclaim's allegation that plaintiff had failed to give 3-day notice of rescission as required by Act. *Grandway Credit Corp. v Brown (1974, Fla App D3) 295 So 2d 714.*

**18. Arbitration**

District court properly granted motion to compel arbitration in Truth in Lending Act action; until designated decision maker decided borrowers' claim seeking rescission of mortgage agreement, agreement remained in effect, and arbitration clause in agreement was enforceable. *Large v Conseco Fin. Servicing Corp. (2002, CA1 RI) 292 F3d 49.*

Arbitration clause in loan agreement was enforceable and demand for rescission under Truth in Lending Act was not somehow self-executing and did not result in automatic voiding of loan agreement. *Thompson v Irwin Home Equity*

*Corp. (2002, CA1 RI) 300 F3d 88.*

Homeowner must submit her claims against remodeler and finance company to arbitration, where she signed loan documents containing arbitration clause as broad as it is possible to draft, because court will uphold and enforce arbitration clause in accordance with strong policy favoring arbitration agreements, and Court will not consider argument that rescission of contract by letter pursuant to *15 USCS § 1635* rendered arbitration clause unenforceable. *Dorsey v H.C.P. Sales, Inc. (1999, ND Ill) 46 F Supp 2d 804.*

Lender's motion to stay pending arbitration was granted because contracts subject to rescission under *15 USCS § 1635*, part of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., could not be deemed voidable for reasons related to arbitration clauses embedded in those contracts; furthermore, because homeowners did not dispute that arbitration provision facially encompassed issues raised in their complaint, Federal Arbitration Act (FAA), *9 USCS §§ 1* et seq., required enforcement of arbitration clause. *Bertram v Ben. Consumer Disc. Co. (2003, MD Pa) 286 F Supp 2d 453.*

Borrowers' rescission of loan agreement under *15 USCS § 1635(a)* was, as matter of law, not subject to revival, and accordingly, arbitration clause in original agreement had no effect on subsequent dealings between parties; thus, when borrowers agreed to enter into new loan by simply signing "borrower's notice of confirmation," which was placed on back side of notice of right to cancel, this document did not revive original agreement, nor did it reinstate requirement to arbitrate. *Chapman v Mortgage One Corp. (2005, ED Mo) 359 F Supp 2d 831.*

**19. Miscellaneous**

Application of rescission provision of Truth in Lending Act (*15 USCS § 1635*) is not excused by fact that developer providing additional financing to home purchasers through second mortgage on home, evidenced by 2 notes bearing no interest if timely paid, did not consider transaction as extension of credit for which purchasers could reasonably compare other credit terms, in belief that few if any other lenders would loan money on such terms. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

Remedies available to borrower under *15 USCS §§ 1635*, *1640*, remain available even if loan that is subject of rescission has been paid off; right to rescission under *15 USCS § 1635* encompasses right to return to status quo that existed before loan, which means unwinding transaction in its entirety and returning borrower to position that he or she occupied prior to loan agreement. *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760.*

Negotiated settlement of credit transaction between consumer and creditor does not constitute credit transaction to which Truth in Lending Act (*15 USCS §§ 1631* et seq.) is applicable where effect of new transaction was to reduce indebtedness and unpaid balance and there is no right to rescission under *15 USCS § 1635*, in light of Regulation Z (12 CFR § 226.903) [now *12 CFR § 226.15*]], even though disclosures required by *12 CFR § 226.8* [now *12 CFR 226.6*] must be made. *Dumas v Home Constr. Co. (1977, SD Ala) 440 F Supp 1386*, affd without op (1979, CA5 Ala) *609 F2d 1006.*

Although right of rescission is inapplicable to creation, retention, or assumption of first lien or equivalent security interest to finance acquisition of dwelling, where plaintiffs owned their dwelling and borrowed funds from lender for purpose of moving house to new lot, failure of lender to disclose right of rescission constituted violation of Truth in Lending Act (*15 USCS § 1635*). *French v Wilson (1978, DC RI) 446 F Supp 216* (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Assertion by carpet buyer that his signature on installment contract and second mortgage securing payment on carpeting was forged precluded claim for rescission under *15 USCS § 1635. Walker v Michael W. Colton Trust (1999, ED Mich) 47 F Supp 2d 858.*

Order, finding that mortgagee violated Home Ownership and Equity Protection Act provisions of Truth in Lending Act with regard to refinancing transaction involving Chapter 13 bankruptcy debtors, was upheld; although bankruptcy

court did not expressly address rebuttable presumption of *15 USCS § 1635(c)*, implicit finding that it had been adequately rebutted by debtors' testimony was not clearly erroneous. *Mourer v EquiCredit Corp. of Am. (In re Mourer) (2004, WD Mich) 309 BR 502.*

Court denied motion of defendants, real estate broker, real estate holding company, and related company, for summary judgment as to homeowners' Home Ownership and Equity Protection Act (HOEPA) and Truth in Lending Act (TILA) claims, which alleged that defendants violated disclosure requirements of both statutes as set forth in *15 USCS §§ 1602*, *1638*, *1639*, and *1641* and implementing regulations, *12 CFR §§ 226.31* and .32, and which sought rescission under *15 USCS § 1635* and *12 CFR § 226.23(a)(2)*, because genuine issues of fact existed as to whether parties intended outright sale, in which case TILA and HOEPA were inapplicable, or whether, given facts surrounding transaction, transaction could be construed as equitable mortgage, in which case TILA and HOEPA applied, and with regard to rescission, given discretion within which court could condition right to rescission, it was not necessary that owners demonstrate they had means to secure necessary financing at instant stage of proceedings. *Jones v REES-MAX, LLC (2007, DC Minn) 514 F Supp 2d 1139.*

Borrower failed to sufficiently plead violation of Truth in Lending Act by lender and servicer under *15 USCS § 1635* because residential mortgage transactions, as defined under *15 USCS § 1602*, were excluded from three-year right of rescission and his claim for statutory damages was likely barred by one-year limitations period of *15 USCS § 1640(e)*. *Delino v Platinum Cmty. Bank (2009, SD Cal) 628 F Supp 2d 1226.*

Although homeowner made good faith allegation that Truth in Lending Act and Home Ownership and Equity Protection Act were applicable to loan servicer and trust deed beneficiary, his claim for damages under those acts were barred by one-year limitations period of *15 USCS § 1640* but his rescission claim was governed by three-year limitations period under *15 USCS § 1635(f)* and was not barred. *Allen v United Fin. Mortg. Corp. (2009, ND Cal) 660 F Supp 2d 1089.*

Borrowers' Truth in Lending Act claim was not barred on motion to dismiss based on statute of limitations of *15 USCS § 1640(e)* because there were factual issues yet to be resolved; however, borrowers failed to state claim for rescission under *15 USCS § 1635* because notice provisions did not apply to residential transactions as defined under *15 USCS § 1602(w)*. *Urbina v Homeview Lending, Inc. (2009, DC Nev) 681 F Supp 2d 1254.*

Borrower's rescission claim against lender and lender's nominee was dismissed where transaction was residential mortgage transaction, and such transactions were excluded from right to rescission under *15 USCS § 1635(e)(1)*. *Lingad v IndyMac Fed. Bank (2010, ED Cal) 682 F Supp 2d 1142.*

Claim for enforcement of notice of rescission under Truth in Lending Act (TILA) involves more than invalidation of subject mortgage; indeed, it is not entirely accurate to refer to rescission of "the mortgage" under TILA; more precisely, TILA and Regulation Z refer to consumer's "right to rescind transaction," not right to rescind "the mortgage," *15 USCS § 1635(a)*; *12 CFR § 226.23(a)*. *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541*.

**Unpublished Opinions**

Unpublished: Disabled adult's complaint against lenders and brokers failed to state claim based on applicable statutes of limitations because there was no rescission claim for three-year period of *15 USCS § 1635* to apply and she did not allege tolling under Cal. Code Civ. Proc. § 352(a) by establishing mental incapacity under *Cal. Civ. Code §§ 39*, *1556*, or *1689*. *House v Cal State Mortg. Co. (2009, ED Cal) 2009 US Dist LEXIS 58529.*

Unpublished: Claims that insured failed to make disclosures required by Truth in Lending Act and Home Ownership and Equity Protection Act under *15 USCS §§ 1602*, *1635*, *1638*, *1640*, did not require plaintiff to prove that insured knowingly or purposefully failed to make requisite disclosures, and thus, insurer was required to provide

defense as to those claims under policy that only excluded risks that arose from event that insured deliberately caused or of which he was consciously aware. *Szelc v Stanger (2010, DC NJ) 2010 US Dist LEXIS 13146.*

**II.NOTICE OF RIGHT TO RESCIND 20. Generally**

Plain meaning of word "or" in *15 USCS § 1635(h)* makes clear that lender may comply with its disclosure obligations by using model form or, alternatively, comparable written notice. *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Notice of right of rescission and disclosure statements must be conveyed to debtor in meaningful fashion; mere acknowledgment by debtor of material disclosures is not conclusive that disclosures were in fact made consistent with requirement. *Abbott v Shaffer (1983, DC Utah) 564 F Supp 1200.*

Seventh Circuit precedent, which holds that lender does not properly notify borrowers of their recission rights, as required by *15 USCS § 1635*, where it does not select and provide appropriate form recission notice and instead provides borrowers with both form notices set out in 12 CFR § 226, app. H-8, and 12 CFR § 226, app. H-9, is equally applicable where creditor provides H-9 notice form to borrowers in connection with original loan; form H-9 is to be used only when borrowers refinance prior loan with same lender for higher amount, and use of that form does not properly notify borrowers of their recission rights with regard to original loan because borrowers will be left with incorrect impression that they are not entitled to rescind full amount of their original loan. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Borrower was simply incorrect in his assertion that three-year rescission period was triggered by lender's failure to sign notices; in fact, forms complying with Rescission Model Form H-8 do not contain line for lender's signature. *Groat v Carlson (In re Groat) (2007, BAP8) 369 BR 413.*

**21. Number of copies of notice**

Alleged delivery to borrower of only one copy of notice of her right to rescind second mortgage transaction involving her principal dwelling, as opposed to 2 copies, supported claim for violation of *15 USCS § 1635(a). Staley v Americorp Credit Corp. (2001, DC Md) 164 F Supp 2d 578.*

Homeowners' claim that they did not receive two copies of right to rescind mortgage loan agreement, together with lender's evidence that standard procedure was provided, precluded summary judgment on homeowners' claim that they were entitled to rescind loan agreement under *15 USCS § 1635(f). Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

In homeowners' suit alleging that mortgage assignee was liable for rescission of original lender's loans and statutory damages, mortgage assignee was not entitled to summary judgment, because material facts regarding delivery of two copies of Notice of Right to Cancel Form were in dispute. *Cooper v First Gov't Mortg. & Investors Corp. (2002, DC Dist Col) 238 F Supp 2d 50.*

Court granted mortgagee's motion to compel arbitration of mortgagor's action seeking recission of mortgage loan transaction where mortgagor's letter to defendants did not rescind mortgage and arbitration agreement where: (1) arbitration agreement was separately negotiated and executed, and court would be required to sever its consideration of that agreement from any attack on accompanying mortgage transaction; and (2) mortgagor's notice purporting to rescind mortgage did not legally void either mortgage itself or arbitration agreement, as defendants did not acknowledge that purported recission met all of necessary preconditions, nor did decisionmaker rule that recission attempt was valid. *Anderson v Delta Funding Corp. (2004, ND Ohio) 316 F Supp 2d 554.*

Mortgagor, who had mortgaged her property to secure loan taken out by her ex-husband, had no right of recission under note, mortgage, or any loan related documents because: (1) she had not offered to and could not return amount of

loan's unpaid principal balance; (2) she was informed, at time she signed mortgage deed, that mortgagee had right to foreclose upon her property if ex-husband defaulted on loan; and (3) mortgagee had also informed mortgagor of her recission rights as required by law, as proven by notice of right to cancel document that she had signed. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 319 F Supp 2d 268.*

Because right of rescission created by *15 USCS § 1635(a)* was not applicable to transaction at issue, defendants were entitled to summary judgment on plaintiffs' claim for rescission; exception to right of rescission contained in *15 USCS § 1635(e)(1)* applied because unrefuted evidence reflected that plaintiffs obtained loan evidenced by adjustable rate mortgage and secured by deed of trust to purchase certain real estate for use as their primary residence and that property was plaintiffs' primary residence when they filed their lawsuit. *Betancourt v Countrywide Home Loans, Inc. (2004, DC Colo) 344 F Supp 2d 1253.*

When mortgagor alleged that mortgagee violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and, after Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, FDIC sold mortgage in question to bank, bank was entitled to summary judgment on issue of whether mortgagee's delivery of one copy of notice required by TILA to mortgagor, rather than two copies, extended time within which mortgagor could exercise right to rescission because, under *12 CFR § 226.23(a)(3)*, rescission right was extended only if required "notice" was not delivered, indicating intent of Federal Reserve Board that failure to deliver two copies of notice did not extend right to rescission. *King v Long Beach Mortg. Co. (2009, DC Mass) 672 F Supp 2d 238.*

Where Chapter 13 debtor was not provided with two copies of Notice of Right to Cancel, or copy of Disclosure Statement as required by 12 C.F.R. pt. 226.23, fact that one copy of notice was given to debtor's husband was irrelevant, and debtor was entitled to rescission under *15 USCS § 1635(a). Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

**22. To whom notice is given; co-obligors**

Although husband had received required disclosure statement and notice of right to rescind from lender in connection with loan to husband and wife, lender's failure to supply such statement and notice to wife constituted violation of Consumer Credit Protection Act, so that, after husband's death, wife was entitled, under *15 USCS § 1640*, to recover $ 1,000 in her own right against lender and $ 1,000 as administratrix of her husband's estate. *Simmons v American Budget Plan (1974, ED La) 386 F Supp 194.*

As general rule, creditor need furnish statement of required disclosures to only one of customers to transactions, but this does not apply where transaction is one which may be rescinded in which case all customers are entitled to necessary disclosures. *Gerasta v Hibernia Nat'l Bank (1975, ED La) 411 F Supp 176*, affd in part and revd in part on other grounds (1978, CA5 La) *575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Cosigner of automobile loan who signed mortgage note on home as part of loan transaction had right to rescind agreement almost 2 years later, where creditor failed to provide cosigner with clear notice of her rescission rights in violation of *15 USCS § 1635* by having cosigner sign postdated certificate of confirmation. *Curry v Fidelity Consumer Discount Co. (1987, ED Pa) 656 F Supp 1129.*

Homeowners who took out home improvement loan are entitled to rescission of loan in action against bank, where homeowners sent letter to bank rescinding contract 14 months after entering into contract and mortgage, because bank violated *15 USCS § 1635(a)* by failing to provide homeowners separate notice of their rights of rescission and forms by which to exercise those rights as set forth in *12 CFR § 226.23(b)*, and notice that bank did provide (1) did not inform homeowners of security interest taken in their home, (2) did not describe effects of rescission, and (3) failed to disclose date upon which right to rescission expired. *Reynolds v D & N Bank (1992, ED Mich) 792 F Supp 1035.*

Recission is equitable doctrine and there is nothing in statutory provision of federal Truth in Lending Act with

regard to right of rescission or in *15 USCS § 1635(b)*'s provision of procedural steps in effecting right of rescission that limits power of court of equity to circumscribe right of rescission to avoid perpetration of stark inequity; courts may condition borrowers' continuing right of rescission upon their tender to lender of all of funds spent by lender in discharging earlier indebtedness of borrowers and, when rescission is attempted under circumstances that would deprive lender of its legal due, attempted rescission will not be judicially enforced unless it is so conditioned that lender will be assured of receiving its legal due. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 319 F Supp 2d 268.*

Copy of notice of right to rescind given to debtor's wife required only debtor's signature and was not addressed to wife, who was not obligated on loan but who had granted mortgage on debtor's and wife's home, thus, notice was unclear under *15 USCS §§ 1632(a), 1635(a), 12 C.F.R. § 226.17(a),* and period for rescission was extended to three years, and loan could be rescinded. *Apgar v Homeside Lending, Inc. (In re Apgar) (2003, BC ED Pa) 291 BR 665.*

**23. Particular cases**

Notice from creditor to debtors who had obtained home improvement loan that debtors had only 2 days in which to rescind loan violated notice requirements of § 125 of Truth in Lending Act (*15 USCS § 1635*). *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Notice sent to mortgagor of right to rescind loan transaction was ineffective where, at time notice was sent, no one had actually agreed to extend credit to mortgagor so that no loan transaction was "consummated" at that time, and where no additional notice of right to rescind was provided to mortgagor when loan actually was consummated more than 2 months later. *Jackson v Grant (1989, CA9 Cal) 876 F2d 764,* op replaced (1989, CA9 Cal) *890 F2d 118.*

Pursuant to *15 USCS § 1640,* court improperly dismissed debtors' action against creditor because debtors alleged that creditor failed to comply with rescission procedures found in Truth in Lending Act, *15 USCS § 1635(b),* and applicable state law, which required creditor to return debtors' money and take steps to void security interest within 20 days of receiving notice of rescission; debtors had filed their action within one year of creditor's receipt of notice for rescission. *Belini v Wash. Mut. Bank, FA (2005, CA1 Mass) 412 F3d 17.*

Mortgagee violated its duties under *15 USCS § 1635(a)* when it provided to plaintiff, mortgagor, during closing of her new mortgage loan, copies of two different Federal Reserve Board model rescission forms, one of which was inappropriate to mortgagor's loan, since (1) simultaneous provision of both Fed. Res. B., Rescission Model Form H-8 and Fed. Res. B., Rescission Model Form H-9 to plaintiff was not simply minor, technical error, but constituted violation of § 1635(a) clear and conspicuous disclosure requirement, (2) mortgagee created confusion by providing both model forms and, in doing so, failed to provide plaintiff with clear notice of what her right to rescind entailed, and (3) mortgagee was not entitled to protection under safe harbor provision set out in *15 USCS § 1640(c)* because mortgagee did not present any evidence showing that it had procedures in place to ensure that borrowers received correct rescission form and to guard against making type of disclosure error that was committed in plaintiff's case. *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760.*

Plain language of *15 USCS § 1604(b)* and regulations did not require exclusive use of model forms in *12 CFR § 226.23* (app. H-8, H-9). Lenders' alleged failure to provide appropriate form to home owners was not per se violation of *15 USCS § 1635* and *Regulation Z. Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Where borrower refinanced home mortgage, but form providing notice of right to rescind transaction left blank spaces for date of transaction and actual deadline to rescind, notice adequately complied with *15 USCS § 1635(a)* because reasonable borrower could not have been misled since short notice period for rescission at will was plain despite blanks. *Melfi v WMC Mortg. Corp. (2009, CA1 RI) 568 F3d 309.*

Where homeowners were furnished notices of rescission in regard to home improvement contracts before consumer credit transaction existed, so that last date for rescission given on notice was misleading, and where overall procedure

used by defendant to inform plaintiffs of their rights under Consumer Credit Protection Act was in contravention of Federal Reserve Board regulations, notices of rescission were ineffective for purposes of *15 USCS § 1635*. *Doggett v County Sav. & Loan Co. (1973, ED Tenn) 373 F Supp 774.*

Notice of right to rescind is inadequate where creditor fails to file with court important material allegedly contained in notice and where disclosures actually contained in notice of rescission obviously contradict and obscure terms of other rescission notice. *O'Neil v Four States Builders & Remodelers, Inc. (1979, ED Pa) 484 F Supp 18.*

Right to rescind notice is sufficient, despite failure to include right to rescind within 3 days of consummation of transaction, where right to rescind notice is model form issued by Federal Reserve Board which carries with it regulating body's approval of farm as in compliance with regulation. *Murphy v Empire of America FSA (1984, WD NY) 583 F Supp 1563,* affd (1984, CA2 NY) *746 F2d 931.*

Omission of identification of transaction in blank at top of form notice of right to rescind does not extend time within which obligor may exercise option to rescind where all of information required to identify transaction, such as date, creditor's name and business address, date for rescission, customer's signature, and current date, appeared elsewhere on rescission notice. *Cantu v Stief (1984, WD Tex) 598 F Supp 562.*

Lender's disclosures were improper under *15 USCS § 1635*, where deadline for, and manner and effect of, rescission were misstated, because lender's compliance with requirements must be strict; thus, 3-year rescission period was operative and borrower's rescission within that period was valid. *Jenkins v Landmark Mortg. Corp. (1988, WD Va) 696 F Supp 1089.*

Where bankruptcy court found that creditor violated Truth in Lending Act, *15 USCS § 1635*, by failing to respond to debtor's notice of rescission within 20 days, court did not err in declining to void creditor's mortgage lien because rescission was not automatic upon debtor giving notice to creditor. *Merriman v Beneficial Mortg. (In re Merriman) (2005, DC Kan) 329 BR 710.*

Where creditor foreclosed on debtor's delinquent loan and purchased property at sheriff's sale, and where debtor filed suit against creditor three days before expiration of statutory redemption period, but did not effect service until 16 days after redemption period expired, debtor was unable to recover because notice of right to rescind under Truth in Lending Act, *15 USCS § 1635(f)*, was untimely; filing of complaint without service was insufficient notice of rescission because it did not constitute "delivery to creditor's designated place of business" under *12 CFR § 225.23(a)(2)*. *Marschner v RJR Fin. Servs. (2005, ED Mich) 382 F Supp 2d 918.*

Average person would have been aware that rescission period expired three days after receipt, even though three-day notices required under *15 USCS § 1635(a)* failed to include dates of transaction, and thus, right to rescind was waived and claim for rescission was dismissed. *Carye v Long Beach Mortg. Co. (2007, DC Mass) 470 F Supp 2d 3.*

Bank's failure to honor consumers' rescission request, which they tendered within three years of allegedly defective notice, constituted distinct and actionable violation; therefore, consumers' prayer for damages was sufficient to extent it was based on bank's alleged failure to provide proper number of notices, *15 USCS § 1640(g)*, or to honor consumers' request to rescind, *15 USCS § 1635(g)*. *Buick v World Sav. Bank (2008, ED Cal) 2008 US Dist LEXIS 48801,* motion den, motion to strike den (2008, ED Cal) *565 F Supp 2d 1152.*

Borrowers alleged right to rescind under *15 USCS § 1635(a)* against certain lenders because lenders failed to provide required disclosures; lenders' motions to dismiss were granted as to notice of right to cancel because that notice adhered to model form; lenders' motions to dismiss were denied as to portion of claim alleging right to rescind based on inadequate disclosure statements, because those statements did not explicitly indicate payment periods. *Ware v Indymac Bank, F.S.B. (2008, ND Ill) 534 F Supp 2d 835.*

Borrowers' putative class action claims against lender failed, where lender's notice pursuant to Truth in Lending

Act, *15 USCS § 1635*, and Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D, clearly and conspicuously disclosed to borrowers effects of their exercise of their right of rescission. *McKenna v First Horizon Home Loan Corp. (2008, DC Mass) 537 F Supp 2d 284.*

To extent that investors sought recission, such relief was not available to them under Truth in Lending Act, *15 USCS § 1635(e)*; moreover, fact that purchase money properties had been foreclosed precluded order of recission, *15 USCS § 1635(f). Smith v Jenkins (2009, DC Mass) 626 F Supp 2d 155.*

In case in which homeowner sued lender, alleging that it violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., because she was required to sign document purporting to confirm that three days had elapsed after loan closing, and she did not intend to exercise her right under TILA to rescind loan and lender moved to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)*, homeowner's allegation was directly belied by her signed loan documents that contained opposite representation; specifically, she signed document titled "NOTICE OF RIGHT TO CANCEL," stating that she had legal right under federal law to cancel transaction, without cost, within *THREE BUSINESS DAYS. Palmer v GMAC Commer. Mortg. (2009, DC Dist Col) 628 F Supp 2d 186.*

When mortgagor alleged that mortgagee violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and, after Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, FDIC sold mortgage in question to bank, bank was not entitled to summary judgment on issue of whether notice provided by mortgagee to mortgagor did not comply with TILA, thereby extending time within which mortgagor could exercise right to rescind, because reasonable jury could find that notice provided was confusing to average consumer, as mortgagee's failure to include expiration date for rescission right on notice retained by mortgagor was sufficiently confusing that jury might return verdict for mortgagor. *King v Long Beach Mortg. Co. (2009, DC Mass) 672 F Supp 2d 238.*

Failure of debtor to properly inform homeowner of her right to rescind oral contract within 3 days as provided by *15 USCS § 1635(a)* gives homeowner continuing right to rescind home improvements contract which right was exercised by homeowner in filing of complaint in bankruptcy action; homeowner is entitled to return of full consideration for contract. *In re Snyder (1982, BC ED Tenn) 22 BR 29.*

By terms of *15 USCS § 1635(a)* and *12 CFR 226.23*, consumer must give notice to exercise right to rescind; as such, applicable subsection under *11 USCS § 108* for purposes of extension of time was § 108(b), providing additional 60 days from order for relief where that extension was longer than period provided by nonbankruptcy law; here, three year period provided by Truth in Lending Act (TILA), *15 USCS 1601* et seq., expired later than 60 day extension under § 108(b); while debtors correctly contended that some courts had determined that filing of complaint seeking rescission could qualify as notice to satisfy terms of statute and regulation, it was notice that was required by *15 USCS § 1635(a)* and *12 CFR § 226.23*, and not commencement of action as provided for under § 108(a). *West v America's Servicing Co. (In re West) (2009, BC WD Pa) 420 BR 284.*

In action seeking foreclosure of mortgage because of homeowner's failure to make required payments, there was sufficient conflicting evidence as to circumstances involving notice of right to rescind (under *15 USCS § 1635*), so as to warrant denial of motion for summary judgment, where although homeowner claimed that he had never received notice and that signature contained on notice was forgery, corporation's depositions showed that notices were always mailed to customers and that notice had been mailed in present case. *Gillis v Fisher Hardware Co. (1974, Fla App D1) 289 So 2d 451.*

Where, in regard to construction of garage upon plaintiffs' property, materialmen failed to disclose plaintiff property owners' right to rescind construction contract as provided in *15 USCS § 1635*, materialmen's mechanics' liens upon property were invalid and could not be foreclosed. *Hobbs Lumber Co. v Shidell (1974) 42 Ohio Misc 21, 71 Ohio Ops 2d 135, 326 NE2d 706.*

**Unpublished Opinions**

Unpublished: District court properly concluded that mortgagor could not hold mortgagee's assignee liable under Truth in Lending Act (TILA), *15 USCS § 1640(a)*, as matter of law, arising from assignee's failure to make required TILA disclosures, including disclosure of her recission rights as required by *15 USCS § 1635(a)*, because mortgagor did not allege facts showing that assignee was "creditor" as defined in *15 USCS § 1602(f)* and *12 C.F.R. § 226.2(a)(17)*; there were two required elements for "creditor" under TILA, and assignee did not meet second element because her name did not appear on face of any of mortgage loan documents that mortgagor had signed. *Parker v Potter (2007, CA11 Fla) 2007 US App LEXIS 3391.*

Unpublished: In borrowers' suit against defendants, mortgage company, bank, and law firm, it was not clear error to find that four copies of notice of right to rescind were provided at closing, because district court made explicit factual finding that one borrower's testimony was not credible, and closing agent signed document claiming to having followed closing instructions. *Smith v Argent Mortg. Co., LLC (2009, CA10 Colo) 2009 US App LEXIS 10702.*

Unpublished: Plaintiffs acknowledged that they each signed "Notice of Right to Cancel," which created rebuttable presumption of delivery of two copies, and although plaintiffs offered their testimony that mortgage company failed to provide them with two copies each of notice as rebuttal evidence, district court found plaintiffs' deposition testimony "plainly obstructive," and found closing agent's testimony (that he always followed all applicable procedures and provided relevant number of copies to borrowers at closings) credible; court found no clear error in district court's conclusions and agreed that plaintiffs failed to rebut presumption that they received requisite copies. *Jobe v Argent Mortg. Co., LLC (2010, CA3 Pa) 2010 US App LEXIS 6961.*

**III.TIME FOR RESCISSION**

**A.In General 24. Generally**

Where defendant's disclosure statement was violative of Truth in Lending Act, plaintiffs are entitled to rescind transaction until midnight of third business day following receipt of correct disclosure statement, *15 USCS § 1635(b)* giving debtor continuing and open-ended power of rescission so long as required disclosures have not been made. *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Under *15 USCS § 1635*, where required disclosures were never made, right to cancel transaction existed after expiration of three day period. *Pedro v Pacific Plan (1975, ND Cal) 393 F Supp 315.*

Consumer has right to rescind transaction until end of third business day following transaction or until creditor delivers to consumer information, notification of rescission form, and disclosure statements that are required, whichever is later; if disclosure statement does not comply with disclosure requirements, consumer has ongoing right to rescind transaction for as long as creditor fails to comply, subject to 3 year limitations period. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

Where creditor fails to specify date upon which 3 day rescission period expires, debtor has right to rescind transaction. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

In Chapter 13 bankruptcy case, in which debtor challenged alleged predatory loan transaction, debtor could rescind under *15 USCS § 1635(b)* without making immediate repayment; Chapter 13 plan could be used as vehicle for debtor to repay loan proceeds over time. *Bell v Parkway Mortg., Inc. (In re Bell) (2004, BC ED Pa) 309 BR 139,* mod and reh den (2004, BC ED Pa) *314 BR 54, 59 FR Serv 3d 763.*

Obligor in consumer credit transaction in which security interest is acquired on obligor's principal dwelling place has 3 days to rescind following delivery of full disclosure of credit terms, and when disclosures are not provided, right to rescind continues for 3 years from date of transaction. *Gramatan Home Investors Corp. v Starling (1983) 143 Vt 527, 470 A2d 1157.*

**25. Consummation of transaction**

Loan from creditor to consumer was not "consummated" within meaning of *15 USCS § 1635(a)*, for purposes of measuring time for rescission, at time when initial documents were executed where these documents specified that creditor would not be lender, that lender was not presently known, and that borrower was not guarantied loan, and it was only when creditor was unable to find another lender that it agreed to make loan itself, since, under governing state law, lender did not become contractually bound until date that it agreed to make loan itself. *Jackson v Grant (1989, CA9 Cal) 890 F2d 118.*

District court did not err when it granted summary judgment to lender and bank on borrowers claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., that their loan was not consummated on January 26, 1999, since loan was conditioned on appraisal review because document relied upon by borrowers clearly informed them that despite fact that loan was conditioned on satisfactory appraisal, loan was consummated; therefore, appraisal review notwithstanding, borrowers became contractually obligated when loan documents were executed on January 26, 1999, and rescission period expired three days later. *Gaona v Town & Country Credit (2003, CA8 Minn) 324 F3d 1050.*

Consumer cannot exercise right to rescind created by *15 USCS § 1635(a)* until after consummation of consumer credit transaction. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Principle that credit transaction must be consummated to trigger Truth in Lending Act, *15 USCS §§ 1601* et seq., liability applies with equal force to right to rescind created by *15 USCS § 1635(a)*; no consumer credit transaction exists for which right to rescind can be exercised until that transaction has been consummated, or put another way, until credit is in fact extended. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Commonsense reading of text of *15 USCS § 1635(a)* suggests that "transaction" refers to consummated, binding agreement, rather than to whole course of parties' interactions. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Lender was not obligated by *15 USCS § 1635(b)* to return full value of application deposit when consumers attempted to exercise right to rescind given by § 1635(a) because right to rescind never arose because consumers withdrew their application before loan was consummated, and no consumer credit transaction existed for which right to rescind could have been exercised until that transaction was consummated. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Right to rescind credit transactions exists within 3 business days of consummation of transaction, receipt of truth in lending disclosures, or receipt of notice of right to rescind; under regulation, state law determines when consumer becomes contractually bound under credit terms for purposes of consummation of transaction; consummation of transaction occurs at time commitment contract is executed. *Murphy v Empire of America FSA (1984, WD NY) 583 F Supp 1563*, affd (1984, CA2 NY) *746 F2d 931*.

For purposes of *15 USCS § 1635* permitting rescission within specified period after "consummation" of transaction, loan is deemed consummated when credit is extended, or perhaps even earlier, when creditor-customer contractual relationship is created. *Bokros v Associates Finance, Inc. (1984, ND Ill) 607 F Supp 869.*

Borrower became contractually obligated as to amount of credit she purchased from funding corporation when she signed promissory note with funding corporation on August 31, 2000, and not when she completed transaction with home equity company on September 6, 2000, pursuant to which she received loan that covered her cash contribution to funding corporation's loan; any condition precedent to funding corporation's performance did not affect buyer's obligation; thus, funding corporation's loan was "consummated" for purposes of *15 USCS § 1635*, part of Truth in Lending Act (TILA), when buyer signed promissory note such that funding corporation's notice of her right to cancel her loan no later than midnight on September 5, 2000, was valid, as TILA's three-day rescission period, and not alternate three-year rescission period, applied. *O'Brien v Aames Funding Corp. (2005, DC Minn) 374 F Supp 2d 764.*

Borrowers' claimed that lender failed to recognize their right of rescission; however, because borrowers received requisite notice of their rights to rescind, three-day time limit applied under *15 USCS § 1635*, and borrowers' claim failed because they did not act within three days after settlement. *Parker v Long Beach Mortg. Co. (2008, ED Pa) 534 F Supp 2d 528, 69 FR Serv 3d 1171.*

**26. Bankruptcy**

Truth in Lending Act was construed to require bankruptcy court to impose equitable terms for benefit of mortgagee upon debtors who elected to rescind mortgage agreement upon filing their bankruptcy petition, where mortgagee's predecessor in interest used wrong right to cancel form in original transaction, effectively extending right to rescind to three years. *Quenzer v Advanta Mortg. Corp. USA (2003, DC Kan) 288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364).*

Upon entry of order for Chapter 7 relief, debtors' right of rescission under state Consumer Credit Code becomes property of estate within meaning of *11 USCS § 541*, exercisable exclusively by trustee in bankruptcy; since sale of realty effectively cuts off any right of rescission under both state Consumer Credit Code and federal Truth in Lending Act, trustee fails to timely exercise right of rescission where, although trustee was made party defendant in adversary proceeding to determine validity of creditor lien, trustee fails to appear or otherwise respond, and Bankruptcy Court authorizes sale of subject real estate on request of debtors and creditor. *Lausier v Goodwin (1980, BC DC Me) 7 BR 476.*

**27. Fraudulent concealment**

To make out case of fraudulent concealment tolling period prescribed by *15 USCS § 1635* for asserting right to rescission, debtor must allege facts indicating fraudulent concealment by party raising statute of limitations, together with other party's failure to discover facts which are basis of his cause of action despite his exercise of due diligence. *Bokros v Associates Finance, Inc. (1984, ND Ill) 607 F Supp 869.*

Even if irregularities and omissions in promissory note should have raised some doubt on part of assignee of note concerning assignor's diligence and care in documenting loan, those deficiencies themselves are not badges of fraud so as to warrant conclusion that assignee had engaged in fraudulent concealment tolling period specified by *15 USCS § 1635(a)* for exercising right of rescission; where debtor's own allegations indicate that assignee took no affirmative steps to conceal debtor's rights under § 1635 and do not imply deliberate failure by assignee to investigate patently suspect transactions, debtor is not entitled to relief from statute of limitations. *Bokros v Associates Finance, Inc. (1984, ND Ill) 607 F Supp 869.*

Case law, regulations, and official commentary all permit payment of yield spread premium without separate disclosure of that fee as finance charge *Escher v Decision One Mortg. Co., LLC (In re Escher) (2007, BC ED Pa) 369 BR 862.*

**B.Expiration of Right to Rescind**

**1.In General 28. Generally**

Even if *15 USCS § 1635(f)*, allowing rescission of loan that does not conform with Truth in Lending Act, were interpreted to refer only to time at which consumer must notify lender of his intention to rescind, rather than time at which suit must be brought, notice should have been sent by borrower before contracting to sell her property which secured loan, rather than at time of actual conveyance. *Hefferman v Bitton (1989, CA9 Cal) 882 F2d 379* (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9) 342 F3d 899)* and (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9 Cal) 342 F3d 899).*

By enacting § 125(f) of Truth in Lending Act (*15 USCS § 1635(f)*) Congress did not merely limit time period within which right to rescission could be asserted, but actually limited to 3 years existence of right itself so that where plaintiff failed to bring action for rescission within 3 years after she acquired right to rescind, case had to be dismissed for lack of subject matter jurisdiction. *Jamerson v Miles (1976, ND Tex) 421 F Supp 107.*

Although borrowers sought loan for purchase of dwelling, fact that financial corporations encumbered second property, not one being acquired, removed mortgage at issue, pursuant to *15 USCS § 1602(w)*, from purview of residential mortgage exception contained in Truth in Lending Act, *15 USCS §§ 1601* et seq., pursuant to *15 USCS § 1635*, meaning that borrowers had right to rescission; they lost that right, however, when they failed to exercise it within three days after transaction given that their was no indication that required disclosures were not made. *De Jesus-Serrano v Sana Inv. Mortg. Bankers, Inc. (2007, DC Puerto Rico) 552 F Supp 2d 191*, summary judgment gr, claim dismissed, judgment entered (2007, DC Puerto Rico) *552 F Supp 2d 196.*

Rescission notice did not clearly and conspicuously disclose date rescission period expired, as required by Truth in Lending Act, *15 USCS § 1635(h)*, because it did not provide correct date when rescission period expired, and it did not define business days or explain when to begin counting business days or explain how to count them. *Aubin v Residential Funding Co., LLC (2008, DC Conn) 565 F Supp 2d 392.*

Notwithstanding that required disclosures have not been made, right to rescind automatically lapses upon occurrence of earliest of (1) expiration of 3 years after occurrence giving rise to right of rescission, (2) transfer of all of consumer's interest in property, including bequests and gifts, and (3) voluntary or involuntary sale of consumer's interest in property, including transaction in which consumer sells dwelling and takes back purchase money mortgage or retains legal title through installment sale contract. Board of Governors of Federal Reserve System Official Staff Interpretation TIL-1, *48 Fed Reg 14887.*

**2.Three Years After Consummation of Transaction 29. Generally**

3-year limitation period of *15 USCS § 1635(f)* is to be applied prospectively. *James v Home Constr. Co. (1980, CA5 Ala) 621 F2d 727* (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26).*

Truth in Lending Act permits no federal right to rescind, defensively or otherwise, after 3-year period of *15 USCS § 1635(f)* has run, as § 1635(f) represents absolute limitation on rescission actions which bars any claims filed more than three years after consummation of transaction. *Miguel v Country Funding Corp (2002, CA9 Hawaii) 309 F3d 1161, 2002 CDOS 10911, 2002* Daily Journal DAR 12629, amd on other grounds, reh den, petition for certiorari filed (2002, CA9) *2002 CDOS 12285* and cert den *(2003) 539 US 927, 156 L Ed 2d 604, 123 S Ct 2577.*

Where lender provided requisite information in disclosure statement under Truth in Lending Act, *15 USCS §§ 1601* et seq., consumers were not entitled to extended rescission period under *15 USCS § 1635(f). Carmichael v Payment Ctr., Inc. (2003, CA7 Ill) 336 F3d 636*, reh, en banc, den (2003, CA7 Ill) *2003 US App LEXIS 20763* and cert den *(2004) 541 US 987, 158 L Ed 2d 491, 124 S Ct 2015.*

Provision of Act of October 28, 1974 amending *15 USCS § 1635* to provide that right of rescission expires 3 years after date of consummation of transaction applies to contracts then in existence. *Rodriguez v County Lumber & Supply Co. (1978, ND Ill) 460 F Supp 810.*

Because *15 USCS § 1635(f)*, which allows for extended three year right of rescission, is statute of repose, rather than statute of limitations; it is not subject to equitable extensions; therefore, borrower cannot file amended complaint and then rely on relation back doctrine to get around three year time limit for notifying lender or lender's assignee of recission claim. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Pursuant to *15 USCS § 1635(f)*, when creditor never gives obligor proper notice of right to rescind, and obligor has

not sold property, right lasts for three years from date of consummation of transaction. *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760* (criticized in *Regency Sav. Bank v Chavis (2002) 333 Ill App 3d 865, 267 Ill Dec 504, 776 NE2d 876)* and (criticized in *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664)* and revd on other grounds, remanded (2003, DC Kan) *288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364)* and (criticized in *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602).*

**30. Particular cases**

Under *15 USCS § 1635(f)*, borrower's right of rescission is completely extinguished at end of 3-year period--and may not be asserted as affirmative defense in collection action brought by lender more than 3 years after consummation of transaction--because (1) § 1635(f) contains uncompromising provision that borrower's right of rescission "shall expire" with running of time, (2) Truth in Lending Act (*15 USCS §§ 1601* et seq.) gives borrower no express permission to assert right of rescission as affirmative defense after expiration of 3-year period, and (3) statutory right of rescission could cloud lender's title on foreclosure, which risk Congress may well have chosen to circumscribe, while permitting borrower's recovery of damages regardless of date collection action may be brought. *Beach v Ocwen Fed. Bank (1998) 523 US 410, 140 L Ed 2d 566, 118 S Ct 1408, 98 CDOS 2943, 98 Daily Journal DAR 4023, 1998 Colo J C A R 1913, 11 FLW Fed S 470.*

Three-year limit on rescission of consumer loan under *15 USCS § 1635(f)* did not run where creditor made material failures to disclose. *La Grone v Johnson (1976, CA9 Cal) 534 F2d 1360* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Failure of creditor to complete rescission notice required by Truth in Lending Act (*15 USCS § 1635(a)*) by inserting date of third business day after execution of transaction, as date until which borrower had right to rescind, constituted violation of Act and extended rescission period until 3 years from date of transaction, where disclosures were never correctly made at time of transaction or subsequently. *Williamson v Lafferty (1983, CA5 Miss) 698 F2d 767.*

Creditor's nondisclosure of contingent mechanic's lien in favor of contractor did not extend to purchaser right to rescind her loan agreement with creditor within 3 year period, since contractor was not creditor, and any liens that could have attached to purchaser's residence by operation of law would not have run in favor of creditor and therefore were not subject to disclosure under Truth in Lending Act (*15 USCS §§ 1601*, et seq.). *McCoy v Harriman Utility Bd. (1986, CA6 Tenn) 790 F2d 493.*

Lenders' disclosure correctly stated that rescission of refinance loan would cancel security interest contemplated by that loan, and would impact only refinance transaction; thus, lenders satisfactorily disclosed effects of rescission as required by *12 CFR § 226.23(d)*, and three-day rescission period was not extended to three years under *15 USCS § 1635(f). Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Where borrowers were asked to sign statement acknowledging they had been advised of their right to rescind loan transaction within three business days and, at same time, were instructed to sign statement certifying that three business days had elapsed and they had not rescinded transaction, lender violated Truth in Lending Act, *15 USCS § 1635(a)*, by failing to clearly and conspicuously disclose borrowers' three-day right to rescind transaction, thereby giving rise to three-year period of rescission. *Rand Corp. v Yer Song Moua (2009, CA8 Minn) 559 F3d 842.*

Three year statute of limitations commenced on day mortgage was executed, barring mortgagor from seeking rescission more than 3 years after mortgage execution. *Dau v Federal Land Bank (1985, ND Iowa) 627 F Supp 346, CCH Fed Secur L Rep P 92832.*

Borrower's rescission of loan secured by her home was proper under *15 USCS § 1635(a)*, notwithstanding that rescission did not occur until almost 1 year after loan was entered into, where bank never properly completed right to

rescission form or provided borrower with required material disclosures, because borrower had 3 years to rescind. *Mayfield v Vanguard Sav. & Loan Ass'n (1989, ED Pa) 710 F Supp 143.*

Debtors had right to rescind mortgage transaction almost 3 years after execution, where mortgagee made clerical error in amount of monthly payment on original loan documents, eventually got state court judgment in its favor for correct monthly payments and issued corrected documents, but never provided new rescission forms with corrected documents, because failure to provide new forms was Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) violation which granted debtors continuing right to rescind for 3 years under § 1635(f). *Smith v Wells Fargo Credit Corp. (1989, DC Ariz) 713 F Supp 354.*

Even if loan to finance purchase of cooperative apartment constituted consumer credit transaction rather than residential mortgage transaction and even if mortgagor's claim under *15 USCS § 1635* could be read as asserting rescission claim, mortgagor's right of rescission under statute expired 3 years after transaction date. *Van Pier v Long Island Sav. Bank, F.S.B. (1998, SD NY) 20 F Supp 2d 535.*

Lender's violation of *15 USCS § 1635* and regulations promulgated thereunder extends period of borrower's right to rescind to 3 years, where (1) language of election not to rescind is both objectively false and internally inconsistent, (2) language tells average borrower that her "cooling off" period "has expired" and that she may no longer rescind, and (3) disputed provision is objectively confusing given its placement on same page as notice of rescission rights, because election not to rescind is inherently confusing in both its language and its placement on notice document as whole. *Wiggins v Avco Fin. Servs. (1999, DC Dist Col) 62 F Supp 2d 90.*

Where creditor foreclosed on debtor's delinquent loan and purchased property at sheriff's sale, and where debtor attempted to rescind sale by filing suit, but where creditor was not served with complaint until after expiration of redemption period, debtor was precluded from receiving relief of rescission under Truth in Lending Act, *15 USCS § 1635(f)*, because right to any such relief was cut off by sheriff's sale. *Marschner v RJR Fin. Servs. (2005, ED Mich) 382 F Supp 2d 918.*

In action arising out of predatory lending scheme allegedly perpetrated by banks and from which lender allegedly profited, no class member had timely claim for rescission because no rescission claims were asserted within three years of closing of loans; proposed claims for rescission were subject to statute of repose and, thus, right could not be revived by equitable tolling, relation back, or any of theories advanced. *In re Cmty. Bank of N. Va. (2006, WD Pa) 467 F Supp 2d 466.*

In case in which homeowner asserted that three mortgage lenders violated Truth-in-Lending Act, *15 U.S.C. §§ 1601* et seq., because they failed to provide notice of his right to rescind within three-day cooling-off period as set forth in *15 USCS § 1635(a)*, lender's motion for summary judgment was granted; since loan was consummated in 1995 and homeowner did not bring suit until 2006, his right to rescission had expired pursuant to *15 USCS § 1635(f). Williams v Countrywide Home Loans, Inc. (2007, SD Tex) 504 F Supp 2d 176.*

Fact issues precluded summary judgment in favor of mortgage refinancing lender on borrower's claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., as there were fact issues regarding whether extended three-year period for rescission under *15 USCS § 1635(f)* applied; borrower claimed that lender failed to disclose certain prepaid finance charges, including processing fee, administrative fee, appraisal fee, and deed preparation and recording fees, so there was fact question as to whether lender's disclosure of finance charges was materially accurate. *Jefferies v Ameriquest Mortg. Co. (2008, ED Pa) 543 F Supp 2d 368.*

In case in which mortgage company did not enumerate date certain by which rescission rights must be exercised, but notice did state with crystalline clarity that borrowers could cancel their loan for any reason within three business days after any of three enumerated events and no reasonably attentive consumer reading that notice could have failed to appreciate existence and running of three-day rescission period, borrowers were ineligible for three-year rescission

period under *15 USCS § 1635(f)*. *McMillian v AMC Mortg. Servs. (2008, SD Ala) 560 F Supp 2d 1210.*

Borrower's request for recission of mortgage agreement pursuant to Truth in Lending Act was barred by *15 USCS § 1635(f)* because borrower's right to rescind expired when borrower sold mortgaged property. *Morilus v Countrywide Home Loans, Inc. (2008, ED Pa) 651 F Supp 2d 292.*

Pursuant to *15 USCS § 1635(f)*, four borrowers had three years from time they closed on two loans to provide notice of their intention to rescind loans because recission notices provided by their original lender failed to accurately inform borrowers of their rescission rights: (1) three borrowers obtained original loan from lender, and later all four borrowers obtained second, larger loan, some of proceeds of which were used to pay off original loan; (2) 12 CFR § 226, app. H-9, form notice that borrowers received in connection with their original loan violated *15 USCS § 1635(a)* because that form was intended to be used for refinanced loans, rather than original loans, and it incorrectly suggested to borrowers that they could not rescind full amount of their original loan; and (3) 12 CFR § 226, app. H-8, form notice that borrowers received in connection with their second loan violated *15 USCS § 1635(a)* because that form was intended to be used for original loans, rather than refinanced loans, and it incorrectly indicated that entire amount of second loan amount could be rescinded, when pursuant to modification exemption, only additional loan amount could be rescinded. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Consumers' claims that their lender violated Truth in Lending Act, *15 USCS § 1601*, et seq., were not brought within limitations periods of *15 USCS § 1640(e)* and *15 USCS § 1635(f)*, where relief was not requested from original creditor; their claim alleging secret fees stated claim for relief under *12 USCS § 2607(a)* of Real Estate Settlement Procedures Act, *12 USCS §§ 2601* et seq. *Brewer v Indymac Bank (2009, ED Cal) 609 F Supp 2d 1104.*

In case in which two home owners sued bank alleging violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., to extent that they recited claim for rescission, such was precluded by applicable three-year statute of limitations in *15 USCS § 1635(f)*; according to loan documents, loan closed in December 2005 or January 2006, and present case was not filed until February 6, 2009, outside allowable three-year period. *Ortiz v Accredited Home Lenders, Inc. (2009, SD Cal) 639 F Supp 2d 1159.*

Because plaintiff borrower did not attempt to rescind against proper entity within three-year limitation period, her right to rescind had expired. *Zakarian v Option One Mortg. Corp. (2009, DC Hawaii) 642 F Supp 2d 1206.*

Because plaintiff borrower did not attempt to rescind against proper entity within three-year limitation period, her right to rescind under Truth in Lending Act, *15 USCS 1601* et seq., had expired, and it was too late for plaintiff to amend her complaint to add lender as defendant, and thereby "relate back" to circumvent expiration of statutory period, as *Fed. R. Civ. P. 15(c)* could not be used to extend federal jurisdiction. *Zakarian v Option One Mortg. Corp. (2009, DC Hawaii) 642 F Supp 2d 1206.*

Where plaintiff borrowers' claimed alleged failure by defendant loan originator to adequately disclose annual percentage rate (APR), and disclosure stated loan contained variable-rate feature, and that APR was 6.99% and was "the cost of your credit as yearly rate," but note stated interest was "at yearly rate of 1%," and interest rate could change, factual dispute existed on whether reference in loan documents to both APR and finance charge as "yearly" rates of interest would confused ordinary consumer, and thus, claim for rescission under *15 USCS § 1635(a)* due to failure to disclose true APR on loan, based on *12 CFR § 226.23(a)(3)*'s extend limitations period could proceed. *Jordan v Paul Fin., LLC (2009, ND Cal) 644 F Supp 2d 1156.*

Mortgagors claim for rescission against loan servicer was time-barred under *15 USCS § 1635(f)* where they filed claim more than three years after closing. *Nool v Homeq Servicing (2009, ED Cal) 653 F Supp 2d 1047.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded, because borrower's rescission claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was barred by three-year

statute of limitations under *15 USCS § 1635(f)*; further, loan was residential mortgage transaction, *15 USCS § 1602(w)*, that was exempt from TILA rescission under *15 USCS § 1635(e)(1). Saldate v Wilshire Credit Corp. (2010, ED Cal) 2010 US Dist LEXIS 21034*, complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220*, complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051*.

Both "notices of right to cancel" produced by debtor lacked date of transaction and corollary deadline to rescind; this was clear violation of *15 USCS § 1635*; it gave debtor 3 years from date of loan closing to rescind. *Armstrong v Nationwide Mortg. Plan/ Trust (In re Armstrong) (2003, BC ED Pa) 288 BR 404.*

Where borrower argued that disclosures required under *15 USCS § 1635(a)* were never properly made so limitation period never began to toll, and exception of rescission under § 1635(I) applied, argument was rejected because § 1635(f) was statute of repose and not subject to any tolling doctrine. *Chabot v Washington Mutual Bank (In re Chabot) (2007, BC DC Mont) 369 BR 1*.

Claim for rescission and for damages was timely where plaintiffs' demand for rescission was made on August 29, 2005, which was within three years of date of violation, i.e., date that loan was consummated. *Escher v Decision One Mortg. Co., LLC (In re Escher) (2007, BC ED Pa) 369 BR 862.*

Chapter 7 trustee's claim seeking damages under Truth in Lending Act, *15 USCS §§ 1601-1693*, from lender who allegedly failed to provide Chapter 7 debtor with Notice of Right to Cancel when it loaned debtor money before she declared bankruptcy was barred by one-year statute of limitations contained in *15 USCS § 1640(e)* because violation occurred in October 2005 and trustee did not file her adversary proceeding until January 2008; however, facts alleged gave debtor right to rescind transaction, and that right was not barred because it was subject to three-year statute of limitations contained in *15 USCS § 1635(f). Helbling v Fox (In re Fox) (2008, BC ND Ohio) 391 BR 772.*

Bankruptcy court refused to dismiss Chapter 7 trustee's claim seeking order requiring home loan company and bank to rescind two loans Chapter 7 debtor obtained on his principal residence on September 24, 2004, over three years before he declared bankruptcy on October 19, 2007; debtor claimed that he did not receive requisite notice when he obtained loans, and if that was true, he had three years to rescind loans under *15 USCS § 1635(f)*, and letter he sent home loan company and bank on September 10, 2007, was timely; once debtor provided timely notice of recission, he had one year under *15 USCS § 1640(e)* to file suit, and trustee filed his adversary proceeding less than one year after debtor sent his letter. *Herzog v Countrywide Home Loans (In re Hunter) (2009, BC ND Ill) 400 BR 651.*

Where creditor arranged sale and lease-back transaction involving debtors' home, whereby creditor did not loan debtors any money but obtained new mortgage against home for amount greater than required to pay debtors' mortgage, rescission remained available remedy under *15 USCS § 1635(f)* since creditor's fraud provided debtors with three years to rescind transaction. *O'Brien v Cleveland (In re O'Brien) (2010, BC DC NJ) 423 BR 477.*

**Unpublished Opinions**

Unpublished: District court properly granted summary judgment in favor of mortgagee in mortgagor's action seeking to rescind refinancing transaction almost three years after closing; mortgagor failed to establish issue of material fact concerning her receipt of required notices of her right to rescind her loan under *15 USCS § 1635(a)*, part of Truth in Lending Act, and *12 CFR § 226.23* because district court did not abuse its discretion in denying mortgagor's *Fed. R. Civ. P. 36(b)* motion to withdraw her deemed admission, mortgagor's written acknowledgement that she received requisite two copies created rebuttable presumption of delivery under *15 USCS § 1635(c)*, and mortgagor's deposition testimony that she received only one copy was insufficient to rebut presumption. Sibby v Ownit Mortg. Solutions, Inc. (2007, CA6 Mich) 2007 FED App 484N.

Unpublished: Even if mortgagor sufficiently alleged claim for recission under Truth in Lending Act, claim would fail as matter of law because it was time-barred under *15 USCS § 1635(f)*, as mortgagor had waited more than three

years after refinancing his mortgage to assert claim; record showed that refinancing took place in 1993, but mortgagor did not seek recission until 2005. *Hall v GMAC Mortg. Corp. Payoff Processing Unit (2007, CA3 NJ) 2007 US App LEXIS 29251.*

Unpublished: Consumer's action against banks alleging violations of Truth In Lending Act (TILA) was properly dismissed because (1) action was untimely under *15 USCS § 1640(e)* as it was filed more than one year after consumer closed on mortgage and signed TILA disclosure statements; (2) even if *15 USCS § 1635(f)* applied, complaint was filed after three-year period expired; and (3) consumer failed to show that equitable tolling applied. *Taggart v Chase Bank USA (2009, CA3 Pa) 2009 US App LEXIS 25904.*

Unpublished: Because rescission rules outlined in *15 USCS § 1635*, part of Truth in Lending Act (TILA) do not apply to residential mortgage transactions, as defined by *15 USCS § 1602(w)*, and it appeared that borrower who filed TILA complaint had residential mortgage, borrower's claim of rescission right would fail; however, since complaint was somewhat ambiguous, court based its dismissal instead on fact that claim for rescission, brought more than six years after transaction, was time-barred by *15 USCS § 1635(f)*, which closed door on actions filed more than three years after transaction. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

Unpublished: Because rescission rules outlined in *15 USCS § 1635*, part of Truth in Lending Act (TILA), do not apply to residential mortgage transactions, as defined by *15 USCS § 1602(w)*, and it appeared that borrower who filed TILA complaint had residential mortgage, borrower's claim of rescission right would fail; however, since complaint was somewhat ambiguous, court based its dismissal instead on fact that claim for rescission, brought more than six years after transaction, was time-barred by § 1635(f), which closed door on actions filed more than three years after transaction. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

Unpublished: While the three-day period for rescission of a mortgage loan transaction expired, the three-year period of *15 USCS § 1635(f)* was applicable and rendered timely a bankruptcy debtor's claim for rescission of a mortgage loan transaction, since the debtor established that the mortgage lender's disclosures were inaccurate at least with regard to recording fees. *Orr v Ameriquest Mortg. Co. (In re Hollis) (2009, BC DC NJ) 2009 Bankr LEXIS 3020.*

**IV.RETURN OR TENDER OF MONEY OR PROPERTY 31. Creditor's duties**

Failure of bank to perform statutorily prescribed duties within 10 [now 20] days upon notification by borrower of intention to rescind home improvement loan transaction pursuant to *15 USCS § 1635*, on ground that borrower's rescission was equivocal and bank was uncertain whether transaction came within disclosure and rescission provisions of Truth in Lending Act (*15 USCS § 1635*) exposed bank to possibility of increased liability under *15 USCS § 1640(a)* upon judicial determination that borrowers were entitled to rescind transaction and that notice of rescission was valid; bank was required to return to borrowers any money or property received from them in connection with transaction and take any action necessary to reflect termination of security interest created in borrowers' property and upon such performance borrowers had to tender loan proceeds to bank within reasonable time; upon bank's failure to perform, borrowers were entitled to damages under *15 USCS § 1640(a)*, including reasonable attorney's fee for services rendered on appeal. *Gerasta v Hibernia Nat'l Bank (1978, CA5 La) 575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

When debtor exercises right of rescission, Truth in Lending Act does not require debtor to tender first, rather, under sequence of events anticipated by statute, creditor must tender before borrower's obligation arises. *Brown v National Permanent Fed. Sav. & Loan Ass'n (1982, App DC) 221 US App DC 125, 683 F2d 444* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Because borrower gave lawful notice of rescission to creditor concerning rent-and-sale transaction which court determined was really loan, creditor would have to return all finance charges, including (1) $ 100 per month "profit" on rentals that borrower was paying, and (2) $ 1,000 profit that creditor made when he resold house back to borrowers;

however, borrowers would not be entitled to return of $ 154 per month, which was part of rent borrowers had been paying to creditor, but which creditor had used to make monthly payments on mortgage on property originally obtained by borrowers. *James v Ragin (1977, WD NC) 432 F Supp 887.*

In action following borrowers' service of notice of rescission of loan transaction after creditor received complete payment of obligations, for creditor's failure to terminate its security interest and foreclosure proceedings, creditor is required to return to borrowers only sum of all moneys received by creditor in excess of those sums disbursed to plaintiffs or to other persons for plaintiffs' benefit because effective rescission under Truth in Lending Act (*15 USCS § 1635*) requires borrower to make restitution of amounts expended by lender. *Clemmer v Liberty Financial Planning, Inc. (1979, WD NC) 467 F Supp 272.*

Mortgage company's motion to dismiss homeowner's claim that it violated Truth in Lending Act by not taking steps to rescind loan transaction as required under *15 USCS § 1635* was denied where company had failed to provide homeowner with rescission statement, take steps toward releasing its security interest in home, and conditioned its rescission on homeowner's return of loan money. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Where mortgage companies did not allege that third-party defendants were "creditors" pursuant to *15 USCS §§ 1631, 1635*, third-party defendants had no statutory duty to deliver proper Notice of Right to Cancel forms to companies' borrowers; because companies did not identify any plausible source of third-party defendants' duty, companies' negligence claims were dismissed. *Ameriquest Mortg. Co. v Northwest Title & Escrow Corp. (In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.) (2008, ND Ill) 589 F Supp 2d 987.*

**32.--Forfeitures**

Failure by creditor to disclose accurate APR on loan agreement permits borrower to rescind under *15 USCS § 1640(a)*, but does not cause creditor to forefeet loan proceeds under § 1635(b), where although creditor did not perform obligation to tender payments made by borrowers, borrowers likewise failed to tender loan proceeds to creditor. *Bustamante v First Fed. Sav. & Loan Ass'n (1980, CA5 Tex) 619 F2d 360.*

Although creditor's forfeiture of loan proceeds is conditioned on prior tender by debtor of such proceeds, debtor's right to rescission is not conditioned on such tender. *Canal Mortg. & Finance Co. v Jackson (1980, La App 4th Cir) 390 So 2d 1347.*

**33.--Setoffs**

*15 USCS § 1635*(b) does not prevent creditor from offsetting value owed to it by obligor from sum it initially tenders to obligor since such arrangement would prevent perfunctory exchange of funds while protecting lender from dissipation of money while it is in hands of obligor. *Harris v Tower Loan (1980, CA5 Miss) 609 F2d 120, 61 ALR Fed 832*, reh den (1980, CA5 Miss) *613 F2d 314* and cert den *(1980) 449 US 826, 66 L Ed 2d 30, 101 S Ct 89* and (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

District Court has power to allow creditor to offset reasonable value of improvements with moneys it is to pay in view of fact that in normal home improvement contract situation, creditor must terminate its security interest and return all moneys that obligor has paid and that following these steps, obligor must tender property or if its return is impracticable, reasonable value thereof. *Pearson v Colonial Fin. Serv. (1981, MD Ala) 526 F Supp 470.*

Where bankruptcy court found that creditor violated Truth in Lending Act, *15 USCS § 1635*, by failing to respond to debtor's notice of rescission within 20 days and awarded debtor statutory damages under *15 USCS § 1640(a)(2)(A)(iii)*, court did not err in deducting damages from post-rescission balance due to creditor because creditor's post-rescission claim arose at same time and as part of same transaction as debtor's claim. *Merriman v Beneficial Mortg.*

*(In re Merriman) (2005, DC Kan) 329 BR 710.*

**34.--Ignoring or refusing to honor obligor's notice of rescission**

Purchaser of aluminum siding under contract which violated Truth-in-Lending Act, who notified seller of rescission, including express offer to return siding, had right under *15 USCS § 1635(b)*, when offer elicited no response, to keep siding without obligation to pay for it; seller was required to return payments made previously by purchaser; lien to secure indebtedness, imposed pursuant to contractual provision creating deed of trust to secure payment of total sales price, was invalid. *Sosa v Fite (1974, CA5 Tex) 498 F2d 114.*

Developer which provided additional financing for home purchasers through second mortgage on home, evidenced by 2 notes bearing no interest if timely paid, forfeited its rights to proceeds of loans which purchasers tendered or offered to tender upon electing to rescind second mortgage transaction pursuant to *15 USCS § 1635* by failing to respond to purchaser's notice, where notification and tender was sufficient and was timely made. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

Where defendant did not make required disclosures and refused to voluntarily honor plaintiff's election to cancel, defendant forfeited its right to restitution under *15 USCS § 1635(b)*; however, where plaintiff recognized presence of equitable obligation to restore net balance of what she had received, and did not allege that defendant practiced any fraud or unconscionable conduct, she had equitable duty to restore net amount which she had received. *Pedro v Pacific Plan (1975, ND Cal) 393 F Supp 315.*

Creditor, by failing to follow statutory steps outlined in *15 USCS § 1635(b)* upon notice of borrower's rescission of loan transaction and failing to give effect to such notice, caused cancellation of security interest, as well as necessity of returning note to plaintiffs together with all moneys paid under such note in order to assure self-enforcement and compliance with Truth in Lending Act. *French v Wilson (1978, DC RI) 446 F Supp 216.*

Creditor who ignores obligor's notice of rescission and begins foreclosure proceedings is required to cancel his mortgage as well as return note to obligors, together with all moneys paid by obligors under such note, and forfeit all sums paid over to obligor. *French v Wilson (1978, DC RI) 446 F Supp 216* (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Where plaintiff, in action alleging violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.), has grounded her prayer for damages and attorney's fees squarely on lender's failure to answer notice of rescission which she sent via counsel and alleged that in failing to comply with plaintiff's request, lender has violated plaintiff's rescission rights pursuant to *15 USCS § 1635* and Regulation Z; 10 [now 20] days after date of notice of rescission is earliest pertinent date for determining when violation occurred for bar of statute of limitations to apply. *Sherwood v Serubo Cadillac Co. (1981, ED Pa) 514 F Supp 167.*

If after 20 days set forth in *12 C.F.R. § 226.23* expires, creditor indicates that it will not comply with *15 USCS § 1635*, consumer has right to sue then and there even if creditor may have begun process of rescinding loan transaction. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Four borrowers were entitled to recover statutory damages under *15 USCS § 1640(a)* because credit company and bank trustee had not complied with their rescission demands, as required by *15 USCS § 1635(b)*, within 20 days after borrowers filed their suit; borrowers' complaint, which was timely filed under § 1635(f) within three years after borrowers' two loans closed, constituted timely notice to company and to trustee of borrowers' rescission demand. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

**35. Obligor's duty to return or tender property**

Attempt of debtors to rescind home improvement loan was fatally defective under Truth in Lending Act (*15 USCS*

*§§ 1601* et seq.) where debtors agreed to tender delivery of home improvements but would not reimburse creditor for amount expended in satisfying other indebtedness of debtors. *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Although borrowers rescinded refinancing loan for their home, under Truth in Lending Act, *15 USCS § 1635(b),* lender was not required to unconditionally release security interest in home because borrowers were unable to tender loan balance, and due to borrowers' inability to tender loan proceeds, remedy of recission was inappropriate. *Am. Mortg. Network, Inc. v Shelton (2007, CA4 NC) 486 F3d 815.*

Performance of creditors' obligations under *15 USCS § 1635(b)* required that obligors return principal to defendant creditors as condition of rescission. *Mitchell v Security Inv. Corp. (1979, SD Fla) 464 F Supp 650.*

If mortgagee fails to provide mortgagor with notice of right to rescind transaction under *15 USCS § 1635(a)* and mortgagor rescinds loan transaction, mortgagee must look to mortgagor to whom loan proceeds were delivered for return of those proceeds after mortgagee terminates its security interest. *Eveland v Star Bank, NA (1997, SD Ohio) 976 F Supp 721,* subsequent app (1999, CA6 Ohio) *188 F3d 507,* reported in full (1999, CA6 Ohio) *1999 US App LEXIS 20351.*

Where plain language of *15 USCS § 1635(b)* and Regulation Z demonstrated that rescission was not automatic upon giving notice, but required affirmative acts by bankruptcy debtors; creditor's mortgage lien was not automatically void upon giving of notice, but secured creditors loan, less adjustments for TILA violations. *Ramirez v Household Fin. Corp. III (In re Ramirez) (2005, DC Kan) 329 BR 727.*

Court was not convinced that "property," as that term was used in *15 USCS § 1635(b),* could have been read to cover debtor's house because house was merely security for repayment of "property" provided by creditor, i.e. loan proceeds; because complaint alleged that "property" received by debtor from creditor was loan proceeds from two refinance credit transactions, loan proceeds were "property" that must have been tendered by debtor in rescission. *Moore v Wells Fargo Bank, N.A (2009, ED Va) 597 F Supp 2d 612.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded, because borrower's rescission claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was barred by borrower's failure to make tender of loan proceeds under *15 USCS § 1635(b). Saldate v Wilshire Credit Corp. (2010, ED Cal) 2010 US Dist LEXIS 21034,* complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220,* complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051.*

Borrower's claim for rescission under *15 USCS § 1635(a)* brought against lender, lender's nominee, and bank was dismissed where borrower failed to allege that he had tendered or had ability to tender principal balance of loan. *Sipe v Countrywide Bank (2010, ED Cal) 690 F Supp 2d 1141.*

Obligors cannot rescind loan transaction and void creditor's encumbrance on obligors' property where obligors file bankruptcy petitions and become unable to return loan proceeds to creditor as required by *15 USCS § 1635(b). In re Pitre (1981, BC ND Ill) 11 BR 777, CCH Bankr L Rptr P 68212.*

In determining how to implement rescission of loan transaction, concept of permitting consumer reasonable time frame to repay creditor while creditor retains security interest it acquired in rescinded transaction is balanced, equitable approach; court accepted debtor's proffer that appropriate procedure for implementing rescission of transaction was to permit lender to retain its mortgage pending completion of debtor's performance of her repayment obligation under *15 USCS § 1635(b)* and *12 CFR § 226.23(d)(3)* through installment payments of repayment amount. *Sterten v Option One Mortg. Corp. (In re Sterten) (2006, BC ED Pa) 352 BR 380.*

Borrower was not entitled to rescission of loan transaction pursuant to *15 USCS § 1635(b)* without obligation to

pay for loan because her claim was subject to requirement to tender loan proceeds. *Chabot v Washington Mutual Bank (In re Chabot) (2007, BC DC Mont) 369 BR 1.*

Borrowers were not entitled to release from mortgage until they tendered payment of principal amount due without interest and finance charges where it was readily obvious that borrowers did not have necessary funds, there were no prospects for securing such funds, borrowers requested creditor to depart from statutory scheme with regard to time limit and method of refund, and borrowers' main objective was to defeat security interest of creditor who had cooperated fully with borrower and even during trial offered to withhold action on foreclosure in order to give more time to secure funds to tender payment. *Nietert v Citizens Bank & Trust Co. (1978) 263 Ark 251, 565 SW2d 4,* cert den *(1978) 439 US 965, 58 L Ed 2d 424, 99 S Ct 453.*

**Unpublished Opinions**

Unpublished: Scope of a bankruptcy debtor's entitlement upon rescission of a mortgage loan transaction which refinanced a prior loan by the same lender was not limited to the amount of new money advanced, since *12 CFR § 226.23(f)(2)* was reasonably interpreted by the Federal Reserve Board to allow the debtor to recover a refund of the new advance amount as well as any amounts paid by the debtor as part of the refinancing. *Orr v Ameriquest Mortg. Co. (In re Hollis) (2009, BC DC NJ) 2009 Bankr LEXIS 3020.*

**36.--Reasonable value in lieu of in-kind return**

Where financing company is not intimately involved with seller that should be considered seller's alter ego, there is no reason why obligor should be permitted to return property purchased with proceeds of credit transaction rather than monetary equivalent of credit extended; if obligor were permitted to return purchased property to creditor, then creditor would suffer consequences of obligor's poor consumer decision. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

Where buyer of home improvements was unable to return what she received in order to effectuate rescission of contract, she must tender reasonable value of improvements to assignee of seller, and upon tender by buyer of reasonable value of improvements, assignee must return all moneys paid by buyer to assignee pursuant to contract. *Cox v First Nat'l Bank (1986, SD Ohio) 633 F Supp 236.*

Homeowners are granted rescission of installment contract for purchase of 6 windows but must tender to bank reasonable value of windows less amount already paid, where material disclosures were either omitted from or illegibly printed on financing documents, because implementation of *15 USCS § 1635* rescission remedy here involves payment of reasonable value of windows installed in plaintiffs' home, which cannot be readily returned. *Rowland v Magna Millikin Bank, N.A. (1992, CD Ill) 812 F Supp 875.*

**37. Conditions placed on rescission**

Requirement of tender of consideration as prerequisite to rescission was abolished by Truth in Lending Act; where lender violated provisions of Truth in Lending Act, borrowers are entitled to right of rescission despite fact that they did not tender money loaned to them at time they notified lender of their decision to exercise right. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Tender back of consideration received from creditor by debtor is not prerequisite to rescission under § 125 of Truth in Lending Act (*15 USCS § 1635*), but rather section requires only that obligor exercise his right of rescission by notifying creditor within prescribed time limit of his intent to rescind. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899).*

In case where obligors notified creditor of their intention to rescind transaction and creditor responded by insisting that obligors return any moneys involved in transaction before creditor would cancel its security or refund any moneys, obligors' contention that creditor's failure to perform its statutory duty worked forfeiture of its right to restitution of proceeds of loan is rejected since *15 USCS § 1635* contemplates performance by creditor and then tender by debtor, and because neither party performed its obligation under § 1635(b), 10 [now 20] -day forfeiture provision was never triggered. *Bustamante v First Fed. Sav. & Loan Ass'n (1980, CA5 Tex) 619 F2d 360.*

Where defendant lender fails to follow sequence for rescission set forth in *15 USCS § 1635(b)* and insists on unwarranted and unreasonable preconditions before it would rescind, plaintiffs as matter of law are excused from making statutory tender envisioned by § 1635(b); hence, ownership of air conditioner and home improvement vested in borrowers. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Creditor's contention that debtor's attempted rescission of transaction under *15 USCS § 1635* is ineffective because debtor did not tender to creditor amounts that it had expended for her benefit is rejected since § 1635(b) does not require tender or restitution as precondition of rescission; before any obligation arises on part of debtor to tender benefit he has received, creditor must first return any money already paid by debtor in connection with loan; thus, debtor is in no way obligated to return benefits received before she is entitled to rescind where bank not only failed to perform its obligations under § 1635(b) when it received debtor's notice of rescission, but sent her letter denying effectiveness of rescission. *Brown v National Permanent Fed. Sav. & Loan Ass'n (1981, DC Dist Col) 526 F Supp 815,* affd in part and remanded in part (1982, App DC) *221 US App DC 125, 683 F2d 444* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Termination of creditor's mortgage should not be conditioned upon plaintiff's payment of entire amount billed for creditor's services where such amount exceeds amount plaintiffs owe creditor at time they enter into transaction. *Dougherty v Hoolihan, Neils, & Boland (1982, DC Minn) 531 F Supp 717.*

Power to rescind is equitable doctrine subject to equitable considerations; when equity demands it, rescission may be conditioned upon return of property by obligor. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

Condition that homeowners release mortgage company of liability in exchange for rescission of loans was not improper under *15 USCS § 1635(b)* because § 1635(b) contains no absolute prohibition against conditioning rescissions on some act by borrower. *Personius v Homeamerican Credit Inc. (2002, ND Ill) 234 F Supp 2d 817.*

Creditor's demand that debtor tender loan proceeds as condition precedent to exercise of debtor's rescission right is rejected even though creditor will be stripped of its secured creditor status and will be powerless to collect its debt in light of debtor's pending bankruptcy proceedings. *In re Wright (1981, BC SD Miss) 11 BR 590.*

Lender which fails to give notice required under Truth in Lending Act (*15 USCS §§ 1601* et seq.) when retaining security interest in debtors' principal dwelling when granting mortgage loan cannot demand that debtor first return property delivered as condition to release of mortgage, but statutory language clearly contemplates tender by debtor after creditor has performed its obligation. *In re Chancy (1983, BC ND Okla) 33 BR 355* (criticized in *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664).*

**38.--Court-ordered conditions**

Where court decree granting rescission under Truth in Lending Act did not condition relief upon repayment by debtor, case would be remanded for consideration of propriety of conditioning grant of rescission on repayment. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Under *15 USCS § 1635(b)*, trial judge has discretion to condition rescission upon tender by borrower of property he received from lender, but tender is not mandatory, and more liberal remedy should be required in cases of egregious violations of Act. *Ljepava v M. L. S. C. Properties (1975, CA9 Cal) 511 F2d 935.*

Court's power to condition rescission of consumer loan on tender of net amounts advanced by creditors is not restricted to cases in which both rescission and damages are at issue and condition should be imposed in case involving rescission alone where violations of Truth in Lending Act (*15 USCS §§ 1601* et seq.) are not egregious and equities heavily favor creditors. *La Grone v Johnson (1976, CA9 Cal) 534 F2d 1360* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

When rescission of consumer loan is attempted pursuant to Truth in Lending Act (*15 USCS §§ 1601* et seq.) under circumstances which would deprive lender of its legal due, attempted rescission will not be judicially enforced unless it is so conditioned that lender will be assured of receiving its legal due. *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Trial court acted within its discretion in awarding interest on unpaid note balance to creditor in permitting rescission by debtor under § 125 of Truth in Lending Act (*15 USCS § 1635*) since provision in § 125(b) that when obligor exercises his right to rescind he is not liable for any finance or other charge does not preclude court from doing equity, and in this case debtor had had benefit of use of loan proceeds and payment of interest on those loan proceeds was equitable condition to right of rescission. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899).*

Court may condition rescission and return of monies under equitable remedy of *15 USCS § 1635(b)* on debtors' returning property received in connection with transaction and debtors who contracted with home improvement contractor for installation of aluminum siding could be required to give contractor reasonable value of siding installed where it was impossible to return material itself. *Rudisell v Fifth Third Bank (1980, CA6 Ohio) 622 F2d 243* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Truth in Lending Act generally provides that creditor shall perform first (i.e. return monies paid by debtor and release its security interest), but Act gives courts discretion to devise other procedures, including conditioning rescissions upon debtor's prior return of principal. *Federal Deposit Ins. Corp. v Hughes Dev. Co. (1991, CA8 Minn) 938 F2d 889,* cert den *(1992) 502 US 1099, 117 L Ed 2d 426, 112 S Ct 1183* and (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Upon rescission of credit transaction under *15 USCS § 1635*, court will require customer to return to lender difference between amount repaid on loan and amount financed, and relieve customer from further liability for finance charge on loan; customer is not entitled to have remaining indebtedness extinguished on grounds home improvement work which loan financed was overpriced and defective, since lender is not liable for unsatisfactory services performed by third party. *Bookhart v Mid-Penn Consumer Discount Co. (1983, ED Pa) 559 F Supp 208.*

Rescission is equitable remedy, and court may condition it upon borrower's return of moneys advanced by lender; since statutory procedures for rescission are designed to restore parties to status quo ante, remainder of indebtedness is not forfeited by lender's failure to fulfill statutory obligation and to terminate security interest in property. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

Additional factfinding must take place in action seeking rescission of loan transaction marred by lender's failure to disclose date on which rescission period expires "clearly and conspicuously" in right-to-rescind notice, even though omission of date and right to rescind are not seriously disputed, because court needs more information before it can exercise its discretion under *15 USCS § 1635(b)* to condition rescission upon tender of loan proceeds by borrower. *New Me. Nat'l Bank v Gendron (1991, DC Me) 780 F Supp 52.*

Bankruptcy court rescinded creditor's lien on debtor's home without conditioning rescission upon debtor tendering

to creditor its legal due; while bankruptcy court gave inadequate consideration of factors that should have guided exercise of discretion in determining relief to afford debtor, it had authority under *15 USCS § 1635(b)* to order rescission of lien without conditioning rescission upon return to creditor of net balance due on loan secured by lien. *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664.*

Bankruptcy court may impose conditions that run with voiding of creditor's security interest upon terms that would be equitable and just to parties in view of all surrounding circumstances, and that it should require debtors' return of property received in connection with transaction as condition to rescission in this case; Truth in Lending Act was construed to require bankruptcy court to impose equitable terms for benefit of mortgagee upon debtors who elected to rescind mortgage agreement upon filing their bankruptcy petition, where mortgagee's predecessor in interest used wrong right to cancel form in original transaction, effectively extending right to rescind to three years. *Quenzer v Advanta Mortg. Corp. USA (2003, DC Kan) 288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364).*

Where bankruptcy court found that creditor violated Truth in Lending Act, *15 USCS § 1635*, by failing to respond to debtor's notice of rescission within 20 days, court did not err in conditioning voiding of creditor's security interest on satisfaction of payment by debtor because court was authorized to impose equitable conditions to ensure that debtor met her obligations. *Merriman v Beneficial Mortg. (In re Merriman) (2005, DC Kan) 329 BR 710.*

Where loan documents clearly indicated material violation of disclosure requirements triggering mortgagors' right to rescind loan, equities dictated modification of rescission procedure under *15 USCS § 1635(b)* to condition rescission upon mortgagors' tender of loan amount to assignee of loan; even though assignee did not tender amounts otherwise due to mortgagors as was required by rescission procedure, it appeared that mortgagors, who failed to pay numerous monthly installments and filed for bankruptcy, lacked capacity to return loan amount. *Egipciaco Ruiz v R&G Fin. Corp. (2005, DC Puerto Rico) 383 F Supp 2d 318.*

Where bankruptcy debtor was entitled to rescission under Truth in Lending Act, *15 USCS §§ 1601* et seq., creditor bank's security interest was voided and under *15 USCS § 1635(b)* and Regulation Z, 12 C.F.R. pt. 226, voiding of security interest was not dependent upon debtor's tender; holding that bank was unsecured creditor, bankruptcy court was not persuaded by cases holding that courts may condition rescission under *15 USCS § 1635* on payment by obligor. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Where creditor defrauded bankruptcy debtors through scam sale and lease-back transaction involving debtors' home, whereby creditor did not loan debtors any money but obtained new mortgage against home for amount greater than required to pay debtors' mortgage, bankruptcy court had equitable authority under *12 CFR § 226.23(d)(4)* to modify rescission process by ordering creditor to return all payments and charges made by debtors, while not requiring debtors to return loan amount to creditor. *O'Brien v Cleveland (In re O'Brien) (2010, BC DC NJ) 423 BR 477.*

**V.PRACTICE AND PROCEDURE 39. Parties**

Action for rescission under *15 USCS § 1635* survives death of plaintiff, since § 1635 remedy is not penal sanction. *James v Home Constr. Co. (1980, CA5 Ala) 621 F2d 727* (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26).*

Mortgage broker could not be held liable to Chapter 13 debtor for failing to provide disclosures under Truth in Lending Act, *15 USCS §§ 1601* et seq., because broker was not "creditor" as defined under *15 USCS § 1602*; debtor's mortgage loan obligation was initially payable to lender, not to broker. *Maroun v New York Mortg. Co., LLC (In re Maroun) (2010, BC DC NH) 2010 BNH 8, 427 BR 200.*

**40.--Assignees**

Fact that assignee of mortgage was not engaged in acquiring mortgages in regular course of his business and therefore would not be liable for civil penalty under § 130 of Truth in Lending Act (*15 USCS § 1640*) had nothing to do with debtor's right to rescind mortgage under § 125 of Act (*15 USCS § 1635*) because of original mortgagee's violation of Act. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899).*

Mortgage lender who financed home repair work was not liable for home repair contractor's alleged failure to provide notice of right to rescind under *15 USCS § 1635(a)*; contract clearly included required language, and even if notice was not provided, there was no evidence that contract was assigned to lender. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

Because discovery had not begun, district court found that it was premature to dismiss mortgagors' Truth in Lending Act, *15 USCS §§ 1601* et seq., claim against one mortgage company based on its contention that it could not be held liable as it was only assignee of mortgage. *Polis v Am. Liberty Fin., Inc. (2002, SD W Va) 237 F Supp 2d 681.*

Assignees argued that borrower's claims for rescission failed because they were merely former assignees who no longer owned loans and therefore could not execute rescission pursuant to *15 USCS § 1635*; however, because *15 USCS § 1641(c)* gave consumers right to rescind against "any assignee," including former assignees, borrower's claims for rescission against assignees survived dismissal. *Miranda v Universal Fin. Group, Inc. (2006, ND Ill) 459 F Supp 2d 760.*

Assignee could not be held liable for statutory damages for failing to comply with notice to rescind under *15 USCS § 1635* of Truth in Lending Act, *15 USCS § 1601* et seq., because underlying basis for requested rescission was alleged disclosure violation that was not apparent on face of disclosure statement; mortgagor and another plaintiff allegedly had not received two copies each of complete notice of right to cancel; under *15 USCS § 1641(a)*, assignee could only be held liable for violations that were apparent on face of disclosure statement, and § 1641(a) did not require assignee to go beyond documents to investigate plaintiffs' claim. *Bills v BNC Mortg., Inc. (2007, ND Ill) 502 F Supp 2d 773.*

Based on documents produced by debtors and debtor wife's credible testimony, debtors had not received completed copies of notice of right to rescind, as required under *15 USCS § 1635(a)* and Regulation Z, 12 C.F.R. pt. 226.23(b); bankruptcy court found bank, as assignee of loan, had to pay minimum statutory penalty under *15 USCS § 1640(a)(2)(A)(iii)*, and loan was rescinded and mortgage was void. *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683.*

**Unpublished Opinions**

Unpublished: Although district court properly determined that mortgagee's assignee could not be held liable under *15 USCS §§ 1640(a), 1641(a)*, because assignee was not "creditor" as defined in Truth In Lending Act and assignee had no statutory duty to make sure that proper disclosures were made by mortgagee, it erred in dismissing mortgagor's suit under *Fed. R. Civ. P. 12(b)(6)* because mortgagor was seeking recission under *15 USCS § 1635*, and assignee could possibly be required to provide recission under *15 USCS § 1641(c)*; dismissal order was vacated and mortgagor's case was remanded back to district court to determine if she had sufficiently alleged claim for recission against assignee pursuant to *15 USCS §§ 1635, 1641(c). Parker v Potter (2007, CA11 Fla) 2007 US App LEXIS 3391.*

**41.--Class actions**

Rescission under *15 USCS § 1635* is purely personal remedy and obligor seeking to rescind credit transaction cannot maintain class action merely by filing individual claim. *James v Home Constr. Co. (1980, CA5 Ala) 621 F2d 727* (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26).*

As matter of law, class certification was not available for rescission claims, direct or declaratory, under federal

Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and, thus, under Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D because it was clear that Congress did not intend rescission suits to receive class-action treatment since variation in treatment of class actions in two relevant sections of TILA strongly suggested that Congress did not intend to include class-action mechanism within compass of *15 USCS § 1635*; moreover, TILA already included significant incentives for creditor compliance with its strictures, thus casting serious doubt on need for class-action mechanism with respect to rescission. *McKenna v First Horizon Home Loan Corp. (2007, CA1 Mass) 475 F3d 418* (criticized in *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 2007 US Dist LEXIS 10751).*

United States Court of Appeals for Seventh Circuit held that rescission remedy under *15 USCS § 1635*, which was by its terms historically equitable, individualized, restorative remedy, as opposed to compensatory remedy of statutory damages under *15 USCS § 1640(a)(2)*, could not be pursued on behalf of putative class. *Andrews v Chevy Chase Bank (2008, CA7 Wis) 545 F3d 570.*

Although it appears that Congress intended that some Truth in Lending Act violations would proceed as class actions (*15 USCS § 1640(a)(2)(B)*), propriety of pursuing rescission under *15 USCS § 1635* through class action is open to serious doubt since there is obvious conflict among interest of parties seeking rescission from credit institution of limited solvency and availability of award of attorneys' fees to successful plaintiff seeking rescission on individual basis undermines contention that class treatment furthers class members' interest in minimizing burdens imposed on recovery by allowing them to share cost of single attorney. *Nelson v United Credit Plan (1978, ED La) 77 FRD 54, 24 FR Serv 2d 830.*

Class actions are not superior method for adjudicating technical disclosure violation claims under Truth in Lending Act where remedy sought is rescission. *Jefferson v Security Pac. Fin. Servs. (1995, ND Ill) 161 FRD 63* (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Latham v Residential Loan Ctrs. of Am., Inc. (2004, ND Ill) 2004 US Dist LEXIS 7993).*

Pursuant to claims under Truth In Lending Act, *15 USCS §§ 1601* et seq., class seeking rescission under *15 USCS § 1635* can be certified, particularly where plaintiffs seek declaratory judgment that class members are entitled to rescission. *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26* (criticized in *Morris v Wachovia Sec., Inc. (2004, ED Va) 223 FRD 284, 59 FR Serv 3d 169)* and (criticized in *Bell v Ameriquest Mortg. Co. (2004, ND Ill) 2004 US Dist LEXIS 24289)* and (criticized in *Murry v America's Mortg. Banc, Inc. (2005, ND Ill) 2005 US Dist LEXIS 11751).*

In suit for violation of Truth in Lending Act (TILA), *15 USCS § 1635*, district court granted borrowers' motion to certify class of all person who received mortgage loans from defendants during 15-month period because class resolution was appropriate for claims seeking declaration of right to rescind under *TILA. Rodrigues v Members Mortg. Co. (2005, DC Mass) 226 FRD 147.*

Borrowers' Truth In Lending Act (TILA), *15 USCS § 1601* et seq., and state Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D, claims for rescission and statutory damages against lender were certified because 1974 amendment of TILA specifically to limit damages recoverable in class actions under *15 USCS § 1640(a)(2)* did not prohibit class actions for rescission under *15 USCS § 1635*, which did not pose same economic threat to credit industry as class action damages. *McKenna v First Horizon Home Loan Corp. (2006, DC Mass) 429 F Supp 2d 291.*

Bank's motion for stay pursuant to *Fed. R. Civ. P. 23(f)* was granted because (1) bank was unlikely to prevail on its claim, that class action could not be maintained in suit seeking rescission under Truth in Lending Act, because that claim was based on First Circuit case, First Circuit appeals court had incorrectly relied upon and applied legislative history in concluding that class actions in such suits were barred, and Seventh Circuit appeals court had repeatedly held that class actions could be maintained in TILA actions as long as requirements of *Fed. R. Civ. P. 23* were met; (2) bank was likely to prevail on interlocutory appeal as to its claim that district court erred by defining rescission class too broadly because class included all borrowers who had received loans from bank, but pursuant to *15 USCS § 1635(e)(1)*,

(2), district court should have included only those borrowers who refinanced loan with bank as different lender or who refinanced prior loan from bank, but secured it with different collateral; and (3) irreparable harm that bank would suffer, if stay was not granted, was greater than harm to some potential class members, who might lose their right to seek rescission under *15 USCS § 1635(f)* if applicable three-year time period expired before bank's interlocutory appeal was decided. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 474 F Supp 2d 1006.*

**Unpublished Opinions**

Unpublished: In borrower's putative class action against mortgage company for alleged violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., mortgage company was entitled to strike borrower's request for rescission under *15 USCS § 1635(b)* on class wide basis; however, because there was at least possibility that mortgage company would be proper party to rescission of borrower's individual loan, mortgage company was not entitled to strike borrower's request for rescission on individual basis. *Amparan v Plaza Home Mortg. (2008, ND Cal) 2008 US Dist LEXIS 109148.*

**42. Statute of limitations**

One-year period of limitations contained in *15 USCS § 1640(e)* applies only to actions to enforce § 1640 rights, and action for rescission under *15 USCS § 1635* is not subject to such one-year period of limitations. *Littlefield v Walt Flanagan & Co. (1974, CA10 Colo) 498 F2d 1133.*

Even if equitable tolling applied to toll statute of limitations on consumers' claim against contractor for rescission of contract to purchase house under *15 USCS § 1635*, it would be tolled only until consumers discovered contractor's second mortgage on their home, which was discovered much earlier than 3 days before rescission action was filed, and, thus, claims were dismissed for lack of jurisdiction. *Diehl v ACRI Co. (1995, CD Ill) 910 F Supp 439.*

Lender's failure to rescind is separate violation of Truth in Lending Act (TILA), subject to three-year statute of limitations, *15 USCS § 1635(f)*; however, TILA violations that are subject to one year statute of limitations, *15 USCS § 1640(e)*, cannot be overcome merely by linking them to rescission claim. *Jenkins v Mercantile Mortg. Co. (2002, ND Ill) 231 F Supp 2d 737* (criticized in *Payton v New Century Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366).*

Mortgage lender, its assignee, and loan servicer were entitled to summary judgment on borrower's claims for statutory damages for alleged violations of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., as amended by Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 USCS §§ 1602(aa), 1639*, because damage claims for violations of TILA and HOEPA were barred by TILA's one-year statute of limitations as was set forth in *15 USCS § 1640(e)*; borrower's argument that if she was entitled to three-year right to rescind loan because of violations under *15 USCS § 1635*, then she would also be allowed, in seeking rescission, to preserve her damage claims even though they would be time-barred if they stood alone lacked merit because both language and legislative history of § 1635(g) supported notion that § 1635(g) was not intended to alter one-year statute of limitations for TILA damage claims. *Brown v Nationscredit Fin. Servs. Corp. (2005, ND Ill) 349 F Supp 2d 1134.*

Truth in Lending Act claim was barred by one-year statute of limitations of *15 USCS § 1640(e)* because limitations period was triggered when 20 days elapsed and defendant lender failed to respond to plaintiff borrower's recission notice and each unsuccessful contact regarding his ignored recission notice id not renew limitations period. *Percival v Am. Home Mortg. Corp. (2007, ND Tex) 469 F Supp 2d 409.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r*, on grounds that request was time barred, summary judgment was not appropriate because borrowers had established issue of material fact as to whether they received properly completed notices of their right to rescind. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Even assuming plaintiff had three-year right to rescind, because she did not exercise that right within three years of entering refinancing agreement, and because equitable tolling did not apply to *15 USCS § 1635(f)*, her claim pursuant to

§ 1635(f) was meritless. *Roach v Option One Mortg. Corp. (2009, ED Va) 598 F Supp 2d 741,* injunction den (2009, ED Va) *2009 US Dist LEXIS 11262.*

Mortgagors' request for rescission of loan transaction was time-barred under *15 USCS § 1635(f)* where they had filed lawsuit against mortgagee more than five years after date they obtained loan and were provided Truth in Lending Act, *15 USCS §§ 1601* et seq., disclosure statement. *Thielen v GMAC Mortg. Corp. (2009, ED Mich) 671 F Supp 2d 947.*

Although mortgage borrower's rescission claim against her first mortgage lender was time-barred, her rescission claim against her second mortgage lender was timely; limitations period on rescission claim against second lender began to run on April 15, 2004, and ended on April 15, 2005; because borrower filed suit on March 30, 2005, her rescission claim against second mortgage lender was not time-barred. *Johnson v Long Beach Mortg. Loan Trust 2001-4 (2006, DC Dist Col) 451 F Supp 2d 16.*

**Unpublished Opinions**

Unpublished: Plaintiff sent defendants letter asserting her right to rescission under Truth in Lending Act (TILA), on September 17, 2004, exactly three years and six months after closing on her loan; because this fell outside three-year time limit, *15 USCS § 1635(f)*, her TILA claim was barred. *Johnson v Mortgage Elec. Registration Sys. (2007, CA11 Ga) 2007 US App LEXIS 25247.*

Unpublished: Borrowers did not file their adversary action until more than three years after they closed their loan and *15 USCS § 1635(f)* completely extinguished right of rescission at end of 3-year period; although borrowers argued in bankruptcy court that three-year period should have been tolled based on class action litigation against mortgage company, they did not raise this argument on appeal and, consequently they failed to show that doctrine of legal tolling was applicable. *Dye v Ameriquest Mortg. Co. (2008, CA7 Wis) 2008 US App LEXIS 17599.*

Unpublished: District court did not evaluate whether defendants' failure to timely rescind mortgage transaction amounted to separate violation of *15 USCS § 1635(b)*, which was actionable under *15 USCS § 1640(a)*; because borrower filed her Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., action within one year of date she exercised her statutory right to rescind, her claim was not time barred. *Frazile v EMC Mortg. Corp. (2010, CA11 Fla) 2010 US App LEXIS 11931.*

**43. Defenses**

Under *15 USCS § 1635(f)*, borrower's right of rescission is completely extinguished at end of 3-year period--and may not be asserted as affirmative defense in collection action brought by lender more than 3 years after consummation of transaction--because (1) § 1635(f) contains uncompromising provision that borrower's right of rescission "shall expire" with running of time, (2) Truth in Lending Act (*15 USCS §§ 1601* et seq.) gives borrower no express permission to assert right of rescission as affirmative defense after expiration of 3-year period, and (3) statutory right of rescission could cloud lender's title on foreclosure, which risk Congress may well have chosen to circumscribe, while permitting borrower's recovery of damages regardless of date collection action may be brought. *Beach v Ocwen Fed. Bank (1998) 523 US 410, 140 L Ed 2d 566, 118 S Ct 1408, 98 CDOS 2943, 98 Daily Journal DAR 4023, 1998 Colo J C A R 1913, 11 FLW Fed S 470.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r*, because they knowingly and intentionally doubled their income level on income loan application, summary judgment was not appropriate because there was at least question of material fact as to inflated income levels stated in loan documents and whether borrowers acted in inequitable manner. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending

Act, *15 USCS §§ 1601-1693r*, because they were unable to pay principal of loan, summary judgment was not appropriate because neither party had provided court with dollar amount representing borrowers' remaining obligation after valid rescission, and borrowers had not had opportunity to submit evidence to court regarding their ability to repay that remaining obligation. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Because plaintiffs had refinanced their loan they could not under Truth in Lending Act (TILA), *15 USCS § 1635* rescind their original loan with lender. *Monaco v Bear Stearns Residential Mortg. Corp. (2008, CD Cal) 554 F Supp 2d 1034.*

Where creditor obtained state court foreclosure judgment against Chapter 13 debtor, debtor's claim for rescission of mortgage under Truth in Lending Act was stricken as barred by Rooker-Feldman doctrine because rescission relief sought by debtor was inextricably intertwined with state court foreclosure judgment. *Randall v Bank One Nat'l Ass'n (In re Randall) (2006, BC ED Pa) 358 BR 145.*

Rooker-Feldman doctrine deprived court of subject matter jurisdiction and barred claim by Chapter 13 debtors under Truth in Lending Act, *15 USCS §§ 1601* et seq., seeking rescission as remedy because foreclosure judgment had previously been entered in state court pursuant to stipulation signed by debtors' attorney. *Dougal v Saxon Mortg. (In re Dougal) (2008, BC WD Pa) 395 BR 880.*

Although right to rescind terminated 3 years after consummation of transaction, original demand for rescission became defense of recoupment. *Dawe v Merchants Mortg. & Trust Corp. (1984, Colo) 683 P2d 796* (criticized in *Beach v Ocwen Fed. Bank (1998) 523 US 410, 140 L Ed 2d 566, 118 S Ct 1408, 98 CDOS 2943, 98 Daily Journal DAR 4023, 1998 Colo J C A R 1913, 11 FLW Fed S 470).*

**44. Dismissals**

Action under Consumer Credit Protection Act was improperly dismissed where insufficient facts had been presented to court to enable it to determine factual question as to whether, for purposes of rescission provision of Act (*15 USCS § 1635*), purchaser had purchased real estate which was used or expected to be used as principal residence. *Sarter v Mays (1974, CA5 Ala) 491 F2d 675.*

Where district court dismissed borrowers' Truth In Lending Act, *15 USCS §§ 1601-1667f*, claim against mortgage company for failure to state claim, dismissal was reversed and case was remanded; district court erred in finding that Lock-in Agreement addressed only refund of $ 400 lock-in fee before closing, and so was not inconsistent with rescission right set out in Notice of Right to Cancel. Jones v E**Trade Mortg. Corp. (2005, CA9 Cal) 397 F3d 810.*

By enacting § 125(f) of Truth in Lending Act (*15 USCS § 1635(f)*) Congress did not merely limit time period within which right to rescission could be asserted, but actually limited to 3 years existence of right itself so that where plaintiff failed to bring action for rescission within 3 years after she acquired right to rescind, case had to be dismissed for lack of subject matter jurisdiction. *Jamerson v Miles (1976, ND Tex) 421 F Supp 107.*

Mobile home purchasers' suit against bank is summarily dismissed, where bank lent purchasers money to have mobile home installed on their real property, because 3-day rescission right, which bank allegedly failed to disclose to purchasers, does not apply to loan for predominant purpose of enabling borrower to acquire or erect new residential structure. *Heuer v Forest Hill State Bank (1989, DC Md) 728 F Supp 1199.*

Even if equitable tolling applied to toll statute of limitations on consumers' claim against contractor for rescission of contract to purchase house under *15 USCS § 1635*, it would be tolled only until consumers discovered contractor's second mortgage on their home, which was discovered much earlier than 3 days before rescission action was filed, and, thus, claims were dismissed for lack of jurisdiction. *Diehl v ACRI Co. (1995, CD Ill) 910 F Supp 439.*

Because discovery had not begun, district court found that it was premature to dismiss mortgagors' Truth in

Lending Act, *15 USCS §§ 1601* et seq., claim against one mortgage company based on its contention that it could not be held liable as it was only assignee of mortgage. *Polis v Am. Liberty Fin., Inc. (2002, SD W Va) 237 F Supp 2d 681.*

Refinancing borrowers' failure to provide bank notice of their request for rescission as required under *15 USCS § 1635* before filing their Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., complaint did not require dismissal because filing of TILA claim itself satisfied § 1635's notice requirement. *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26* (criticized in *Morris v Wachovia Sec., Inc. (2004, ED Va) 223 FRD 284, 59 FR Serv 3d 169)* and (criticized in *Bell v Ameriquest Mortg. Co. (2004, ND Ill) 2004 US Dist LEXIS 24289)* and (criticized in *Murry v America's Mortg. Banc, Inc. (2005, ND Ill) 2005 US Dist LEXIS 11751).*

Mortgage company's motion to dismiss homeowner's claim that it violated Truth in Lending Act by not taking steps to rescind loan transaction as required under *15 USCS § 1635* was denied where company had failed to provide homeowner with rescission statement, take steps toward releasing its security interest in home, and conditioned its rescission on homeowner's return of loan money. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Mortgage servicer's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' complaint alleging that mortgage servicer failed to provide all material disclosures required by *15 USCS § 1639(a)* and that borrowers timely rescinded transaction was denied because, although mortgage servicer did not have any involvement in initial mortgage transaction and therefore did not have any responsibility to provide disclosures at that time, complaint could support reasonable inference that mortgage servicer was, at least in part, responsible for decisions regarding rescission of transaction pursuant to *15 USCS § 1635(a). Smith v Argent Mortg. Co. LLC (2006, DC Colo) 447 F Supp 2d 1200.*

Mortgage company was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's claim for rescission under *15 USCS § 1635(a)* of Truth in Lending Act, *15 USCS §§ 1601* et seq., because borrowers had refinanced and deed of trust securing their loan had been reconveyed. *Velazquez v GMAC Mortg. Corp. (2008, CD Cal) 605 F Supp 2d 1049.*

Notably absent from mortgagor's complaint was any allegation that he attempted to tender, or was capable of tendering, value of property pursuant to rescission framework established by Truth in Lending Act (TILA), *15 USCS § 1635*. Nor did mortgagor allege that such equitable circumstances existed that conditioning rescission on any tender would have been inappropriate; therefore, mortgagor failed to adequately allege that he was entitled to rescission under *TILA. Reyes v Premier Home Funding, Inc. (2009, ND Cal) 640 F Supp 2d 1147.*

Allegations of disclosure violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., brought by Chapter 13 debtors, could not be dismissed on pleadings because debtors had to be given opportunity to rebut presumption of delivery of disclosures, and their allegation of non-receipt of required documents could not be dismissed via motion to dismiss. *Hopkins v First NLC Fin. Servs. (In re Hopkins) (2007, BC ED Pa) 372 BR 734.*

Where Chapter 13 debtors alleged that it had right to rescind loan under Truth in Lending Act, *15 USCS §§ 1601* et seq., due to disclosure violations, but that loan originator and assignee failed to honor their request to rescind loan, claims survived motion to dismiss because they sufficiently asserted claim for recission and for damages that conceivably could entitle them to recovery. *Hopkins v First NLC Fin. Servs. (In re Hopkins) (2007, BC ED Pa) 372 BR 734.*

Trial court correctly denied defendant's motion to strike motion to dismiss his counterclaim based on allegations that plaintiff failed to notify him of right under *15 USCS § 1635* to rescind contract, where mere allegation in defendant's motion to strike is insufficient to rebut presumption of notice evidenced by receipt signed by defendant acknowledging he had received 2 copies of notice, although affidavit of nondelivery from defendant would have sufficed to create material issue of fact. *Award Lumber & Constr. Co. v Humphries (1982, 1st Dist) 110 Ill App 3d 119, 65 Ill Dec 676, 441 NE2d 1190.*

**45. Summary judgment**

District court did not err when it granted summary judgment to lender and bank on borrowers claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., that their loan was not consummated on January 26, 1999, since loan was conditioned on appraisal review because document relied upon by borrowers clearly informed them that despite fact that loan was conditioned on satisfactory appraisal, loan was consummated; therefore, appraisal review notwithstanding, borrowers became contractually obligated when loan documents were executed on January 26, 1999, and rescission period expired three days later. *Gaona v Town & Country Credit (2003, CA8 Minn) 324 F3d 1050.*

District court properly granted summary judgment for lender's assignee in plaintiffs' suit to rescind loan under *15 USCS § 1635(b)* of Truth in Lending Act (TILA), even though district court found triable issue of fact as to whether plaintiffs had received required TILA disclosures, as plaintiffs were unable to tender loan proceeds; district court had discretion to modify sequence of rescission events to assure that plaintiffs could meet their obligations should rescission be warranted. *Yamamoto v Bank of N.Y. (2003, CA9 Hawaii) 329 F3d 1167, 2003 CDOS 4481, 2003* Daily Journal DAR 5722, cert den *(2004) 540 US 1149, 157 L Ed 2d 1042, 124 S Ct 1146.*

Congressional policy, as expressed in *15 USCS § 1635(c)*, precludes granting defendant creditor summary judgment on basis of receipt acknowledgement alone, where plaintiffs deny by affidavit that they received disclosures required by Act; where plaintiffs' affidavits rebut defendant's protestations of delivery, court cannot conclude that there is no genuine issue as to fact of delivery which would entitle defendant to summary judgment as matter of law. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

In action brought under Consumer Credit Protection Act of 1968 (*15 USCS § 1601* et seq.) alleging failure of defendant creditors to give financial disclosure statement required by Regulation Z (*12 CFR 226.1* et seq.), failure of plaintiffs to controvert by affidavit their receipt of financial disclosure statement as indicated by their signature on loan document entitled defendants to summary judgment as to issue of such receipt. *Whitlock v Midwest Acceptance Corp. (1977, ED Mo) 76 FRD 190, 24 FR Serv 2d 463,* revd on other grounds (1978, CA8 Mo) *575 F2d 652.*

Court denies creditor's motion for partial summary judgment in rescission action despite debtor's failure to tender amount of loan as condition to rescission in view of factual question whether debtor enjoyed benefit of loan proceeds. *City Consumer Servs. v Horne (1984, DC Utah) 578 F Supp 283.*

Claim for rescission of loan under *15 USCS § 1635* will not be denied summarily, where borrower asserts failure to include as part of finance charge payment of $ 1,273.27 for purchase of credit life insurance, because genuine issues of fact remain as to whether (1) borrower willingly chose to purchase insurance, and (2) term of loan was properly disclosed. *Williams v Central Money Co. (1997, DC Dist Col) 974 F Supp 22,* motions ruled upon (1997, DC Dist Col) *974 F Supp 17.*

Homeowners' claim that they did not receive two copies of right to rescind mortgage loan agreement, together with lender's evidence that standard procedure was provided, precluded summary judgment on homeowners' claim that they were entitled to rescind loan agreement under *15 USCS § 1635(f). Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

In homeowners' suit alleging that mortgage assignee was liable for rescission of original lender's loans and statutory damages, mortgage assignee was not entitled to summary judgment, because material facts regarding delivery of two copies of Notice of Right to Cancel Form were in dispute. *Cooper v First Gov't Mortg. & Investors Corp. (2002, DC Dist Col) 238 F Supp 2d 50.*

Because bank did not wrongfully refuse to rescind plaintiffs' loan, plaintiffs' claim under *15 USCS § 1635* for failing to clearly and conspicuously inform them of their right to cancel, failed; therefore, bank was entitled to summary judgment on issue. *Barrett v Bank One, N.A. (2007, ED Ky) 511 F Supp 2d 836.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending

Act, *15 USCS §§ 1601-1693r*, because assignee no longer held that mortgage, summary judgment was not appropriate because borrowers had at least established issue of material fact as to whether assignee was actual lender instead of only current loan servicer. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Where mortgage borrowers sought rescission under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r*, on basis that they were given copies of notice of right to cancel form that incorrectly stated date of consummation of loan transaction, and assignee of mortgage claimed that forms in loan file showed handwritten corrections to date of consummation, summary judgment was not appropriate because there was material issue of fact as to whether violation that borrowers were claiming would have been apparent to reasonable person on face of documents in loan file. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Bankruptcy court concludes that creditor and debtor entered into only one transaction for purposes of "regularity" requirement and it followed that creditor was not "creditor" under *15 USCS § 1635*; creditor was entitled to summary judgment, pursuant to *Fed. R. Civ. P. 56*; *Fed. R. Bankr. P. 7056*, as matter of law as to debtor's first and second claims for relief. *Sticka v Geller (In re Stratton) (2003, BC DC Or) 299 BR 616.*

In action seeking foreclosure of mortgage because of homeowner's failure to make required payments, there was sufficient conflicting evidence as to circumstances involving notice of right to rescind (under *15 USCS § 1635*), so as to warrant denial of motion for summary judgment, where although homeowner claimed that he had never received notice and that signature contained on notice was forgery, corporation's depositions showed that notices were always mailed to customers and that notice had been mailed in present case. *Gillis v Fisher Hardware Co. (1974, Fla App D1) 289 So 2d 451.*

**Unpublished Opinions**

Unpublished: Rescission was not proper under *15 USCS § 1635* where (1) bank objected to service of process in its answer and thus did not waive its objections to insufficient service of process and jurisdiction, (2) consumers were estopped from seeking judicial enforcement of alleged cancellation of loan transaction where, at their behest, court of competent jurisdiction necessarily found that subject transaction had not been rescinded and was in full force and effect, and (3) even if fully executed notice of cancellation had been delivered as alleged, delivery was defective and could not have served as basis for judicial enforcement. *Brown v Chevy Chase Bank, FSB (2005, CA11 Ga) 137 Fed Appx 278*, cert den (2005, US) *126 S Ct 754, 163 L Ed 2d 587.*

**46. Election of remedies**

Remedy of rescission under *15 USCS § 1635(a)* is not inconsistent with recovery under *15 USCS § 1640*, and it is unnecessary for litigant to make election of remedies so as to be limited to remedies under either § 1635 or § 1640; request for relief under both sections is addressed to court's sense of equity and may properly be denied in appropriate cases; and it was not abuse of equitable discretion to grant relief under both sections where creditor had failed to make required disclosures of credit terms. *Eby v Reb Realty (1974, CA9 Ariz) 495 F2d 646, 28 ALR Fed 539.*

Although plaintiff may seek both damages under *15 USCS § 1640* and rescission under *15 USCS § 1630* and need not elect between these remedies, court which grants both remedies may condition granting of rescission on plaintiff's compliance with court's order to tender to defendant lender principal of loan which plaintiff had received, and where District Court apparently was unaware of its equitable power to impose such condition, judgment in favor of plaintiff would be vacated and case would be remanded by Court of Appeals, so that District Court could consider propriety of conditioning grant of rescission upon plaintiff's repayment. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Where notice provisions of Truth In Lending Act are violated, relief consisting of both rescission under *15 USCS § 1635* and monetary award under *15 USCS § 1640* is appropriate. *Sellers v Wollman (1975, CA5 La) 510 F2d 119, 29*

*ALR Fed 899.*

Remedies provided by *15 USCS §§ 1635, 1640* are not mutually exclusive and consumer may be entitled to both rescission pursuant to § 1635 and damages pursuant to § 1640. *Gerasta v Hibernia Nat'l Bank (1978, CA5 La) 575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Since double damages under *15 USCS § 1640* and rescission pursuant to *15 USCS § 1635(b)* are not mutually exclusive remedies, obligors did not foreclose their right to double damages by seeking rescission as each remedy serves different purpose. *Mitchell v Security Inv. Corp. (1979, SD Fla) 464 F Supp 650.*

**47. Attorney's fees and costs**

Attorney's fees would not be awarded to debtor suing for rescission under § 125 since § 125 makes no provision for award of attorney's fee and attorney's fees are not ordinarily recoverable by prevailing litigant in federal litigation in absence of statutory authorization. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899).*

Attorneys' fees are not ordinarily recoverable by prevailing litigant in federal litigation in absence of statutory authorization, and *15 USCS § 1635* contains no provision for award of attorneys' fees. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899).*

Debtor's failure to abide by requirements of *15 USCS § 1635(a)* renders him liable to homeowner under *15 USCS § 1640(a)(2)(A)(i)* in amount equal to twice finance charge imposed under contract and under *15 USCS § 1640(a)(3)* to reasonable attorney fee. *In re Snyder (1982, BC ED Tenn) 22 BR 29.*

Debtor was entitled to costs and attorney's fees in truth in lending action, pursuant to *15 USCS § 1640(a)(3)* where court determined that debtor had right of rescission under *15 USCS § 1635. Webster v Centex Home Equity Corp. (In re Webster) (2003, BC WD Okla) 300 BR 787* (criticized in *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602).*

Borrowers were not entitled to recover attorneys' fees as result of creditor's violation of *15 USCS § 1635* by failing to adequately disclose right of rescission where creditor readily admitted obligations under Truth in Lending Act and withheld foreclosure for several months pending borrowers' futile efforts to obtain financing to repay principal, borrowers' counterclaim was brought more than one year after transaction, and borrowers were not successful in their counteraction against creditor. *Nietert v Citizens Bank & Trust Co. (1978) 263 Ark 251, 565 SW2d 4,* cert den *(1978) 439 US 965, 58 L Ed 2d 424, 99 S Ct 453.*

**48. Miscellaneous**

Requirements of res judicata under P.R. Laws Ann. tit. 31, § 3343 were satisfied because state-court judgment against individual was final and unappealable; state and federal actions arose out of common nucleus of operative fact and pertained to common subject matter, and parties in federal action were, for all practical purposes, identical to parties in state action; therefore, prior judgment precluded individual from asserting his present rescission claim under federal Truth in Lending Act against companies. *R.G. Fin. Corp. v Vergara-Nunez (2006, CA1 Puerto Rico) 446 F3d 178.*

Court rejected individual's claim that window for asserting his rescission right under Truth in Lending Act (TILA) remained open because events other than expiration of three-year period or sale of encumbered property could cut off debtor's right of rescission; therefore, because ordinary preclusion principles continued to operate in TILA milieu and those principles could hasten demise of debtor's TILA-based right of rescission, earlier foreclosure judgment extinguished individual's TILA right of rescission. *R.G. Fin. Corp. v Vergara-Nunez (2006, CA1 Puerto Rico) 446 F3d*

*178.*

Seventh Circuit rejected defendants' argument that, even if mortgagee had violated its disclosure obligations under *15 USCS § 1635(a)*, rescission of plaintiff's mortgage loan was inappropriate and/or impossible remedy because loan had already been paid in full, because (1) remedies provided for in *15 USCS §§ 1635, 1640*, remained available to plaintiff, even though loan had been paid off, (2) plaintiff's right to rescission under *15 USCS § 1635* encompassed right to return to status quo that existed before loan, which meant unwinding transaction in its entirety and returning plaintiff to position that she occupied before she accepted mortgage loan, and (3) not only did parties have to return everything they received from each other on mortgage closing date, but defendants also had to release whatever security interest they might have asserted in mortgagee's property, they had to reimburse plaintiff for interest that she paid while loan was outstanding, and defendants might also be liable for statutory damages and attorneys' fees pursuant to *15 USCS § 1640(a)(2)(A)(iii)*, (a)(3). *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760.*

TILA is primarily disclosure statute that does not require consumer to suffer actual prejudice to bring action, and whether consumer is entitled to rescind transaction depends on whether she received clear notice of her right to rescission under *15 USCS § 1635*, not whether she actually was prejudiced by any ambiguity in lending agreement. *Williams v Empire Funding Corp. (2000, ED Pa) 109 F Supp 2d 352.*

If after 20 days set forth in *12 C.F.R. § 226.23* expires, creditor indicates that it will not comply with *15 USCS § 1635*, consumer has right to sue then and there even if creditor may have begun process of rescinding loan transaction. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Where mortgagors notified business that they were rescinding loan due to alleged violations of Truth In Lending Act (TILA), but default had been entered against mortgagors in foreclosure action, businesses were entitled to judgment on pleadings and, in turn, declaratory judgment that all issues addressed in foreclosure action were res judicata and that, because mortgagors did not raise TILA claims as compulsory counterclaims, P.R. R. Civ. P. 11.1, in foreclosure action, mortgagors were collaterally estopped from pursuing any TILA claims arising from loan transaction. *R-G Fin. Corp. v Vergara-Nunez (2005, DC Puerto Rico) 381 F Supp 2d 1.*

Bankruptcy court judge was aware of debtor's contentions and decided that, because debtor's rescission claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was disputed and had not been resolved in his favor, mortgage lien remained effective and nothing warranted reconsideration of order granting relief; because that decision was not clearly erroneous as matter of law and did not constitute abuse of discretion, company's motion to dismiss was allowed and debtor's appeal of denial of his motion for reconsideration was dismissed. *Augustin v Chase Home Fin., LLC (2008, DC Mass) 383 BR 359.*

Lender's disclosure for purposes of Truth in Lending Act, *15 USCS §§ 1601-1666j*, which borrower had signed, showed annual percentage rate and monthly payments increasing annually for loan's life, three-day right to cancel, and good faith estimate; thus, record suggested that borrower's TILA violation claims were dubious at best, she failed to demonstrate likelihood of success on merits of her claims, and court agreed with lender and holder of deed of trust that action and motion for preliminary injunctive relief were transparent attempt to stall foreclosure. *Alcaraz v Wachovia Mortg. FSB (2009, ED Cal) 592 F Supp 2d 1296.*

District court rejected contention that homeowner's complaint seeking rescission under *15 USCS § 1635(b)* was deficient for failure to plead ability to tender loan proceeds because under applicable case law, district court lacked discretion at pleading stage to require Truth in Lending Act, *15 USCS §§ 1601* et seq., plaintiffs to allege present ability to tender. *Botelho v U.S. Bank, N.A. (2010, ND Cal) 692 F Supp 2d 1174.*

Where mortgage creditor failed to object to confirmation of Chapter 13 plan that included provision declaring mortgage transaction rescinded by reason of Truth in Lending Act violations, confirmation of plan had res judicata effect and entitled debtors to partial summary judgment that mortgage was rescinded and void; rescission provision

served as notice to creditor that debtors were exercising their right to rescind. *Bilal v Household Fin. Corp. (In re Bilal) (2003, BC DC Kan) 296 BR 828.*

"Remedy-based" focus of Rooker-Feldman doctrine compelled conclusion that court lacked jurisdiction over debtors' request for judicial enforcement of their rescission of mortgage, even though they first exercised right to rescind after entry of state court foreclosure judgment; regardless when alleged right of rescission demand was exercised, remedy requested by debtors in federal court included invalidation of mortgage which was subject of state court foreclosure judgment, that judgment being "dependent upon existence of valid mortgage." *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541.*

Entry of money judgment for civil penalty under Truth in Lending Act (TILA) was not "inextricably intertwined" with state foreclosure judgment because creditor's rights under foreclosure judgment (i.e., mortgage's validity and right to foreclose) were not impaired if money judgment was entered against creditor for violating TILA; viewed in its proper context, debtors' affirmative TILA damages claim for failure to rescind was relatively insignificant compared to other TILA rescission remedies (and as to which court lacked jurisdiction), and in interest of justice, and in interest of comity with state courts, court abstained from hearing debtors' claim for TILA damages. *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541.*

**Unpublished Opinions**

Unpublished: District court properly found that, even assuming plaintiffs' testimony that they did not receive two copies of "Notice of Right to Cancel" at closing was credible, they would not have been able to rescind mortgage obligation because they were unable to return money defendant mortgage company advanced to them in reliance on their performance under contract. *Jobe v Argent Mortg. Co., LLC (2010, CA3 Pa) 2010 US App LEXIS 6961.*

24 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1636*

§ 1636. [Repealed]

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

This section (Act May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 126, 82 Stat. 153) was repealed by Act March 31, 1980, P.L. 96-221, Title VI, § 614(e)(1), 94 Stat. 180, effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note. It provided for content of periodic statements.

25 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1637*

§ 1637. Open end consumer credit plans [Caution: See prospective amendment note below.]

(a) Required disclosures by creditor. Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period. If no such time period is provided, the creditor shall disclose such fact.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the Board.

(6) In cases where the credit is or will be secured, a statement that a security interest has been or will be taken in (A) the property purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(7) A statement, in a form prescribed by regulations of the Board of the protection provided by sections 161 and 170 [*15 USCS §§ 1666* and *1666i*] to an obligor and the creditor's responsibilities under sections 162 and 170 [*15 USCS §§ 1666a* and *1666i*]. With respect to one billing cycle per calendar year, at intervals of not less than six months or more than eighteen months, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to section 127(b) [subsec. (b) of this section] for such billing cycle.

(8) In the case of any account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, any information which--

(A) is required to be disclosed under section 127A(a) [*15 USCS § 1637a(a)*]; and

(B) the Board determines is not described in any other paragraph of this subsection.

(b) Statement required with each billing cycle. The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and a brief identification, on or accompanying the statement of each extension of credit in a form prescribed by the Board sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished, except that a creditor's failure to disclose such information in accordance with this paragraph shall not be deemed a failure to comply with this chapter [*15 USCS §§ 1631* et seq.] or this *title [15 USCS §§ 1601* et seq.] if (A) the creditor maintains procedures reasonably adapted to procure and provide such information, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 161 [*15 USCS § 1666*]. In lieu of complying with the requirements of the previous sentence, in the case of any transaction in which the creditor and seller are the same person, as defined by the Board, and such person's open end credit plan has fewer than 15,000 accounts, the creditor may elect to provide only the amount and date of each extension of credit during the period and the seller's name and location where the transaction took place if (A) a brief identification of the transaction has been previously furnished, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 161 [*15 USCS § 1666*].

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 107(a)(2) [*15 USCS § 1606(a)(2)*]) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 107(a)(2) [*15 USCS § 1606(a)(2)*]), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(8) The outstanding balance in the account at the end of the period.

(9) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(10) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

(11) (A) A written statement in the following form: "Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance.", or such similar statement as is established by the Board pursuant to consumer testing.

(B) Repayment information that would apply to the outstanding balance of the consumer under the credit plan, including--

(i) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments and if no further advances are made;

(ii) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the

consumer pays only the required minimum monthly payments and if no further advances are made;

(iii) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and

(iv) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

(C) (i) Subject to clause (ii), in making the disclosures under subparagraph (B), the creditor shall apply the interest rate or rates in effect on the date on which the disclosure is made until the date on which the balance would be paid in full.

(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date.

(D) All of the information described in subparagraph (B) shall--

(i) be disclosed in the form and manner which the Board shall prescribe, by regulation, and in a manner that avoids duplication; and

(ii) be placed in a conspicuous and prominent location on the billing statement.

(E) In the regulations prescribed under subparagraph (D), the Board shall require that the disclosure of such information shall be in the form of a table that--

(i) contains clear and concise headings for each item of such information; and

(ii) provides a clear and concise form stating each item of information required to be disclosed under each such heading.

(F) In prescribing the form of the table under subparagraph (E), the Board shall require that--

(i) all of the information in the table, and not just a reference to the table, be placed on the billing statement, as required by this paragraph; and

(ii) the items required to be included in the table shall be listed in the order in which such items are set forth in subparagraph (B).

(G) In prescribing the form of the table under subparagraph (D), the Board shall employ terminology which is different than the terminology which is employed in subparagraph (B), if such terminology is more easily understood and conveys substantially the same meaning.

(12) Requirements relating to late payment deadlines and penalties.

(A) Late payment deadline required to be disclosed. In the case of a credit card account under an open end consumer credit plan under which a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment, the periodic statement required under subsection (b) with respect to the account shall include, in a conspicuous location on the billing statement, the date on which the payment is due or, if different, the date on which a late payment fee will be charged, together with the amount of the fee or charge to be imposed if payment is made after that date.

(B) Disclosure of increase in interest rates for late payments. If 1 or more late payments under an open end consumer credit plan may result in an increase in the annual percentage rate applicable to the account, the statement required under subsection (b) with respect to the account shall include conspicuous notice of such fact, together with the applicable penalty annual percentage rate, in close proximity to the disclosure required under subparagraph (A) of the date on which payment is due under the terms of the account.

(C) Payments at local branches. If the creditor, in the case of a credit card account referred to in subparagraph (A), is a financial institution which maintains branches or offices at which payments on any such account are accepted from the obligor in person, the date on which the obligor makes a payment on the account at such branch or office shall be considered to be the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment.

(c) Disclosure in credit and charge card applications and solicitations.

(1) Direct mail applications and solicitations.

(A) Information in tabular format. Any application to open a credit card account for any person under an open end consumer credit plan, or a solicitation to open such an account without requiring an application, that is mailed to consumers shall disclose the following information, subject to subsection (e) and section 122(c) [*15 USCS § 1632(c)*]:

(i) Annual percentage rates.

(I) Each annual percentage rate applicable to extensions of credit under such credit plan.

(II) Where an extension of credit is subject to a variable rate, the fact that the rate is variable, the annual percentage rate in effect at the time of the mailing, and how the rate is determined.

(III) Where more than one rate applies, the range of balances to which each rate applies.

(ii) Annual and other fees.

(I) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of a credit card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(II) Any minimum finance charge imposed for each period during which any extension of credit which is subject to a finance charge is outstanding.

(III) Any transaction charge imposed in connection with use of the card to purchase goods or services.

(iii) Grace period.

(I) The date by which or the period within which any credit extended under such credit plan for purchases of goods or services must be repaid to avoid incurring a finance charge, and, if no such period is offered, such fact shall be clearly stated.

(II) If the length of such "grace period" varies, the card issuer may disclose the range of days in the grace period, the minimum number of days in the grace period, or the average number of days in the grace period, if the disclosure is identified as such.

(iv) Balance calculation method.

(I) The name of the balance calculation method used in determining the balance on which the finance charge is computed if the method used has been defined by the Board, or a detailed explanation of the balance calculation method used if the method has not been so defined.

(II) In prescribing regulations to carry out this clause, the Board shall define and name not more than the 5 balance calculation methods determined by the Board to be the most commonly used methods.

(B) Other information. In addition to the information required to be disclosed under subparagraph (A), each application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f):

(i) Cash advance fee. Any fee imposed for an extension of credit in the form of cash.

(ii) Late fee. Any fee imposed for a late payment.

(iii) Over-the-limit fee. Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

(2) Telephone solicitations.

(A) In general. In any telephone solicitation to open a credit card account for any person under an open end consumer credit plan, the person making the solicitation shall orally disclose the information described in paragraph (1)(A).

(B) Exception. Subparagraph (A) shall not apply to any telephone solicitation if--

(i) the credit card issuer--

(I) does not impose any fee described in paragraph (1)(A)(ii)(I); or

(II) does not impose any fee in connection with telephone solicitations unless the consumer signifies acceptance by using the card;

(ii) the card issuer discloses clearly and conspicuously in writing the information described in paragraph (1) within 30 days after the consumer requests the card, but in no event later than the date of delivery of the card; and

(iii) the card issuer discloses clearly and conspicuously that the consumer is not obligated to accept the card or account and the consumer will not be obligated to pay any of the fees or charges disclosed unless the consumer elects to accept the card or account by using the card.

(3) Applications and solicitations by other means.

(A) In general. Any application to open a credit card account for any person under an open end consumer credit plan, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall meet the disclosure requirements of subparagraph (B), (C), or (D).

(B) Specific information. An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation contains--

(i) the information--

(I) described in paragraph (1)(A) in the form required under section 122(c) of this chapter [*15 USCS § 1632(c)*], subject to subsection (e), and

(II) described in paragraph (1)(B) in a clear and conspicuous form, subject to subsections (e) and (f);

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that--

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

(C) General information without any specific term. An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation--

(i) contains a statement, in a conspicuous and prominent location on the application or solicitation, that--

(I) there are costs associated with the use of credit cards; and

(II) the applicant may contact the creditor to request disclosure of specific information of such costs by calling a toll free telephone number or by writing to an address, specified in the application;

(ii) contains a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number and a mailing address at which the applicant may contact the creditor to obtain such information; and

(iii) does not contain any of the items described in paragraph (1).

(D) Applications or solicitations containing subsection (a) disclosures. An application or solicitation meets the requirement of this subparagraph if it contains, or is accompanied by--

(i) the disclosures required by paragraphs (1) through (6) of subsection (a);

(ii) the disclosures required by subparagraphs (A) and (B) of paragraph (1) of this subsection included clearly and conspiciously [conspicuously] (except that the provisions of section 122(c) [*15 USCS § 1632(c)*] shall not apply); and

(iii) a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided.

(E) Prompt response to information requests. Upon receipt of a request for any of the information referred to in subparagraph (B), (C), or (D), the card issuer or the agent of such issuer shall promptly disclose all of the information described in paragraph (1).

(4) Charge card applications and solicitations.

(A) In general. Any application or solicitation to open a charge card account shall disclose clearly and conspicuously the following information in the form required by section 122(c) of this chapter [*15 USCS § 1632(c)*], subject to subsection (e):

(i) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of the charge card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(ii) Any transaction charge imposed in connection with use of the card to purchase goods or services.

(iii) A statement that charges incurred by use of the charge card are due and payable upon receipt of a periodic statement rendered for such charge card account.

(B) Other information. In addition to the information required to be disclosed under subparagraph (A), each written

application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f):

(i) Cash advance fee. Any fee imposed for an extension of credit in the form of cash.

(ii) Late fee. Any fee imposed for a late payment.

(iii) Over-the-limit fee. Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

(C) Applications and solicitations by other means. Any application to open a charge card account, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall contain--

(i) the information--

(I) described in subparagraph (A) in the form required under section 122(c) of this chapter [*15 USCS § 1632(c)*], subject to subsection (e), and

(II) described in subparagraph (B) in a clear and conspicuous form, subject to subsections (e) and (f);

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that--

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

(D) Issuers of charge cards which provide access to open end consumer credit plans. If a charge card permits the card holder to receive an extension of credit under an open end consumer credit plan, which is not maintained by the charge card issuer, the charge card issuer may provide the information described in subparagraphs (A) and (B) in the form required by such subparagraphs in lieu of the information required to be provided under paragraph (1), (2), or (3) with respect to any credit extended under such plan, if the charge card issuer discloses clearly and conspicuously to the consumer in the application or solicitation that--

(i) the charge card issuer will make an independent decision as to whether to issue the card;

(ii) the charge card may arrive before the decision is made with respect to an extension of credit under an open end consumer credit plan; and

(iii) approval by the charge card issuer does not constitute approval by the issuer of the extension of credit.

The information required to be disclosed under paragraph (1) shall be provided to the charge card holder by the creditor which maintains such open end consumer credit plan before the first extension of credit under such plan.

(E) Charge card defined. For the purposes of this subsection, the term "charge card" means a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.

(5) Regulatory authority of the Board. The Board may, by regulation, require the disclosure of information in addition to that otherwise required by this subsection or subsection (d), and modify any disclosure of information required by this subsection or subsection (d), in any application to open a credit card account for any person under an open end consumer credit plan or any application to open a charge card account for any person, or a solicitation to open any such account without requiring an application, if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection.

(6) Additional notice concerning "introductory rates".

(A) In general. Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall--

(i) use the term "introductory" in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the

temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c) [*15 USCS § 1632(c)*]), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c) [*15 USCS § 1632(c)*]), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

(B) Exception. Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

(C) Conditions for introductory rates. An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation--

(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate--

(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

(D) Definitions. In this paragraph--

(i) the terms "temporary annual percentage rate of interest" and "temporary annual percentage rate" mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

(ii) the term "introductory period" means the maximum time period for which the temporary annual percentage rate may be applicable.

(E) Relation to other disclosure requirements. Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection

(7) Internet-based solicitations.

(A) In general. In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose--

(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

(ii) the information described in paragraph (6).

(B) Form of disclosure. The disclosures required by subparagraph (A) shall be--

(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

(C) Definitions. For purposes of this paragraph--

(i) the term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

(ii) the term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(8) Applications from underage consumers.

(A) Prohibition on issuance. No credit card may be issued to, or open end consumer credit plan established by or on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

(B) Application requirements. An application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application shall require--

(i) the signature of a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21; or

(ii) submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.

(C) Safe harbor. The Board shall promulgate regulations providing standards that, if met, would satisfy the requirements of subparagraph (B)(ii).

(d) Disclosure prior to renewal.

(1) In general. A card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed or that imposes any fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) shall transmit to a consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account a clear and conspicuous disclosure of--

(A) the date by which, the month by which, or the billing period at the close of which, the account will expire if not renewed;

(B) the information described in subsection (c)(1)(A) or (c)(4)(A) that would apply if the account were renewed, subject to subsection (e); and

(C) the method by which the consumer may terminate continued credit availability under the account.

(2) Short-term renewals. The Board may by regulation provide for fewer disclosures than are required by paragraph (1) in the case of an account which is renewable for a period of less than 6 months.

(3) [Redesignated]

(e) Other rules for disclosures under subsections (c) and (d).

(1) Fees determined on the basis of a percentage. If the amount of any fee required to be disclosed under subsection (c) or (d) is determined on the basis of a percentage of another amount, the percentage used in making such determination and the identification of the amount against which such percentage is applied shall be disclosed in lieu of the amount of such fee.

(2) Disclosure only of fees actually imposed. If a credit or charge card issuer does not impose any fee required to be disclosed under any provision of subsection (c) or (d), such provision shall not apply with respect to such issuer.

(f) Disclosure of range of certain fees which vary by State allowed. If the amount of any fee required to be disclosed by a credit or charge card issuer under paragraph (1)(B), (3)(B)(i)(II), (4)(B), or (4)(C)(i)(II) of subsection (c) varies from State to State, the card issuer may disclose the range of such fees for purposes of subsection (c) in lieu of the amount for each applicable State, if such disclosure includes a statement that the amount of such fee varies from State to State.

(g) Insurance in connection with certain open end credit card plans.

(1) Change in insurance carrier. Whenever a card issuer that offers any guarantee or insurance for repayment of all or part of the outstanding balance of an open end credit card plan proposes to change the person providing that guarantee or insurance, the card issuer shall send each insured consumer written notice of the proposed change not less than 30 days prior to the change, including notice of any increase in the rate or substantial decrease in coverage or service which will result from such change. Such notice may be included on or with the monthly statement provided to the consumer prior to the month in which the proposed change would take effect.

(2) Notice of new insurance coverage. In any case in which a proposed change described in paragraph (1) occurs, the insured consumer shall be given the name and address of the new guarantor or insurer and a copy of the policy or group certificate containing the basic terms and conditions, including the premium rate to be charged.

(3) Right to discontinue guarantee or insurance. The notices required under paragraphs (1) and (2) shall each include a

statement that the consumer has the option to discontinue the insurance or guarantee.

(4) No preemption of State law. No provision of this subsection shall be construed as superseding any provision of State law which is applicable to the regulation of insurance.

(5) Board definition of substantial decrease in coverage or service. The Board shall define, in regulations, what constitutes a "substantial decrease in coverage or service" for purposes of paragraph (1).

(h) Prohibition on certain actions for failure to incur finance charges. A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.

(i) Advance notice of rate increase and other changes required.

(1) Advance notice of increase in interest rate required. In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of an increase in an annual percentage rate (except in the case of an increase described in paragraph (1), (2), or (3) of section 171(b) [*15 USCS § 1666i-1(b)*]) not later than 45 days prior to the effective date of the increase.

(2) Advance notice of other significant changes required. In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of any significant change, as determined by rule of the Board, in the terms (including an increase in any fee or finance charge, other than as provided in paragraph (1)) of the cardholder agreement between the creditor and the obligor, not later than 45 days prior to the effective date of the change.

(3) Notice of right to cancel. Each notice required by paragraph (1) or (2) shall be made in a clear and conspicuous manner, and shall contain a brief statement of the right of the obligor to cancel the account pursuant to rules established by the Board before the effective date of the subject rate increase or other change.

(4) Rule of construction. Closure or cancellation of an account by the obligor shall not constitute a default under an existing cardholder agreement, and shall not trigger an obligation to immediately repay the obligation in full or through a method that is less beneficial to the obligor than one of the methods described in section 171(c)(2) [*15 USCS § 1666i-1(c)(2)*], or the imposition of any other penalty or fee.

(j) Prohibition on penalties for on-time payments.

(1) Prohibition on double-cycle billing and penalties for on-time payments. Except as provided in paragraph (2), a creditor may not impose any finance charge on a credit card account under an open end consumer credit plan as a result of the loss of any time period provided by the creditor within which the obligor may repay any portion of the credit extended without incurring a finance charge, with respect to--

(A) any balances for days in billing cycles that precede the most recent billing cycle; or

(B) any balances or portions thereof in the current billing cycle that were repaid within such time period.

(2) Exceptions. Paragraph (1) does not apply to--

(A) any adjustment to a finance charge as a result of the resolution of a dispute; or

(B) any adjustment to a finance charge as a result of the return of a payment for insufficient funds.

(k) Opt-in required for over-the-limit transactions if fees are imposed.

(1) In general. In the case of any credit card account under an open end consumer credit plan under which an over-the-limit fee may be imposed by the creditor for any extension of credit in excess of the amount of credit authorized to be extended under such account, no such fee shall be charged, unless the consumer has expressly elected to permit the creditor, with respect to such account, to complete transactions involving the extension of credit under such account in excess of the amount of credit authorized.

(2) Disclosure by creditor. No election by a consumer under paragraph (1) shall take effect unless the consumer, before making such election, received a notice from the creditor of any over-the-limit fee in the form and manner, and at the time, determined by the Board. If the consumer makes the election referred to in paragraph (1), the creditor shall provide notice to the consumer of the right to revoke the election, in the form prescribed by the Board, in any periodic

statement that includes notice of the imposition of an over-the-limit fee during the period covered by the statement.

(3) Form of election. A consumer may make or revoke the election referred to in paragraph (1) orally, electronically, or in writing, pursuant to regulations prescribed by the Board. The Board shall prescribe regulations to ensure that the same options are available for both making and revoking such election.

(4) Time of election. A consumer may make the election referred to in paragraph (1) at any time, and such election shall be effective until the election is revoked in the manner prescribed under paragraph (3).

(5) Regulations. The Board shall prescribe regulations--

(A) governing disclosures under this subsection; and

(B) that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees.

(6) Rule of construction. Nothing in this subsection shall be construed to prohibit a creditor from completing an over-the-limit transaction, provided that a consumer who has not made a valid election under paragraph (1) is not charged an over-the-limit fee for such transaction.

(7) Restriction on fees charged for an over-the-limit transaction. With respect to a credit card account under an open end consumer credit plan, an over-the-limit fee may be imposed only once during a billing cycle if the credit limit on the account is exceeded, and an over-the-limit fee, with respect to such excess credit, may be imposed only once in each of the 2 subsequent billing cycles, unless the consumer has obtained an additional extension of credit in excess of such credit limit during any such subsequent cycle or the consumer reduces the outstanding balance below the credit limit as of the end of such billing cycle.

(l) Limit on fees related to method of payment. With respect to a credit card account under an open end consumer credit plan, the creditor may not impose a separate fee to allow the obligor to repay an extension of credit or finance charge, whether such repayment is made by mail, electronic transfer, telephone authorization, or other means, unless such payment involves an expedited service by a service representative of the creditor.

(m) Use of term "fixed rate". With respect to the terms of any credit card account under an open end consumer credit plan, the term "fixed", when appearing in conjunction with a reference to the annual percentage rate or interest rate applicable with respect to such account, may only be used to refer to an annual percentage rate or interest rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account.

(n) Standards applicable to initial issuance of subprime or "fee harvester" cards.

(1) In general. If the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.

(2) Rule of construction. No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.

(o) Due dates for credit card accounts.

(1) In general. The payment due date for a credit card account under an open end consumer credit plan shall be the same day each month.

(2) Weekend or holiday due dates. If the payment due date for a credit card account under an open end consumer credit plan is a day on which the creditor does not receive or accept payments by mail (including weekends and holidays), the creditor may not treat a payment received on the next business day as late for any purpose.

(p) Parental approval required to increase credit lines for accounts for which parent is jointly liable. No increase may be made in the amount of credit authorized to be extended under a credit card account for which a parent, legal guardian, or spouse of the consumer, or any other individual has assumed joint liability for debts incurred by the consumer in

connection with the account before the consumer attains the age of 21, unless that parent, guardian, or spouse approves in writing, and assumes joint liability for, such increase.

(q) [Not enacted]

(r) College card agreements.

(1) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) College affinity card. The term "college affinity card" means a credit card issued by a credit card issuer under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, under which such cards are issued to college students who have an affinity with such institution, organization and--

(i) the creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump sum or 1-time payment of money for access);

(ii) the creditor has agreed to offer discounted terms to the consumer; or

(iii) the credit card bears the name, emblem, mascot, or logo of such institution, organization, or foundation, or other words, pictures, or symbols readily identified with such institution, organization, or foundation.

(B) College student credit card account. The term "college student credit card account" means a credit card account under an open end consumer credit plan established or maintained for or on behalf of any college student.

(C) College student. The term "college student" means an individual who is a full-time or a part-time student attending an institution of higher education.

(D) Institution of higher education. The term "institution of higher education" has the same meaning as in section 101 and 102 of the Higher Education Act of 1965 (*20 U.S.C. 1001* and *1002*).

(2) Reports by creditors.

(A) In general. Each creditor shall submit an annual report to the Board containing the terms and conditions of all business, marketing, and promotional agreements and college affinity card agreements with an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, with respect to any college student credit card issued to a college student at such institution.

(B) Details of report. The information required to be reported under subparagraph (A) includes--

(i) any memorandum of understanding between or among a creditor, an institution of higher education, an alumni association, or foundation that directly or indirectly relates to any aspect of any agreement referred to in such subparagraph or controls or directs any obligations or distribution of benefits between or among any such entities;

(ii) the amount of any payments from the creditor to the institution, organization, or foundation during the period covered by the report, and the precise terms of any agreement under which such amounts are determined; and

(iii) the number of credit card accounts covered by any such agreement that were opened during the period covered by the report, and the total number of credit card accounts covered by the agreement that were outstanding at the end of such period.

(C) Aggregation by institution. The information required to be reported under subparagraph (A) shall be aggregated with respect to each institution of higher education or alumni organization or foundation affiliated with or related to such institution.

(D) Initial report. The initial report required under subparagraph (A) shall be submitted to the Board before the end of the 9-month period beginning on the date of enactment of this subsection [enacted May 22, 2009].

(3) Reports by Board. The Board shall submit to the Congress, and make available to the public, an annual report that lists the information concerning credit card agreements submitted to the Board under paragraph (2) by each institution of higher education, alumni organization, or foundation.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 127, 82 Stat. 153; Oct. 28, 1974, P.L. 93-495, Titles III, §§ 304, 305, Title IV, 411, 415, 88 Stat. 1511, 1519, 1521; March 31, 1980, P.L. 96-221, Title VI, § 613(a)-(e), 94 Stat. 176; Nov. 3, 1988, P.L. 100-583, §§ 2(a), 6, 102 Stat. 2960, 2968; Nov. 23, 1988, P.L. 100-709, § 2(b), 102 Stat. 4729.)

(As amended April 20, 2005, P.L. 109-8, Title XIII, §§ 1301(a), 1303(a), 1304(a), 1305(a), 1306(a), 119 Stat. 204,

209, 211, 212; May 22, 2009, P.L. 111-24, Title I, §§ 101(a)(1), 102(a), 103, 105, 106(a), Title II, §§ 201(a), 202, 203, Title III, §§ 301, 303, 305(a), 123 Stat. 1735, 1738, 1741, 1743, 1745, 1747, 1748, 1749; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The bracketed word "conspicuously" has been inserted in subsec. (c)(3)(D)(ii) as the word probably intended by Congress in the amendment made by Act Nov. 3, 1988, P.L. 100-583, § 2(a).

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1974. Act Oct. 28, 1974 (effective 10/28/74, as provided by § 416 of such Act, which appears as *15 USCS § 1665a* note), in subsec. (a)(1), substituted "(if any)" for ", if any," and inserted the exception; and, in subsec. (b)(10), added the exception.

Such Act further (effective "upon the expiration of one year after" 10/28/74 as provided by §§ 308 and 416 of such Act, which appear as notes to *15 USCS §§ 1666* and 1664a, respectively), added subsec. (a)(8); substituted subsec. (b)(2) for one which read: "The amount and date of each extension of credit during the period, and, if a purchase was involved, a brief identification (unless previously furnished) of the goods or services purchased."; added subsec. (b)(11); substituted subsec. (c) for one which read: "In the case of any open end consumer credit plan in existence on the effective date of this subsection, the items described in subsection (a), to the extent applicable, shall be disclosed in a notice mailed or delivered to the obligor not later than thirty days after that date.".

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), in subsec. (a), para. (1), inserted "If no such time period is provided, the creditor shall disclose such fact.", and deleted former para. (5) which read:

"(5) If the creditor so elects,

"(A) the average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

"(B) whenever circumstances are such that the computation of a rate under subparagraph (A) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan.

The Board shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph.".

Such Act further in subsec. (a) redesignated paras. (6)-(8) as paras (5)-(7), respectively, and substituted new paras. (5) and (6) for redesignated ones, which read:

"(5) The conditions under which any other charges may be imposed, and the method by which they will be determined.

"(6) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.".

Such Act further in subsec. (a) in para. (7), as redesignated, substituted "one billing cycle per calendar year at intervals of not less than six months or more than eighteen months" for "each of two billing cycles per year, at semiannual intervals"; in subsec. (b), substituted para. (2) for former one which read: "The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished.", deleted para. (7) which read: "At the election of the creditor, the average effective annual percentage rate of return (or the projected rate) under the plan as prescribed in subsection (a)(5).", redesignated paras. (8)-(11) as paras. (7)-(10), respectively; and deleted subsec. (c) which read: "In the case of any existing account under an open end consumer credit plan having an outstanding balance of more than $ 1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (a) or any amendments thereto, the items described in subsection (a), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsection (b).".

1988. Act Nov. 3, 1988 (effective as provided by § 7 of such Act, which appears as a note to this section), added subsecs. (c)-(f).

Such Act further (effective on enactment) added subsec. (g).

Act Nov. 23, 1988 (effective and applicable as provided by § 7 of such Act, which appears as *15 USCS § 1637a* note), in subsec. (a), added para. (8).

2005. Act April 20, 2005 (effective as provided by § 1301(b)(2) of such Act, which appears as a note to this section), in subsec. (b), added para. (11).

Such Act further (effective as provided by § 1305(b)(2) of such Act, which appears as a note to this section), in subsec. (b), added para. (12).

Such Act further (effective as provided by § 1303(b)(2) of such Act, which appears as a note to this section), in subsec. (c), added para. (6).

Such Act further (effective as provided by § 1304(b)(2) of such Act, which appears as a note to this section), in subsec. (c), added para. (7).

Such Act further (effective as provided by § 1306(b)(2) of such Act, which appears as a note to this section), added subsec. (h).

2009. Act May 22, 2009 (effective 90 days after enactment, as provided by § 101(a)(2) of such Act, which appears as a note to this section), added subsec. (i).

Such Act further (effective 9 months after enactment, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note), in subsec. (b), substituted paras. (11) and (12) for one which read:

"(11)

(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement,

disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $ 1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: --------.' (the blank space to be filled in by the creditor).

"(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $ 300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: --------.' (the blank space to be filled in by the creditor).

"(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $ 300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: --------.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

"(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

"(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

"(F)

(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

"(ii)

(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $ 250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose

in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

"(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

"(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

"(H) The Board shall--

"(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

"(ii) establish the table required under clause (i) by assuming--

"(I) a significant number of different annual percentage rates;

"(II) a significant number of different account balances;

"(III) a significant number of different minimum payment amounts; and

"(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

"(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

"(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

"(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

"(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: ------.' (the blank space to be filled in by the creditor).

"(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

"(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

"(B) The amount of the late payment fee to be imposed if payment is made after such date.";

added subsec. (c)(8); in subsec. (d), in para. (1), substituted "A card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed or" for "Except as provided in paragraph (2), a card issuer", deleted para. (2) which read:

"(2) Special rule for certain disclosures.

(A) In general. The disclosures required by this subsection may be provided--

"(i) prior to posting a fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) to the account, or

"(ii) with the periodic billing statement first disclosing that the fee has been posted to the account.

"(B) Limitation on use of special rule. Disclosures may be provided under subparagraph (A) only if--

"(i) the consumer is given a 30-day period to avoid payment of the fee or to have the fee recredited to the account in any case where the consumer does not wish to continue the availability of the credit; and

"(ii) the consumer is permitted to use the card during such period without incurring an obligation to pay such fee.";

and added subsecs. (j)-(p) and (r).

Other provisions:

**Effective date of Nov. 3, 1988 amendments.** Act Nov. 3, 1988, P.L. 100-583, § 7, 102 Stat. 2968, provides:

"Any regulation required to be prescribed by the Board under the amendments made by section 2 [adding *15 USCS § 1637(c)*-(f); amending *15 USCS § 1632(a)*, and adding subsec. (c) to such section] shall--

"(1) take effect not later than the end of the 150-day period beginning on the date of the enactment of this Act; and

"(2) apply only with respect to applications, solicitations, and other material distributed after the end of the 150-day period beginning after the end of the period referred to in paragraph (1), except that--

"(A) in the case of applications and solicitations subject to paragraph (3) or (4)(C) of section 127(c) of the Truth in Lending Act (as added by section 2) [*15 USCS § 1637(c)(3)* or (4)(C)], such period shall be 240 days; and

"(B) any card issuer may, at its option, comply with the requirements of the amendments made by this Act [generally amending this section, for full classification of such Act, consult USCS Tables volumes] prior to the applicable effective date, in which case the amendments made by this Act [generally amending this section, for full classification of such Act, consult USCS Tables volumes] shall be fully applicable to such card issuer.".

**Reports to the Congress.** Act Nov. 3, 1988, P.L. 100-583, § 8, 102 Stat. 2969, provides: "Not later than 1 year after the regulations prescribed under section 7 of this Act [*15 USCS § 1637a* note] become effective and annually thereafter, the Board of Governors of the Federal Reserve System shall transmit to the Congress a report containing an assessment by the Board of the profitability of credit card operations of depository institutions, including an analysis of any impact of the amendments made by this Act [generally amending this section; for full classification of such Act, consult USCS Tables volumes] on such profitability.".

**Regulations implementing subsec. (b)(11).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1301(b)(1), 119 Stat. 207, provides: "The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the 'Board') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act [subsec. (b)(11) of this section], as added by subsection (a) of this section.".

**Effective date of subsec. (b)(11).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1301(b)(2), 119 Stat. 207, provides:

"Section 127(b)(11) of the Truth in Lending Act [subsec. (b)(11) of this section], as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection [note to this section] shall not take effect until the later of--

"(A) 18 months after the date of enactment of this Act; or

"(B) 12 months after the publication of such final regulations *[74 Fed. Reg. 5244*, Jan. 29, 2009] by the Board.".

**Regulations implementing subsec. (c)(6).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1303(b)(1), 119 Stat. 211, provides: "The Board [Board of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act [subsec. (c)(6) of this section], as added by this section.".

**Effective date of subsec. (c)(6).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1303(b)(2), 119 Stat. 211, provides:

"Section 127(c)(6) of the Truth in Lending Act [subsec. (c)(6) of this section], as added by this section, and regulations issued under paragraph (1) of this subsection [note to this section] shall not take effect until the later of--

"(A) 12 months after the date of enactment of this Act; or

"(B) 12 months after the date of publication of such final regulations *[74 Fed. Reg. 5244*, Jan. 29, 2009] by the Board [Board of Governors of the Federal Reserve System].".

**Regulations implementing subsec. (c)(7).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1304(b)(1), 119 Stat. 211, provides: "The Board [Board of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act [subsec. (c)(7) of this section], as added by this section.".

**Effective date of subsec. (c)(7).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1304(b)(2), 119 Stat. 212, provides:

"The amendment made by subsection (a) [adding subsec. (c)(7) of this section] and the regulations issued under paragraph (1) of this subsection [note to this section] shall not take effect until the later of--

"(A) 12 months after the date of enactment of this Act; or

"(B) 12 months after the date of publication of such final regulations *[74 Fed. Reg. 5244*, Jan. 29, 2009] by the Board [of Governors of the Federal Reserve System].".

**Regulations implementing subsec. (b)(12).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1305(b)(1), 119 Stat. 212,

provides: "The Board [Board of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act [subsec. (b)(12) of this section], as added by this section.".

**Effective date of subsec. (b)(12).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1305(b)(2), 119 Stat. 212, provides:

"The amendment made by subsection (a) [adding subsec. (b)(12) of this section] and regulations issued under paragraph (1) of this subsection [note to this section] shall not take effect until the later of--

"(A) 12 months after the date of enactment of this Act; or

"(B) 12 months after the date of publication of such final regulations *[74 Fed. Reg. 5244,* Jan. 29, 2009] by the Board [of Governors of the Federal Reserve System].".

**Regulations implementing subsec. (h).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1306(b)(1), 119 Stat. 212, provides: "The Board [Board of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act [subsec. (h) of this section], as added by this section.".

**Effective date of subsec. (h).** Act April 20, 2005, P.L. 109-8, Title XIII, § 1306(b)(2), 119 Stat. 212, provides:

"The amendment made by subsection (a) [adding subsec. (h) of this section] and regulations issued under paragraph (1) of this subsection [note to this section] shall not take effect until the later of--

"(A) 12 months after the date of enactment of this Act; or

"(B) 12 months after the date of publication of such final regulations *[74 Fed. Reg. 5244,* Jan. 29, 2009] by the Board [Board of Governors of the Federal Reserve System].".

**Clarification of clear and conspicuous.** Act April 20, 2005, P.L. 109-8, Title XIII, § 1309, 119 Stat. 213, provides:

"(a) Regulations. Not later than 6 months after the date of enactment of this Act, the Board [Board of Governors of the Federal Reserve System], in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [*12 USCS § 1813*]), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term 'clear and conspicuous', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act [subsecs. (b)(11) and (c)(6)(A) of this section].

"(b) Examples. Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

"(c) Standards. In promulgating regulations under this section, the Board [Board of Governors of the Federal Reserve System] shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.".

**Effective date of subsec. (i).** Act May 22, 2009, P.L. 111-24, Title I, § 101(a)(2), 123 Stat. 1736, provides: "Notwithstanding section 3 [*15 USCS § 1602* note], section 127(i) of the Truth in Lending Act [subsec. (i) of this section], as added by this subsection, shall become effective 90 days after the date of enactment of this Act.".

**Guidelines required.** Act May 22, 2009, P.L. 111-24, Title II, § 201(c), 123 Stat. 1745, provides:

"(1) In general. Not later than 6 months after the date of enactment of this Act, the Board shall issue guidelines, by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about accessing credit counseling and debt management services, as required under section 127(b)(11)(B)(iv) of the Truth in Lending Act [subsec. (b)(11)(B)(iv) of this section], as added by this section.

"(2) Approved agencies. Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number referred to in paragraph (1) include only those nonprofit budget and credit counseling agencies approved by a United States bankruptcy trustee pursuant to *section 111(a) of title 11, United States Code*.".

**Study and report by the Comptroller General.** Act May 22, 2009, P.L. 111-24, Title III, § 305(b), 123 Stat. 1750, provides:

"(1) Study. The Comptroller General of the United States shall, from time to time, review the reports submitted by creditors under section 127(r) of the Truth in Lending Act [subsec. (r) of this section], as added by this section, and the marketing practices of creditors to determine the impact that college affinity card agreements and college student card

agreements have on credit card debt.

"(2) Report. Upon completion of any study under paragraph (1), the Comptroller General shall periodically submit a report to the Congress on the findings and conclusions of the study, together with such recommendations for administrative or legislative action as the Comptroller General determines to be appropriate.".

**NOTES:**

Code of Federal Regulations:

Federal Reserve System--Truth in lending (Regulation Z), *12 CFR 226.1* et seq.

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 78m, 1602, 1610, 1632, 1640, 1643, 1646, 1666*.

Research Guide:

Federal Procedure:

4B Fed Proc L Ed, Banking and Financing § 8:1532.

7 Fed Proc L Ed, Consumer Credit Protection § 15:18.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 38-42, 46-56, 147*.

*20 Am Jur 2d, Credit Cards and Charge Accounts §§ 1, 4*.

*68A Am Jur 2d, Secured Transactions § 165*.

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:

6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:69-74, 76, 163, 164.

7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards §§ 40, 72.

17C Am Jur Pl & Pr Forms (2006), Moneylenders and Pawnbrokers, § 7.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.07, 1.10.

1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.02.

3 Debtor-Creditor Law (Matthew Bender), ch 26, Confession of Judgment § 26.03.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.12, 62.13.

Annotations:

What constitutes violation of requirements of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) concerning disclosure of information in credit transactions--civil cases. *113 ALR Fed 197.*

Construction and effect of disclosure statutes requiring one extending credit or making loan to give statement showing terms as to amounts involved and charges made. *14 ALR3d 330.*

Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or instalment sale contract. *63 ALR3d 50.*

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.04, 152.08.

9 Banking Law (Matthew Bender), ch 170, Advertising § 170.03.

9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.

10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.07, 174.14, 174.15.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

2 The Law of Advertising (Matthew Bender), ch 17, The Jurisdiction of the Federal Trade Commission in Advertising § 17.02.

Law Review Articles:

Dobbs; Anderson. Bankruptcy Law Changes Will Affect Business Cases Too: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *11 Ga Bar J 32,* October 2005.

Landers. Truth in Lending: Open End Credit. *24 Prac Law 13,* Sept-Dec 1978.

Landers. Open-end Credit Disclosure Requirements Under the Truth in Lending Act. *52 S Cal L Rev 1005,* May 1979.

Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

Whitford. The Functions of Disclosure Regulation in Consumer Transactions. *1973 Wis L Rev 400.*

Interpretive Notes and Decisions:

**I.DISCLOSURES**

**A.Prior to Opening Account** 1. Generally 2. Timing of disclosure 3. Method of determining balance 4. Change in rates 5. Security interests 6. Miscellaneous

**B.After Opening Account** 7. Generally

**II.STATEMENT REQUIRED WITH BILLING CYCLE** 8. Generally 9. Periodic rates 10. Balance on which finance charge is computed 11. Miscellaneous

**I.DISCLOSURES**

**A.Prior to Opening Account 1. Generally**

Though disclosure-on-the-same-page rule is not applicable to open-end credit arrangements, disclosure statement that fails to disclose on its face either after-acquired property clause or 10-day limitation on its operation is inadequate for purposes of *15 USCS § 1637*. *Lee v Redstone Federal Credit Union (1980, CA5 Ala) 615 F2d 682.*

When a card issuer makes the necessary disclosures before the card is activated, before any fees are incurred and before any charges are made to the new account, the card issuer clearly has satisfied the requirements of *15 USCS § 1637(a)*; it has made the required disclosures before the account is open in any sense of the word. *Muro v Target Corp. (2009, CA7 Ill) 580 F3d 485.*

Regulation Z (*12 CFR § 226.7*) [now contained in *12 CFR § 226.6*] requires furnishing of copy of Fair Credit Billing Act notice on or with initial disclosure statement, and failure of creditor to timely provide such notice to consumer before opening account constitutes violation of *15 USCS § 1637(a)*. *Lirtzman v Spiegel, Inc. (1980, ND Ill) 493 F Supp 1029.*

Because various disclosures of individual's credit agreement accomplished notice objective of Truth in Lending Act (TILA), *15 USCS § 1637a(2)*, bank's alleged failure to disclose that credit account was deemed open as of application date did not constitute TILA violation. *Stein v JP Morgan Chase Bank (2003, SD NY) 279 F Supp 2d 286.*

New initial disclosure is required where account has been closed due to inactivity, cancellation or expiration and then is reopened, but not when account is closed merely to assign new number where credit card is reported lost or stolen and new account then continues on same terms as old account. Board of Governors of Federal Reserve System Official Staff Interpretation TIL-1, *48 Fed Reg 14887.*

**2. Timing of disclosure**

Credit card recipient's claim under *15 USCS § 1637(a)* failed because proper disclosures were mailed along with card and recipient's account was not opened before disclosures were received; recipient never activated card or took any action that could have been taken as acceptance of card offer, and account was not opened in absence of commitment by recipient to be bound by terms of offer. *Muro v Target Corp. (2007, ND Ill) 250 FRD 350.*

Credit union satisfied requirements of *15 USCS § 1637(a)* and Regulation Z (*12 CFR § 226.7*), regarding disclosures in open-end credit agreements, where credit union, in good faith effort to comply with Truth-in-Lending Act (*15 USCS §§ 1601* et seq.), delivered disclosure statement to borrower prior to his negotiation of proceeds of loan, since borrower was not foreclosed from shopping for better credit terms until he negotiated credit union's check, which constitutes first transaction within meaning of statute and Regulation Z. *Super Chief Credit Union v Gilchrist (1982) 232 Kan 40, 653 P2d 117.*

With respect to mail order sale, date amount is debited to customer's account is reasonable date to disclose for purposes of identifying transaction on open-end account. Board of Governors of Federal Reserve System Official Staff Interpretation FC-0004, *41 Fed Reg 44855.*

**3. Method of determining balance**

Credit card company's method of apportioning cardholder's payment between his airline account, which is subject to finance charges, and his general account, which is not, providing that, unless specifically instructed by cardholder, airline account overpayment, if less in amount than total airline account balance, is to be credited to cardholder's general account, without regard to whether or not there are any outstanding charges in that account, is subject to disclosure requirements of *15 USCS § 1637* which compels creditors to disclose method by which balance is determined both

before opening of account and by periodic statements once account has been opened; also, such method is not exempt from disclosure by reason of 12 CFR § 226.706 which provides that it is not necessary to show method of allocating payments or other credits since § 226.706 applies only where payments are allocated among charges and not between accounts, and applies only to open end credit plans, such as airline account, as distinguished from general account. *Zeltzer v Carte Blanche Corp. (1975, CA3 Pa) 514 F2d 1156.*

Creditor-seller's retail installment agreement, which made clear that, normally, finance charges were added to all balances over $ 5, but when customers reduced large balance to within $ 10, during current billing period, they were excused from paying finance charge, informed customers of balances and conditions upon which finance charge could be imposed as required by *15 USCS § 1637(a)(1)* and (2). *Turoff v May Co. (1976, CA6 Ohio) 531 F2d 1357, 21 FR Serv 2d 503.*

Where plaintiff entered into "privilege checking" agreement with his bank permitting him to overdraw his regular checking account up to agreed-upon maximum, such overdrafts to be covered by loans to his account in multiples of $ 100, bank's disclosure that advances to plaintiff and payments by him are recorded immediately was sufficient to meet requirements of *15 USCS § 1637(a)(2)*, and fact that bank did not include statement that balance includes charges in multiples of $ 100 rather than actual amounts of overdraft did not constitute violation of Truth in Lending Act; key word in § 226.7 (identical in language to *15 USCS § 1637(a)(2)*) is "method"; statute does not require disclosure of particular terms of individual transactions but only of "method" of determining balance, and such method is fully disclosed by revealing that advances to and payments by borrower are recorded immediately. *Rothenberg v Chemical Bank New York Trust Co. (1975, SD NY) 400 F Supp 1299.*

Cardholder agreement governing credit card issued by bank does not violate *15 USCS § 1637(c)(1)(A)(iv)*, where agreement discloses that balance calculation method is "Average Daily Balance," because that is method that Regulation Z identifies and, as such, it need only be disclosed by name. *Greisz v Household Bank (Ill.) (1998, ND Ill) 8 F Supp 2d 1031,* affd (1999, CA7 Ill) *176 F3d 1012, 44 FR Serv 3d 118* (criticized in *Asch v Teller, Levit & Silvertrust, P.C. (2000, ND Ill) 200 FRD 399).*

**4. Change in rates**

*15 USCS § 1637*(c)(1)(A)(i), part of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., required credit card provider to disclose certain information in direct mail applications and solicitations, including annual percentage rates (APR), and *15 USCS § 1632(a)*, (c), required that annual percentage rates had to clearly and conspicuously disclosed in tabular format; thus, where defendant bank's credit card solicitation, stated in so-called "Schumer Box" only that fixed annual percentage rate (APR) could change for nonpayment or account closure, consumer could have reasonably concluded that APR could be changed only under those listed circumstances and adequacy of disclosures should have proceeded to trial. *Roberts v Fleet Bank (2003, CA3 Pa) 342 F3d 260.*

Under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., any disclosures in credit card agreement had to reflect terms of legal obligation between parties and consumers sufficiently stated claim that company violated *12 CFR § 226.6(a)(2)* because, as matter of law, company could not show that its agreement disclosed in clear and conspicuous manner annual percentage rates company was permitted to use. *Barrer v Chase Bank United States, N.A. (2009, CA9 Or) 566 F3d 883.*

Increase in finance charge on existing credit card balance by bank pursuant to Executive Order No. 12201 *(12 USCS § 1904* note) and 12 CFR § 229.6 does not violate disclosure requirements of *15 USCS § 1637* or Regulation Z where (1) bank includes in credit card agreement signed by customer notice of possibility of change in rate and customer's rights and liabilities in such event, and (2) provision for change in rate of finance charge in credit card agreement is not precluded by statute or regulation, which do not freeze rate disclosed at time of purchase or authorize application of increased rate only to future purchases. *Peterson v Wells Fargo Bank (1981, ND Cal) 556 F Supp 1100.*

**5. Security interests**

Where bank sent credit card to person who had checking account at bank, bank's failure to disclose its right to set off amount, in checking account against debt from use of credit card, did not violate *15 USCS § 1637(a)(6)* (formerly § 1637(a)(7)); bank's common-law right to setoff was not "security interest" within meaning of § 1637(a)(6). *Fletcher v Rhode Island Hosp. Trust Nat'l Bank (1974, CA1 RI) 496 F2d 927,* cert den *(1974) 419 US 1001, 42 L Ed 2d 277, 95 S Ct 320* and (criticized in *Heinrich ex rel. Heinrich v Sweet (1999, DC Mass) 62 F Supp 2d 282)* and (criticized in *Sarro v Cornell Corr., Inc. (2003, DC RI) 248 F Supp 2d 52, 119 ALR5th 593).*

Merchant's statement, prior to opening account under open end credit plan, that it may, at its option, retain security interest in merchandise at time of purchase, was insufficient to comply with requirements of *15 USCS § 1637,* which requires creditors to state conditions under which security interest may be retained, since such perfunctory statement frustrates purpose of Truth in Lending Act by not sufficiently informing consumer so that he may compare various credit terms available to him. *Willis v American Nat'l Stores (1972, ND Ga) 350 F Supp 173.*

"Federal box"--for federally mandated disclosure to borrowers--on automobile loan contract between automobile dealer and borrower properly includes notice that, in event contract is assigned to certain bank, bank has setoff against any deposits owed by bank to borrower under *15 USCS § 1638(b)(1),* where inclusion of notice is intended to inform borrower of significant remedy in event of default rather than to obscure other information printed in box, because setoff is analogous to and possibly subsumed in broad concept of method of payment, notwithstanding that setoff is not, within ordinary meaning of term, "security interest" under *15 USCS § 1637(a)(6)* requiring disclosure. *Goldberg v Delaware Olds, Inc. (1987, DC Del) 670 F Supp 125,* affd without op (1988, CA3 Del) *845 F2d 1011.*

Provisions of § 1810.6 of California Civil Code, which permits pro rata allocation of payments under security agreement to all purchases made under agreement and thereby permits seller to retain security interest in all goods sold until full payment has been made, is condition required to be disclosed by both § 1810.1 of California Civil Code and *15 USCS § 1637,* and where no such disclosure is made, court will not apply allocation provisions, but will apply first-in, first-out principle in allocating debtor's payments. *In re Casselli (1980, BC CD Cal) 4 BR 531.*

**6. Miscellaneous**

Use by creditor of "previous balance" method of computing charges on unpaid balances in revolving charge account does not violate *15 USCS § 1637,* where customer, at time of application for charge account, received explanation of "previous balance" method. *Taylor v R. H. Macy & Co. (1973, CA9 Cal) 481 F2d 178,* cert den *(1973) 414 US 1068, 38 L Ed 2d 473, 94 S Ct 577.*

Seller of merchandise on charge account was not required by § 127(b)(4) of Truth-In-Lending Act (*15 USCS § 1637(b)(4)*) to disclose policy of giving trading stamps with each payment made on charge account since same amount of stamps was given no matter when payment was made and therefore stamps had no effect on discounts or charges. *Turoff v May Co. (1976, CA6 Ohio) 531 F2d 1357, 21 FR Serv 2d 503.*

Regardless of credit card issuer's disclosure obligations, it was not permitted to mislead recipients of its "no annual fee" credit card solicitations into believing that it could not or would not impose such a fee. *Rossman v Fleet Bank Nat'l Ass'n (2002, CA3 Pa) 280 F3d 384.*

Disclosure by bank to customers using open-end consumer credit plan, which permitted overdraft of checking accounts, that "charge is imposed on average daily balance of account during billing cycle at rate of 1/30 percent per day," was sufficient to satisfy requirement of *15 USCS § 1637* that creditor shall disclose method of determining amount of finance charge, including any minimum or fixed amount imposed as finance charge; bank need not include in disclosure statement notice that loans to cover overdrafts were always to be made in units of $ 100 (unless overdraft was under $ 10) since such sum is not minimum or fixed charge. *Rothenberg v Chemical Bank New York Trust Co. (1975, SD NY) 400 F Supp 1299.*

Credit card holder's claim that issuer and its holding company violated *15 USCS § 1637(c)* and (d) must fail, where holder claims statute mandated truthful disclosure of "secret marketing strategy" of waiving annual fees in whole or in part when card-holders complain about fees or threaten to cancel their cards, because *12 CFR § 226.9(c)(2)*, promulgated under § 1637, plainly states that notice of "reduction of any component of finance or other charge" is not required. *Litwin v American Express Co. (1993, SD NY) 838 F Supp 855, RICO Bus Disp Guide (CCH) P 8466.*

Credit card recipient's Truth In Lending Act (TILA) (*15 USCS §§ 1601* et seq.) claims against issuer must fail, to extent he complains about hidden restrictions governing use of "free round-trip companion ticket" offered as promotion for taking TWA MasterCard with bank, because TILA is very specific about its scope and none of requirements under either *15 USCS § 1637(a)* or (c) purports to govern promotional inducements unrelated to credit terms. *Miller v European Am. Bank (1996, SD NY) 921 F Supp 1162.*

Credit card recipient lacked standing under *15 USCS § 1640* to pursue failure-to-disclose claim under *15 USCS § 1637(c)* against issuers of allegedly unsolicited credit card, as recipient never accepted or used card and never paid any fees. *Muro v Target Corp. (2007, ND Ill) 250 FRD 350.*

Although property owners allegations that company committed unspecified acts violating unspecified provisions of federal law, and that violations gave rise to defenses or remedies, they did not allege that any of company's actions violated Home Ownership and Equity Protection Act (HOEPA), *15 USCS § 1637*, Truth in Lending Act (TILA), *15 USCS § 1601*; or Federal Trade Commission Act (FTC Act), *15 USCS § 41* et seq; those allegations were not sufficient to state claim against company for violation of *TILA, HOEPA or FTC Act. Izenberg v ETS Servs., LLC (2008, CD Cal) 589 F Supp 2d 1193.*

Debtor was not entitled to summary judgment under *Fed. R. Civ. P. 56(c), Fed. R. Bankr. P. 7056*, on claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS §§ 1639* et seq., because when debtor's loan closed in July, 1997, *12 C.F.R. § 226.32* did not require disclosure of balloon payments, and annual percentage rate and monthly payment were clearly disclosed; thus, as matter of law there were no violations of *15 USCS §§ 1632, 1637, 1638(a)*, (b), 1639. *Lewis v Delta Funding Corp. (In re Lewis) (2003, BC ED Pa) 290 BR 541* (criticized in *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962).*

Creditor may freely substitute debiting date for other required date for foreign transactions and such disclosure would not be erroneous billing; creditor who substitutes voucher number for description of goods and services or merchant's name and address during transition period (October 28, 1976--October 28, 1977) has not made erroneous billing. Board of Governors of Federal Reserve System Official Staff Interpretation FC-0028, *41 Fed Reg 54480.*

When credit union provides self-replenishing line of credit for use in connection with its members' overdrafts under share draft plan, and such arrangement is functionally equivalent to open end credit account used in connection with overdraft checking plan, then for descriptive billing purposes date of debiting member's line of credit account is considered to be transaction date under Regulation Z § 226.7 [now *12 CFR § 226.8*]. Board of Governors of Federal Reserve System Official Staff Interpretation FC-0115, *42 Fed Reg 55880.*

**B.After Opening Account 7. Generally**

Credit card holder's claim that issuer and its holding company violated *15 USCS § 1637(c)* and (d) must fail, where holder claims statute mandated truthful disclosure of "secret marketing strategy" of waiving annual fees in whole or in part when card-holders complain about fees or threaten to cancel their cards, because *12 CFR § 226.9(c)(2)*, promulgated under § 1637, plainly states that notice of "reduction of any component of finance or other charge" is not required. *Litwin v American Express Co. (1993, SD NY) 838 F Supp 855, RICO Bus Disp Guide (CCH) P 8466.*

When bank imposed certain fees and charges on consumers who made credit card payments on date due, consumers' claim that bank violated *15 USCS § 1637(b)(9)* by failing to disclose that stated minimum payment did not include all of fees that bank imposed was not dismissed because bank did not appear to challenge claim. *Trombley v*

*Bank of Am. Corp. (2009, DC RI) 675 F Supp 2d 266.*

New initial disclosure is required where account has been closed due to inactivity, cancellation or expiration and then is reopened, but not when account is closed merely to assign new number where credit card is reported lost or stolen and new account then continues on same terms as old account. Board of Governors of Federal Reserve System Official Staff Interpretation TIL-1, *48 Fed Reg 14887.*

**II.STATEMENT REQUIRED WITH BILLING CYCLE 8. Generally**

Creditors who maintain open-end credit accounts must, at close of each billing cycle, provide customers with account statements disclosing closing date of billing cycle, "new balance", and payment due date; disclosure of amount of payment necessary to avoid additional finance charges is not expressly required. *Gambardella v G. Fox & Co. (1983, CA2 Conn) 716 F2d 104.*

Under plain language of Regulation Z, *12 C.F.R. § 226.1* et seq., creditor is required to furnish periodic statements pursuant to *15 USCS § 1637(b)* only to natural persons, and this duty does not extend to organizations; although statute requires that statements be provided to "obligors," regulatory limitation of that term to natural persons is not irrational. *Hess v Citibank, (South Dakota), N.A. (2006, CA8 Mo) 459 F3d 837.*

Under Truth in Lending Act, merchants using "revolving" consumer credit plan are not required to mail or deliver bills within specific period of time following close of customer's billing cycle where they disclose time period during which payment may be made in full without finance charge and compute such time from closing date of billing period; mailing bills between 8 and 12 days after closing date of billing cycle is not unreasonable. *Krainin v S. Klein Dep't Stores (1972, SD NY) 345 F Supp 1345.*

**9. Periodic rates**

Creditor did not violate *15 USCS § 1637(b)(5)* by using "previous balance" method of computing charges on unpaid balances in revolving charge accounts, where each monthly statement to customer contained explanation of method of computing finance charge, including statement of corresponding annual percentage rates and statement that finance charge was computed on amount owed at end of prior billing period without deducting payments and credits. *Taylor v R. H. Macy & Co. (1973, CA9 Cal) 481 F2d 178,* cert den *(1973) 414 US 1068, 38 L Ed 2d 473, 94 S Ct 577.*

District court properly dismissed customers' Truth in Lending Act of 1968 (TILA), *15 USCS §§ 1601* et seq., claims as purchasers of delinquent accounts of customers of credit card issuers were not creditors subject to TILA under *15 USCS § 1602(n),* as purchasers neither issued credit cards nor were they agents of credit card issuers. *Neff v Capital Acquisitions & Mgmt. Co. (2003, CA7 Ill) 352 F3d 1118.*

Bank which failed to disclose "nominal annual percentage rate" of interest on its periodic billing statements, as required by *15 USCS § 1637(b)(5),* violated Truth in Lending Act even though plaintiff had not in fact incurred any finance charge in connection with transaction involved. *Ratner v Chemical Bank New York Trust Co. (1971, SD NY) 329 F Supp 270.*

**10. Balance on which finance charge is computed**

Credit card company's method of apportioning cardholder's payment between his airline account, which is subject to finance charges, and his general account, which is not, providing that, unless specifically instructed by cardholder, airline account overpayment, if less in amount than total airline account balance, is to be credited to cardholder's general account, without regard to whether or not there are any outstanding charges in that account, is subject to disclosure requirements of *15 USCS § 1637* which compels creditors to disclose method by which balance is determined both before opening of account and by periodic statements once account has been opened. *Zeltzer v Carte Blanche Corp. (1975, CA3 Pa) 514 F2d 1156.*

Definition of "previous balance" in credit agreement as balance remaining unpaid from previous monthly billing period is not inadequate on grounds it does not affirmatively state that credits accrued after end of previous monthly billing period will not be subtracted from previous balance before calculating interest due since *15 USCS § 1637(a)(2)* and (3) do not require such statement. *Turoff v May Co. (1976, CA6 Ohio) 531 F2d 1357, 21 FR Serv 2d 503.*

Bank did not violate Truth in Lending Act where it failed to disclose in its periodic statements to customers utilizing "privilege checking" open-end credit plan (which permitted overdrafts) that deposit payments to checking account were not deducted from daily balance prior to computing finance charge, where methods of payment under privilege checking plan did not include depositing of money in checking account; hence, any such deposit does not have to be reflected as "credit" which would reduce balance or whose failure to reduce balance must be disclosed pursuant to *15 USCS § 1637(b)(7)* (formerly ((8)). *Rothenberg v Chemical Bank New York Trust Co. (1975, SD NY) 400 F Supp 1299.*

*15 USCS § 1637*(b) requirement that if balance on which finance charge is imposed was computed "without first deducting all credits during period" such fact must be disclosed on monthly billing statement applies only to situation in which final balance on which finance charge is imposed takes no account of some or all credits which accrued during billing period; such requirement does not apply to "average daily balance" method of finance charge calculation. *Bryson v Bank of New York (1984, SD NY) 584 F Supp 1306.*

Bank's billing statement provision that average daily balance of purchases and advances subject to finance charge is determined by adding together "daily balances outstanding of each respectively during period from previous billing date" to date of "next month's billing statement" and dividing result number of days in billing period is sufficiently clear to satisfy *15 USCS § 1637* requirement that statement disclose balance on which finance charge was computed and how balance was determined, notwithstanding allegedly ambiguous use of "next month" and that statement failure to disclose that separately listed purchases and cash advances are not added together during calculation of finance charge. *Bryson v Bank of New York (1984, SD NY) 584 F Supp 1306.*

Credit card issuer's monthly billing statement violated Truth-in-Lending Act, where statement inadequately described "Average Daily Balance" method of finance charge application and failed to define "Daily Balance" and "Average Daily Balance," and where statement noted on back that consumer should write to issuer concerning dispute in billing in order to preserve rights under law, but invited telephone inquiries on front, because (1) *15 USCS § 1637(b)(7)* requires periodic billing statement setting forth balance on which finance charge was computed and statement of how balance was determined, and (2) *15 USCS §§ 1632(a)* and *1637(b)(10)* require clear and conspicuous disclosure of address to which consumer billing inquiries should be sent. *Schmidt v Citibank (South Dakota) N.A. (CBSD) (1987, DC Conn) 677 F Supp 687.*

**11. Miscellaneous**

Where credit card holder alleged that petitioners violated Truth in Lending Act, 82 Stat. 146, by failing to classify over-limit fees as "finance charges," petitioners were entitled to dismissal because Court could not conclude that term "finance charge" in *15 USCS § 1605(a)* unambiguously included over-limit fees, and Federal Reserve Board's decision to exclude over-limit fees from term "finance charge" pursuant to *12 C.F.R. § 226.4(c)(2)* was reasonable. *Household Credit Servs. v Pfennig (2004) 541 US 232, 158 L Ed 2d 450, 124 S Ct 1741, 17 FLW Fed S 228*, on remand, remanded (2004, CA6 Ohio) *103 Fed Appx 861*.

Auditor is not relieved of responsibility of identifying goods in monthly statements sent to debtor under open end credit plan because creditor previously furnished adequate identification by identifying goods as "apparel" or "hard goods" on charge slips at time of purchase where designations "apparel" and "hard goods" are meaningless since purchaser cannot identify from such designations what goods were purchased. *White v Arlen Realty & Dev. Corp. (1975, CA4 Md) 540 F2d 645.*

Allegation by debtor under open end consumer credit account that creditor had failed to send him required statements for several months in which there was outstanding balance and with respect to which finance charge was imposed clearly stated claim under Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Murray v Amoco Oil Co. (1976, CA5 Ala) 539 F2d 1385.*

Where representative of decedent's estate asserted that issuer of credit card to decedent covered up its conversion of overpayment on decedent's account by failing to send statements to estate, under *15 USCS § 1637(b)* issuer was not required to send statements to estate since it was not natural person. *Hess v Citibank, (South Dakota), N.A. (2006, CA8 Mo) 459 F3d 837.*

Cause of action was stated against creditor who allegedly reported to credit bureau that debtor's account was delinquent after debtor had paid account in full, and who failed to send debtor periodic statement. *Saunders v Ameritrust of Cincinnati (1984, SD Ohio) 587 F Supp 896.*

Because alleged violations of Truth in Lending Act (TILA) and Fair Credit Billing Act occurred in connection with single account, and plaintiff borrower had never been granted recovery under TILA, she was limited to single recovery for those violations. *Tweedy v RCAM Title Loans, LLC (2009, WD Va) 611 F Supp 2d 603.*

Provisions of *15 USCS § 1637(b)* impose no liability on open end creditor, such as issuer of credit card, for failure to reflect finance charges imposed by seller; thus, where customer purchased item from merchant participant in credit plan, where such merchant informed customer that he was adding 7 percent to quoted cash price of item if he wished to charge such item, and where creditor was not informed that any such finance charge was included in purchase price, creditor did not violate Truth in Lending Act by failing to disclose finance charge, expressed as annual percentage rate, in its billing to customer. *White v Central Charge Service, Inc. (1971, Dist Col App) 285 A2d 305,* cert den *(1972) 409 US 895, 34 L Ed 2d 152, 93 S Ct 119.*

26 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1637a*

§ 1637a. Disclosure requirements for open end consumer credit plans secured by the consumer's principal dwelling [Caution: See prospective amendment note below.]

(a) Application disclosures. In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

(1) Fixed annual percentage rate. Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

(2) Variable percentage rate. In the case of a plan which provides for variable rates of interest on credit extended under the plan--

(A) a description of the manner in which such rate will be computed and a statement that such rate does not include costs other than interest;

(B) a description of the manner in which any changes in the annual percentage rate will be made, including--

(i) any negative amortization and interest rate carryover;

(ii) the timing of any such changes;

(iii) any index or margin to which such changes in the rate are related; and

(iv) a source of information about any such index;

(C) if an initial annual percentage rate is offered which is not based on an index--

(i) a statement of such rate and the period of time such initial rate will be in effect; and

(ii) a statement that such rate does not include costs other than interest;

(D) a statement that the consumer should ask about the current index value and interest rate;

(E) a statement of the maximum amount by which the annual percentage rate may change in any 1-year period or a statement that no such limit exists;

(F) a statement of the maximum annual percentage rate that may be imposed at any time under the plan;

(G) subject to subsection (b)(3), a table, based on a $ 10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected

during the preceding 15-year period by changes in any index used to compute such rate;

(H) a statement of--

(i) the maximum annual percentage rate which may be imposed under each repayment option of the plan;

(ii) the minimum amount of any periodic payment which may be required, based on a $ 10,000 outstanding balance, under each such option when such maximum annual percentage rate is in effect; and

(iii) the earliest date by which such maximum annual interest rate may be imposed; and

(I) a statement that interest rate information will be provided on or with each periodic statement.

(3) Other fees imposed by the creditor. An itemization of any fees imposed by the creditor in connection with the availability or use of credit under such plan, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as "points"), and the time when such fees are payable.

(4) Estimates of fees which may be imposed by third parties.

(A) Aggregate amount. An estimate, based on the creditor's experience with such plans and stated as a single amount or as a reasonable range, of the aggregate amount of additional fees that may be imposed by third parties (such as governmental authorities, appraisers, and attorneys) in connection with opening an account under the plan.

(B) Statement of availability. A statement that the consumer may ask the creditor for a good faith estimate by the creditor of the fees that may be imposed by third parties.

(5) Statement of risk of loss of dwelling. A statement that--

(A) any extension of credit under the plan is secured by the consumer's dwelling; and

(B) in the event of any default, the consumer risks the loss of the dwelling.

(6) Conditions to which disclosed terms are subject.

(A) Period during which such terms are available. A clear and conspicuous statement--

(i) of the time by which an application must be submitted to obtain the terms disclosed; or

(ii) if applicable, that the terms are subject to change.

(B) Right of refusal if certain terms change. A statement that--

(i) the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other than a change contemplated by a variable feature of the plan) before any such agreement is final; and

(ii) if the consumer makes an election described in clause (i), the consumer is entitled to a refund of all fees paid in connection with the application.

(C) Retention of information. A statement that the consumer should make or otherwise retain a copy of information disclosed under this subparagraph.

(7) Rights of creditor with respect to extensions of credit. A statement that--

(A) under certain conditions, the creditor may terminate any account under the plan and require immediate repayment of any outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account; and

(B) the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any action described in subparagraph (A).

(8) Repayment options and minimum periodic payments. The repayment options under the plan, including--

(A) if applicable, any differences in repayment options with regard to--

(i) any period during which additional extensions of credit may be obtained; and

(ii) any period during which repayment is required to be made and no additional extensions of credit may be obtained;

(B) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described in clauses (i) and (ii) of subparagraph (A); and

(C) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any such amount with regard to the periods described in clauses (i) and (ii) of subparagraph (A).

(9) Example of minimum payments and maximum repayment period. An example, based on a $ 10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under such plan, showing the minimum monthly or periodic payment, and the time it would take to repay the entire $ 10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.

(10) Statement concerning balloon payments. If, under any repayment option of the plan, the payment of not more than the minimum periodic payments required under such option over the length of the repayment period--

(A) would not repay any of the principal balance; or

(B) would repay less than the outstanding balance by the end of such period,

as the case may be, a statement of such fact, including an explicit statement that at the end of such repayment period a balloon payment (as defined in section 147(f)) [*15 USCS § 1665b(f)*] would result which would be required to be paid in full at that time.

(11) Negative amortization. If applicable, a statement that--

(A) any limitation in the plan on the amount of any increase in the minimum payments may result in negative amortization;

(B) negative amortization increases the outstanding principal balance of the account; and

(C) negative amortization reduces the consumer's equity in the consumer's dwelling.

(12) Limitations and minimum amount requirements on extensions of credit.

(A) Number and dollar amount limitations. Any limitation contained in the plan on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.

(B) Minimum balance and other transaction amount requirements. Any requirement which establishes a minimum amount for--

(i) the initial extension of credit to an account under the plan;

(ii) any subsequent extension of credit to an account under the plan; or

(iii) any outstanding balance of an account under the plan.

(13) Statement regarding tax deductibility. A statement that--

(A) the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan; and

(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.]) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.

(14) Disclosure requirements established by board. Any other term which the Board requires, in regulations, to be disclosed.

(b) Time and form of disclosures.

(1) Time of disclosure.

(A) In general. The disclosures required under subsection (a) with respect to any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (e) shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.

(B) Telephone, publications, and 3d party applications. In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under subsection (a) and the pamphlet required under subsection (e) shall be provided by the creditor before the end of the 3-day period beginning on the date the creditor receives a completed application from a consumer.

(2) Form.

(A) In general. Except as provided in paragraph (1)(B), the disclosures required under subsection (a) shall be provided on or with any application to establish an account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling.

(B) Segregation of required disclosures from other information. The disclosures required under subsection (a) shall be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures on a separate form, in accordance with regulations of the Board.

(C) Precedence of certain information. The disclosures required by paragraphs (5), (6), and (7) of subsection (a) shall precede all of the other required disclosures.

(D) Special provision relating to variable interest rate information. Whether or not the disclosures required under subsection (a) are provided on the application form, the variable rate information described in subsection (a)(2) may be

provided separately from the other information required to be disclosed.

(3) Requirement for historical table. In preparing the table required under subsection (a)(2)(G), the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

(c) Third party applications. In the case of an application to open an account under any open end consumer credit plan described in subsection (a) which is provided to a consumer by any person other than the creditor--

(1) such person shall provide such consumer with--

(A) the disclosures required under subsection (a) with respect to such plan, in accordance with subsection (b); and

(B) the pamphlet required under subsection (e); or

(2) if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no nonrefundable fee may be imposed in connection with such application before the end of the 3-day period beginning on the date the consumer receives the disclosures required under subsection (a) with respect to the application.

(d) "Principal dwelling" defined. For purposes of this section and sections 137 and 147 [*15 USCS §§ 1647* and *1665b*], the term "principal dwelling" includes any second or vacation home of the consumer.

(e) Pamphlet. In addition to the disclosures required under subsection (a) with respect to an application to open an account under any open end consumer credit plan described in such subsection, the creditor or other person providing such disclosures to the consumer shall provide--

(1) a pamphlet published by the Board pursuant to section 4 of the Home Equity Consumer Protection Act of 1988 [note to this section]; or

(2) any pamphlet which provides substantially similar information to the information described in such section, as determined by the Board.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 127A, as added Nov. 23, 1988, P.L. 100-709, § 2(a), 102 Stat. 4725.)

(As amended April 20, 2005, P.L. 109-8, Title XIII, § 1302(a)(1), 119 Stat. 208; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Amendments:

2005. Act April 20, 2005 (effective 180 days after enactment and inapplicable to cases commenced before the effective date, as provided by § 1501 of such Act, which appears as *11 USCS § 101* note), in subsec. (a)(13), substituted "tax deductibility. A statement that--

"(A) the"

for "consultation of tax adviser. A statement that the", substituted "; and" for a concluding period, and added subpara.

(B).

Other provisions:

**Consumer education pamphlet.** Act Nov. 23, 1988, P.L. 100-709, § 4, 102 Stat. 4733, applicable as provided by § 7 of such Act, which appears as a note to this section, provides:

"The Board of Governors of the Federal Reserve System shall develop and prepare a pamphlet for distribution to consumers which contains--

"(1) a general description of open end consumer credit plans secured by the consumer's principal dwelling and the terms and conditions under which such loans are generally extended; and

"(2) a discussion of the potential advantages and disadvantages of such plans, including how to compare among home equity plans and between home equity and closed end credit plans.".

**Effective date and application of Nov. 23, 1988 amendments; regulations.** Act Nov. 23, 1988, P.L. 100-709, § 7, 102 Stat. 4734, provides:

"(a) Regulations. Before the end of the 60-day period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall prescribe such regulations as may be necessary to carry out the proposes [purposes] of the amendments made by this Act [enacting this section and notes and *15 USCS §§ 1647* and *1665b*; amending *15 USCS § 1632*].

"(b) Effective date. The amendments made by this Act [enacting *15 USCS §§ 1637a*, *1647*, and *1665b*; amending *15 USCS § 1632*], and the regulations prescribed pursuant to subsection (a) with respect to such amendments, shall apply to--

"(1) any agreement to open an account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling which is entered into after the end of the 5-month period beginning on the date on which the regulations prescribed under subsection (a) become final; and

"(2) any application to open such an account which is distributed by, or received by a creditor, after the end of such 5-month period.

"(c) Voluntary compliance. Notwithstanding subsection (b), any creditor may comply with the amendments made by this Act [enacting this section and notes and *15 USCS §§ 1647* and *1665b*; amending *15 USCS § 1632*], in accordance with the regulations prescribed by the Board, before the effective date established under such subsection.".

**April 20, 2005 amendments; regulatory implementation.** Act April 20, 2005, P.L. 109-8, Title XIII, § 1302(c), 119 Stat. 209, provides:

"(1) In general. The Board [Board of Governors of the Federal Reserve System] shall promulgate regulations implementing the amendments made by this section [amending *15 USCS §§ 1637a(a)(13)* and *1665b(b)*, and adding *15 USCS §§ 1638(a)(15)*, (b)(3), and 1664(e)].

"(2) Effective date. Regulations issued under paragraph (1) shall not take effect until the later of--

"(A) 12 months after the date of enactment of this Act; or

"(B) 12 months after the date of publication of such final regulations by the Board.".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1632*, *1647*, *1665b*.

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 39, 57-77, 79-81*.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.06.

9 Banking Law (Matthew Bender), ch 171, Application Process §§ 171.04, 171.05.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

11 Banking Law (Matthew Bender), ch 195, Regulation of Banking Operations of Branches and Agencies of Foreign Banks § 195.06.

Interpretive Notes and Decisions:

Regulation providing that lenders may meet statutory requirement of *15 USCS § 1637a(a)(2)(E)* and (F) for disclosure of annual cap for open-end home equity loans by stating range of caps is not inconsistent with statute, since prompting consumer to ask about currently used cap combined with disclosure of range will afford more meaningful understanding than disclosure in pre-application materials of actual cap to be offered to customer. *Consumers Union of U.S., Inc. v Federal Reserve Bd. (1991, App DC) 291 US App DC 1, 938 F2d 266.*

27 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1638*

§ 1638. Transactions other than under an open end credit plan [Caution: See prospective amendment note below.]

(a) Required disclosures by creditor. For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) The identity of the creditor required to make disclosure.

(2) (A) The "amount financed", using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection (b)(1):

(i) take the principal amount of the loan or the cash price less downpayment and trade-in;

(ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 106 [*15 USCS § 1605*]; and

(iii) subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.

(B) In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

(i) the amount that is or will be paid directly to the consumer;

(ii) the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; and

(iv) the total amount of any charges described in the preceding subparagraph (A)(iii).

(3) The "finance charge", not itemized, using that term.

(4) The finance charge expressed as an "annual percentage rate", using that term. This shall not be required if the amount financed does not exceed $ 75 and the finance charge does not exceed $ 5, or if the amount financed exceeds $ 75 and the finance charge does not exceed $ 7.50.

(5) The sum of the amount financed and the finance charge, which shall be termed the "total of payments".

(6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 121(b) [*15 USCS § 1631(b)*], the "total sale price", using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms "amount financed", "finance charge", "annual percentage rate", "total of payments", and "total sale price" as specified by the Board. The descriptive explanation of "total sale price" shall include reference to the amount of the downpayment.

(9) Where the credit is secured, a statement that a security interest has been taken in (A) the property which is purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(10) Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge.

(11) A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.

(12) A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.

(13) In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.

(14) In the case of any variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the Board for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a $ 10,000 loan originated at a recent interest rate, as determined by the Board, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.

(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that--

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(16) **[Caution: This paragraph is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]** In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments--

(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

(17) **[Caution: This paragraph is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]** In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of

funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

(18) **[Caution: This paragraph is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]** In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

(19) **[Caution: This paragraph is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]** In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.

(b) Form and timing of disclosures; residential mortgage transaction requirements.

(1) Except as otherwise provided in this chapter [*15 USCS §§ 1631* et seq.], the disclosures required under subsection (a) shall be made before the credit is extended. Except for the disclosures required by subsection (a)(1) of this section, all disclosures required under subsection (a) and any disclosure provided for in subsection (b), (c), or (d) of section 106 [*15 USCS § 1605*] shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization.

(2) (A) Except as provided in subparagraph (G), in the case any extension of credit that is secured by the dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act, good faith estimates of the disclosures required under subsection (a) shall be made in accordance with regulations of the Board under section 121(c) [*15 USCS § 1631(c)*] and shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, which shall be at least 7 business days before consummation of the transaction.

(B) In the case of an extension of credit that is secured by the dwelling of a consumer, the disclosures provided under subparagraph (A), shall be in addition to the other disclosures required by subsection (a), and shall--

(i) state in conspicuous type size and format, the following: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."; and

(ii) be provided in the form of final disclosures at the time of consummation of the transaction, in the form and manner prescribed by this section.

(C) **[Caution: For effective date of this subparagraph, see § 2502(c)(2) of Act July 30, 2008, P.L. 110-289, which appears as a note to this section.]** In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this subsection shall do the following:

(i) Label the payment schedule as follows: "Payment Schedule: Payments Will Vary Based on Interest Rate Changes".

(ii) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this clause is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the Board. Prior to issuing any rules pursuant to this clause, the Board shall conduct consumer testing to determine the appropriate format for providing the disclosures required under this subparagraph to consumers so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount.

(D) In any case in which the disclosure statement under subparagraph (A) contains an annual percentage rate of interest that is no longer accurate, as determined under section 107(c) [*15 USCS § 1606(c)*], the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.

(E) The consumer shall receive the disclosures required under this paragraph before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a

consumer. If the disclosures are mailed to the consumer, the consumer is considered to have received them 3 business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures under this paragraph, provided the fee is bona fide and reasonable in amount.

(F) Waiver of timeliness of disclosures. To expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may waive or modify the timing requirements for disclosures under subparagraph (A), provided that--

(i) the term "bona fide personal emergency" may be further defined in regulations issued by the Board;

(ii) the consumer provides to the creditor a dated, written statement describing the emergency and specifically waiving or modifying those timing requirements, which statement shall bear the signature of all consumers entitled to receive the disclosures required by this paragraph; and

(iii) the creditor provides to the consumers at or before the time of such waiver or modification, the final disclosures required by paragraph (1).

(G) (i) In the case of an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code [*11 USCS § 101(53D)*]--

(I) the requirements of subparagraphs (A) through (E) shall not apply; and

(II) a good faith estimate of the disclosures required under subsection (a) shall be made in accordance with regulations of the Board under section 121(c) *[11 USCS § 121*(c)] before such credit is extended, or shall be delivered or placed in the mail not later than 3 business days after the date on which the creditor receives the written application of the consumer for such credit, whichever is earlier.

(ii) If a disclosure statement furnished within 3 business days of the written application (as provided under clause (i)(II)) contains an annual percentage rate which is subsequently rendered inaccurate, within the meaning of section 107(c) [*11 USCS § 107(c)*], the creditor shall furnish another disclosure statement at the time of settlement or consummation of the transaction.

(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.

(4) Repayment analysis required to include escrow payments **[Caution: This paragraph is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]**.

(A) In general. In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974 [*12 USCS § 2609(a)(2)*].

(B) Assessment value. The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

(c) Timing of disclosures on unsolicited mailed or telephone purchase orders or loan requests.

(1) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

(2) If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the

disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance. If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

(e) Terms and disclosure with respect to private education loans.

(1) Disclosures required in private education loan applications and solicitations. In any application for a private education loan, or a solicitation for a private education loan without requiring an application, the private educational lender shall disclose to the borrower, clearly and conspicuously--

(A) the potential range of rates of interest applicable to the private education loan;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) requirements for a co-borrower, including any changes in the applicable interest rates without a co-borrower;

(E) potential finance charges, late fees, penalties, and adjustments to principal, based on defaults or late payments of the borrower;

(F) fees or range of fees applicable to the private education loan;

(G) the term of the private education loan;

(H) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;

(I) payment deferral options;

(J) general eligibility criteria for the private education loan;

(K) an example of the total cost of the private education loan over the life of the loan--

(i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and

(ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments;

(L) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;

(M) that the borrower may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (*20 U.S.C. 1070* et seq.), in lieu of, or in addition to, a loan from a non-Federal source;

(N) the interest rates available with respect to such Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (*20 U.S.C. 1070* et seq.);

(O) that, as provided in paragraph (6)--

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

(P) that, before a private education loan may be consummated, the borrower must obtain from the relevant institution of higher education the form required under paragraph (3), and complete, sign, and return such form to the private educational lender;

(Q) that the consumer may obtain additional information concerning such Federal student financial assistance from

their institution of higher education, or at the website of the Department of Education; and

(R) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(2) Disclosures at the time of private education loan approval. Contemporaneously with the approval of a private education loan application, and before the loan transaction is consummated, the private educational lender shall disclose to the borrower, clearly and conspicuously--

(A) the applicable rate of interest in effect on the date of approval;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) the initial approved principal amount;

(E) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;

(F) fees or range of fees applicable to the private education loan;

(G) the maximum term under the private education loan program;

(H) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof;

(I) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;

(J) payment deferral options applicable to the borrower;

(K) whether monthly payments are graduated;

(L) that, as provided in paragraph (6)--

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

(M) that the borrower --

(i) may qualify for Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (*20 U.S.C. 1070* et seq.), in lieu of, or in addition to, a loan from a non-Federal source; and

(ii) may obtain additional information concerning such assistance from their institution of higher education or the website of the Department of Education;

(N) the interest rates available with respect to such Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (*20 U.S.C. 1070* et seq.);

(O) the maximum monthly payment, calculated using the maximum rate of interest actually offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof; and

(P) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(3) Self-certification of information.

(A) In general. Before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender shall obtain from the applicant for the private education loan the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965 [*20 USCS § 1019d*], signed by the applicant, in written or electronic form.

(B) Rule of construction. No other provision of this subsection shall be construed to require a private educational lender to perform any additional duty under this paragraph, other than collecting the form required under subparagraph (A).

(4) Disclosures at the time of private education loan consummation. Contemporaneously with the consummation of a private education loan, a private educational lender shall make to the borrower each of the disclosures described in--

(A) paragraph (2)(A) (adjusted, as necessary, for the rate of interest in effect on the date of consummation, based on the index used for the loan);

(B) subparagraphs (B) through (K) and (M) through (P) of paragraph (2); and

(C) paragraph (7).

(5) Format of disclosures.

(A) Model form. Not later than 2 years after the date of enactment of this subsection [enacted Aug. 14, 2008], the Board shall, based on consumer testing, and in consultation with the Secretary of Education, develop and issue model forms that may be used, at the option of the private educational lender, for the provision of disclosures required under this subsection.

(B) Format. Model forms developed under this paragraph shall--

(i) be comprehensible to borrowers, with a clear format and design;

(ii) provide for clear and conspicuous disclosures;

(iii) enable borrowers easily to identify material terms of the loan and to compare such terms among private education loans; and

(iv) be succinct, and use an easily readable type font.

(C) Safe harbor. Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this subsection.

(6) Effective period of approved rate of interest and loan terms.

(A) In general. With respect to a private education loan, the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan, and the rates and terms of the loan may not be changed by the private educational lender during that period.

(B) Prohibition on changes. Except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender prior to the earlier of--

(i) the date of acceptance of the terms of the loan and consummation of the transaction by the borrower, as described in subparagraph (A); or

(ii) the expiration of the period described in subparagraph (A).

(7) Right to cancel. With respect to a private education loan, the borrower may cancel the loan, without penalty to the borrower, at any time within 3 business days of the date on which the loan is consummated, and the private educational lender shall disclose such right to the borrower in accordance with paragraph (4).

(8) Prohibition on disbursement. No funds may be disbursed with respect to a private education loan until the expiration of the 3-day period described in paragraph (7).

(9) Board regulations. In issuing regulations under this subsection, the Board shall prevent, to the extent possible, duplicative disclosure requirements for private educational lenders that are otherwise required to make disclosures under this title, except that in any case in which the disclosure requirements of this subsection differ or conflict with the disclosure requirements of any other provision of this title, the requirements of this subsection shall be controlling.

(10) Definitions. For purposes of this subsection, the terms "covered educational institution", "private educational lender", and "private education loan" have the same meanings as in section 140 [*15 USCS § 1650*].

(11) Duties of lenders participating in preferred lender arrangements. Each private educational lender that has a preferred lender arrangement with a covered educational institution shall annually, by a date determined by the Board, in consultation with the Secretary of Education, provide to the covered educational institution such information as the Board determines to include in the model form developed under paragraph (5) for each type of private education loan that the lender plans to offer to students attending the covered educational institution, or to the families of such students, for the next award year (as that term is defined in section 481 of the Higher Education Act of 1965 [*20 USCS § 1088*]).

(f) Periodic statements for residential mortgage loans [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.].

(1) In general. The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the

obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

(A) The amount of the principal obligation under the mortgage.

(B) The current interest rate in effect for the loan.

(C) The date on which the interest rate may next reset or adjust.

(D) The amount of any prepayment fee to be charged, if any.

(E) A description of any late payment fees.

(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [*12 USCS § 1441a-1*]).

(H) Such other information as the Board may prescribe in regulations.

(2) Development and use of standard form. The Board shall develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.

(3) Exception. Paragraph (1) shall not apply to any fixed rate residential mortgage loan where the creditor, assignee, or servicer provides the obligor with a coupon book that provides the obligor with substantially the same information as required in paragraph (1).

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 128, 82 Stat. 155; March 31, 1980, P.L. 96-221, Title VI, § 614(a)-(c), 94 Stat. 178; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2105, 110 Stat. 3009-402.)

(As amended April 20, 2005, P.L. 109-8, Title XIII, § 1302(b)(1), 119 Stat. 209; July 30, 2008, P.L. 110-289, Div B, Title V, § 2502(a), 122 Stat. 2855; Aug. 14, 2008, P.L. 110-315, Title X, Subtitle B, § 1021(a), 122 Stat. 3483; Oct. 3, 2008, P.L. 110-343, Div A, Title I, § 130(a), 122 Stat. 3797; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), Title XIV, Subtitle B, §§ 1419, 1420, Subtitle E, § 1465, 124 Stat. 2107, 2154, 2185.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

The "Real Estate Settlement Procedures Act", referred to in subsec. (b)(2), is Act Jan. 2, 1976, P.L. 94-205, 89 Stat. 1157, which appears generally as *12 USCS §§ 2601* et seq. For full classification of such Act, consult USCS Tables volumes.

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted subsec. (a) for one which read:

"(a) In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

"(1) The cash price of the property or service purchased.

"(2) The sum of any amounts credited as downpayment (including any trade-in).

"(3) The difference between the amount referred to in paragraph (1) and the amount referred to in paragraph (2).

"(4) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

"(5) The total amount to be financed (the sum of the amount described in paragraph (3) plus the amount described in paragraph (4)).

"(6) Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable.

"(7) The finance charge expressed as an annual percentage rate except in the case of a finance charge

"(A) which does not exceed $ 5 and is applicable to an amount financed not exceeding $ 75, or

"(B) which does not exceed $ 7.50 and is applicable to an amount financed exceeding $ 75.

"A creditor may not divide a consumer credit sale into two or more sales to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

"(8) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness.

"(9) The default, delinquency, or similar charges payable in the event of late payments.

"(10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.".

Such Act further substituted subsec. (b) for one which read: "Except as otherwise provided in this chapter, the disclosures required under subsection (a) shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser."; in subsec. (c), inserted "(1)", substituted "total sale price" for "deferred payment price", and added para. (2).

1996. Act Sept. 30, 1996, in subsec. (a), added para. (14).

2005. Act April 20, 2005 (effective 180 days after enactment and inapplicable to cases commenced before the effective date, as provided by § 1501 of such Act, which appears as *11 USCS § 101* note), in subsec. (a), added para. (15); and, in subsec. (b), added para. (3).

2008. Act July 30, 2008 (effective as provided by § 2502(c) of such Act, which appears as a note to this section), in subsec. (b)(2), inserted the subparagraph designation "(A)", substituted "any extension of credit that is secured by the dwelling of a consumer" for "a residential mortgage transaction, as defined in section 103(w)", substituted "and" for "before the credit is extended, or", inserted ", which shall be at least 7 business days before consummation of the transaction", deleted ", whichever is earlier" preceding ". If the disclosure statement", substituted subparas. (B)-(G) for a sentence which read: "If the disclosure statement furnished within three days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 107(c), the creditor shall furnish another statement at the time of settlement or consummation.".

Act Aug. 14, 2008 (effective on enactment, as provided by § 1003 of such Act, which appears as a note to this

section), added subsec. (e)(5) and (9)-(11).

Such Act further (effective on the earlier of the effective date of regulations issued under § 1002 (note to this section) or 18 months after enactment, as provided by § 1003 of such Act, which appears as a note to this section), added subsec. (e)(1)-(4), (6)-(8).

Act Oct. 3, 2008 (effective as if included in the amendments made by § 2502 of Act July 30, 2008, as provided by § 130(b) of such Act, which appears as a note to this section), in subsec. (b)(2), in subpara. (A), substituted "Except as provided in subparagraph (G), in the case" for "In the case of", and substituted subpara. (G) for one which read: "(G) The requirements of subparagraphs (B), (C), (D) and (E) shall not apply to extensions of credit relating to plans described in *section 101(53D) of title 11, United States Code*.".

2010. Act July 21, 2010 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), in subsec. (a), added paras. (16)-(19); in subsec. (b), added para. (4); and added subsec. (f).

Other provisions:

**Effective date of July 30, 2008 amendments.** Act July 30, 2008, P.L. 110-289, Div B, Title V, § 2502(c), 122 Stat. 2857, provides:

"(1) General disclosures. Except as provided in paragraph (2), the amendments made by subsection (a) [amending subsec. (b)(2) of this section] shall become effective 12 months after the date of enactment of this Act.

"(2) Variable interest rates. Subparagraph (C) of section 128(b)(2) of the Truth in Lending Act (*15 U.S.C. 1638(b)(2)(C)*), as added by subsection (a) of this section, shall become effective on the earlier of--

"(A) the compliance date established by the Board for such purpose, by regulation; or

"(B) 30 months after the date of enactment of this Act.".

**Act Aug. 14, 2008, Title X regulation provisions.** Act Aug. 14, 2008, P.L. 110-315, Title X, § 1002, 122 Stat. 3478, provides: "Not later than 365 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue regulations in final form to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) [*15 USCS § 1638(e)*] and section 140(c) of the Truth in Lending Act [*15 USCS § 1650(c)*], as added by this title, which regulations shall become effective not later than 6 months after their date of issuance.".

**Effective dates of Title X of Aug. 14, 2008 amendments.** Act Aug. 14, 2008, P.L. 110-315, Title X, § 1003, 122 Stat. 3478, provides:

"(a) In general. Except as provided in subsection (b) and as otherwise provided in this title [for full classification, consult USCS Tables volumes], this title and the amendments made by this title [for full classification, consult USCS Tables volumes] shall become effective on the date of enactment of this Act.

"(b) Effect notwithstanding regulations. Paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) [*15 USCS § 1638(e)*] and section 140(c) of the Truth in Lending Act [*15 USCS § 1650(c)*], as added by this title, shall become effective on the earlier of the date on which regulations issued under section 1002 [note to this section] become effective or 18 months after the date of enactment of this Act.".

**Effective date of Oct. 3, 2008 amendments.** Act Oct. 3, 2008, P.L. 110-343, Div A, Title I, § 130(b), 122 Stat. 3797, provides: "The amendments made by subsection (a) [amending subsec. (b)(2) of this section] shall take effect as if included in the amendments made by section 2502 of the Mortgage Disclosure Improvement Act of 2008 [§ 2502 of Act July 30, 2008] (Public Law 110-289).".

**Transfer of note related to mortgage loans rulemaking; civil actions.** Act March 11, 2009, P.L. 111-8, Div D, Title VI, § 626(a), (b), 123 Stat. 678; May 22, 2009, P.L. 111-24, Title V, § 511(a), 123 Stat. 1763 (effective 3/12/2009, as provided by § 511(b) of such Act), which formerly appeared as a note to this section, was reclassified by the compilers of the official United States Code, and now appears as *12 USCS § 5538*.

**NOTES:**

Related Statutes & Rules:
This section is referred to in *42 USCS §§ 1632,* 1640.

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection §§ 36, 82, 84, 86-98, 100, 102, 103, 105, 107, 147.*
*53A Am Jur 2d, Moneylenders and Pawnbrokers § 30.*

Am Jur Proof of Facts:
73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:
25 *Rabkin & Johnson, Current Legal Forms, § 21.30,* Sales and Exchanges.
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:24, 93-96, 98, 99, 101-103, 112-114, 116, 128.
19 Am Jur Legal Forms 2d, Article 9 Secured Transactions; Sales of Accounts and Chattel Paper § 253:1869.
7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards § 39.
17C Am Jur Pl & Pr Forms (2006), Moneylenders and Pawnbrokers, §§ 5, 8, 9, 12.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection §§ 5, 46-48, 50, 89.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.04, 1.05, 1.10.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections § 2.03.
1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.06.
1A Debtor-Creditor Law (Matthew Bender), ch 10, Repossessions § 10.02.
1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.07.
3 Debtor-Creditor Law (Matthew Bender), ch 26, Confession of Judgment § 26.03.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.11, 62.12, 62.14.

Annotations:
Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141.*
What constitutes "default, delinquency, or similar charges payable in the event of late payments" which must be disclosed under §§ 128(a)(9) and 129(a)(7) of Truth in Lending Act (*15 USCS §§ 1638(a)(9), 1639(a)(7)*) and § 226.8(b)(4) of Regulation Z (*12 CFR § 226.8(b)(4)*). *34 ALR Fed 467.*

What constitutes violation of requirements of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) concerning disclosure of information in credit transactions--civil cases. *113 ALR Fed 197.*

Construction and effect of disclosure statutes requiring one extending credit or making loan to give statement showing terms as to amounts involved and charges made. *14 ALR3d 330.*

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.04, 152.06, 152.08.
7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act § 156.08.
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.06.
9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.
9 Banking Law (Matthew Bender), ch 173, Applicant Notification § 173.05.
10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.04, 174.06, 174.17.
3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

Law Review Articles:

Dobbs; Anderson. Bankruptcy Law Changes Will Affect Business Cases Too: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *11 Ga Bar J 32*, October 2005.

**Emerging Issues Analysis**

*Sonnenschein, Nath, and Rosenthal, LLP on the Recent Amendments to the Truth-in-Lending Act and Regulation Z for Private Student Loans*

In this Emerging Issues Analysis, Stephen F.J. Ornsein, Matthew Yoon, and John P. Holahan of Sonnenschein, Nath and Rosenthal, LLP examine the private student loan provisions of the federal Truth-in-Lending Act as promulgated by the Board of Governors of the Federal Reserve under Regulation Z, and address the recent amendments to both TILA and Regulation Z which were made pursuant to the Higher Education Opportunity Act of 2008 ("HEOA").

Interpretive Notes and Decisions:

**I.IN GENERAL** 1. Generally 2. Relationship with other laws 3. Form of disclosures 4. Time of disclosures 5. Location of disclosures 6. Delivery of disclosures to consumers 7. Identity of creditor 8.--Assignments 9. Descriptive explanation of terms 10. Remedies 11.--Statutory damages 12. Miscellaneous

**II.AMOUNT FINANCED** 13. Generally 14. Itemization 15. Total amount financed 16. Net proceeds 17. Down payment 18. Insurance 19. Late or delinquency charges 20. Miscellaneous

**III.FINANCE CHARGE** 21. Generally 22. Itemization 23. Accrual date 24. Annual percentage rate 25. Interest rate 26. Mortgages 27. Delivery charges 28. Discounts 29. Notary fee 30. Cash transaction differentials 31. Miscellaneous

**IV.PAYMENT, DEFAULT AND ACCELERATION** 32. Number of payments 33. Prepayment 34. Rebates 35. Mortgages 36.--Chattel mortgages 37. Unearned insurance premiums 38. Deferral charges 39. Litigation costs and fees 40. Miscellaneous

**V.SECURITY INTEREST** 41. Description of security interest 42.--Uniform Commercial Code reference 43.--Personal property and chattel mortgages 44. Identification or description of property 45.--After-acquired property 46.--Personal property and household goods 47. Confession of judgment 48. Unearned insurance premiums 49. Payday loans 50. Relationship with state laws 51. Miscellaneous

**I.IN GENERAL 1. Generally**

In financing agreement containing condition precedent, where condition of obtaining financing is within exclusive control of seller and third-party lender, consummation occurs when consumer signs contract; in vehicle purchaser's suit against dealer alleging violations of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., even assuming that retail installment contracts, which were signed by purchaser but not by dealer, contained condition precedent regarding dealer's ability to obtain financing, district court was incorrect in finding that consummation occurred only upon assignment of loan; purchaser's signature on those documents rendered purchaser contractually obligated to purchase of credit and, thus, constituted consummation for purposes of TILA disclosures. *Bragg v Bill Heard Chevrolet, Inc. (2004, CA11 Fla) 374 F3d 1060, 17 FLW Fed C 727,* cert den (2005, US) *160 L Ed 2d 898, 125 S Ct 963.*

Based on clear language of *12 CFR §§ 226.2(17)(a), 225.17, 226.18,* and in conjunction with language in *15 USCS § 1638,* creditor, and only creditor, can make disclosures required by Truth in Lending Act, including disclosures regarding exclusion of debt cancellation coverage premium amount from finance charge calculations on loan covering purchase of vehicle. *Vallies v Sky Bank (2006, CA3 Pa) 432 F3d 493.*

In cases where difference between terminology used by creditor and terminology required by regulations under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) is so de minimis as to negate any possibility that consumer debtor would be confused thereby or his or her ability to comparison shop for credit would be inhibited thereby, it would serve no purpose to find such discrepancies to be violative of Act. *Glover v Doe Valley Development Corp. (1975, WD Ky) 408 F Supp 699.*

"Disclosure" required in credit sale under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) is term which refers to manner in which creditor must convey certain information to consumer, and requirements of disclosure under Act do not apply to all information that creditor might furnish to customer but only to that information Act requires to be disclosed. *Cosby v Mellon Bank, N. A. (1976, WD Pa) 407 F Supp 233.*

**2. Relationship with other laws**

McCarran-Ferguson Act (*15 USCS §§ 1011* et seq.) does not preclude application of Truth In Lending Act's (*15 USCS §§ 1601* et seq.) disclosure requirements to credit agreement between lending institution and borrower who obtains loan to purchase automobile insurance; premium financing by independent premium finance company does not constitute "business of insurance" for purposes of McCarren Act. *Cochran v Paco, Inc. (1979, CA5 Ga) 606 F2d 460, 51 ALR Fed 731.*

No cause of action under Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) is stated by Vietnam veterans against mobile home manufacturers charging abuse of mobile home loan guaranty provisions of Veterans Housing Act (*38 USCS §§ 1801* et seq.), alleging that manufacturers failed to disclose "true price of manufactured homes" and "true financing charges" for credit received, where veterans organization failed to allege how false certification of price of home constitutes "charge" to them incident to extension of credit. *Vietnam Veterans of America, Inc. v Guerdon Industries, Inc. (1986, DC Del) 644 F Supp 951* (criticized in *Foster Wheeler Corp. v Edelman (1987, DC NJ) 1987 US Dist LEXIS 16783).*

Although creditor violated Truth in Lending Act when it failed to disclose annual percentage rate it charged Chapter 13 debtor who bought furniture four months before he declared bankruptcy, creditor's failure to include annual percentage rate in parties' contract was bona fide error under *15 USCS § 1640(c)* that excused it from liability; the

debtor's failure to make downpayment he was required to make under contract prevented or inhibited creditor from following procedures it normally followed to prevent error. *Gordon v Hendricks-Patton Co. (In re Gordon) (2008, BC ND Ala) 389 BR 243.*

**3. Form of disclosures**

Disclosure of installment credit terms mandated by Truth in Lending Act (*15 USCS §§ 1601* et seq.) must be made in manner readily understandable by ordinary layman who is in unfamiliar waters and often pursued by unabating financial pressures when he seeks financial assistance. *Sneed v Beneficial Finance Co. (1976, DC Hawaii) 410 F Supp 1135, 19 UCCRS 1223.*

Form and timing requirements of Truth in Lending Act, *15 USCS §§ 1601* et seq., work together to mandate that consumers be given separate copy of disclosures to keep before they sign contract; that consumer is allowed to review applicable provisions and disclosures before signing contract is not same as being given copy of disclosures to keep and review prior to signing. *Kilbourn v Candy Ford-Mercury, Inc. (2002, WD Mich) 209 FRD 121* (criticized in *Brown v SCI Funeral Servs. of Fla., Inc. (2003, SD Fla) 212 FRD 602).*

Car seller's motion for summary judgment as to buyer's claim under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., that seller's disclosure's were not properly given was granted; TILA required seller to make required disclosures in writing on form buyer could retain before buyer became contractually obligated, and that actually occurred in this case because buyer was provided completed retail installment sales contract (RISC) before she signed any contract papers, and RISC was sufficient writing. *Harper v Lindsay Chevrolet Oldsmobile, LLC (2002, ED Va) 212 F Supp 2d 582.*

Summary judgment was denied because disputed issues of fact existed as to whether plaintiff was given Truth in Lending Act disclosures provided within retail installment contract in form she could keep prior to her signing contract. *Gillom v Ralph Thayer Auto. Livonia, Inc. (2006, ED Mich) 444 F Supp 2d 763.*

Lender violated Truth in Lending Act (TILA), *15 USCS §§ 1632* and *1638(b)* by failing to clearly and conspicuously disclose and segregate information relating to loan's payment schedule, by failing to clearly disclose loan's annual percentage rate and its variable interest rate feature, and by including information not directly related to required information in its disclosure statement. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 240 FRD 612.*

**Unpublished Opinions**

Unpublished: Seller of used car, which was being financed, did not violate disclosure provisions of Truth in Lending Act, *15 USCS § 1638(a)(3)*, and Regulation Z, *12 CFR § 226.18*, by failing to make known that disclosures were estimates because disclosures were not estimates, but actual amounts, even though numbers were later altered when financing was not approved and alternative arrangements were disclosed because disclosures were proper at time that transaction was consummated. *Tripp v Charlie Falk's Auto Wholesale, Inc. (2008, CA4 Va) 2008 US App LEXIS 18850.*

Unpublished: Where imprecise verb tense was used in descriptive explanation contained in "total of payments" portion of installment contract, purchaser failed to present evidence of violations of *15 USCS § 1638(a)(6)* and (b)(1); installment contract correctly disclosed payment schedule. *Mize v Joe's Auto Sales, Inc. (2005, SD Ind) 2005 US Dist LEXIS 1648.*

**4. Time of disclosures**

In mortgage transaction in which mortgage permits increase in interest rates, disclosures required by Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) must be made at time original transaction is entered into and interest rates applicable at that time as well as provision for increase must be disclosed, but upon increasing rates pursuant to

agreement mortgagee need not again make disclosures required by Act. *Herbst v First Federal Sav. & Loan Asso. (1976, CA7 Wis) 538 F2d 1279.*

In closed-end transactions, required disclosures under TILA are to be made as of time that credit is extended, and it is as of that time that adequacy and accuracy of disclosures are measured. *Begala v PNC Bank, N.A. (1998, CA6 Ohio) 163 F3d 948, 1998 FED App 378P*, reh den, reh, en banc, den, clarified (1999, CA6) *1999 US App LEXIS 6016* and cert den *(1999) 528 US 868, 145 L Ed 2d 141, 120 S Ct 166* and (criticized in *Crabill v Trans Union, L.L.C. (2001, CA7 Ill) 259 F3d 662).*

Credit was extended to purchaser of automobile at time at which credit terms were agreed to, and it was at that point that creditor-seller was obligated to comply with disclosure provisions of Truth-In-Lending-Act (*15 USCS §§ 1601* et seq.); fact that buyer-debtor made only partial down payment at that time and agreed to pay remainder of down payment before credit would be extended did not alter point at which disclosure was required. *Hardin v Cliff Pettit Motors, Inc. (1976, ED Tenn) 407 F Supp 297, 19 UCCRS 421.*

Agreement by which purchasers of mobile home committed themselves to purchasing mobile home under terms of credit agreement but seller's obligation to sell was conditioned upon availability of financing was agreement entered into by parties in connection with consumer credit sale not under open end credit plan within meaning of § 128 of Truth in Lending Act (*15 USCS § 1638*), and disclosure required by Act should have been made before entering into agreement since § 128 requires disclosure prior to time that purchaser contractually binds himself to accept particular credit terms. *Copley v Rona Enters. (1976, SD Ohio) 423 F Supp 979.*

"Rapid Refund" recipients' challenge to timeliness of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) disclosures must fail, where they claim transaction was consummated upon completion of "Refund Anticipation Loan" application but lender and tax service claim consummation occurs when taxpayer signs loan agreement on back of proceeds check, because TILA disclosures attached to check stub are sufficiently delivered "before credit is extended" within meaning of *15 USCS § 1638(b)(1)*, even though earlier disclosure might more comport with spirit of *TILA. Basile v H & R Block (1995, ED Pa) 897 F Supp 194.*

*15 USCS § 1638*(a) only covers whether the proper disclosures under the Truth in Lending Act of 1968 were made, not when such disclosures were made. *Graham v RRR, LLC (2002, ED Va) 202 F Supp 2d 483*, affd (2003, CA4 Va) *55 Fed Appx 135.*

Form and timing requirements of Truth in Lending Act, *15 USCS §§ 1601* et seq., work together to mandate that consumers be given separate copy of disclosures to keep before they sign contract; that consumer is allowed to review applicable provisions and disclosures before signing contract is not same as being given copy of disclosures to keep and review prior to signing. *Kilbourn v Candy Ford-Mercury, Inc. (2002, WD Mich) 209 FRD 121* (criticized in *Brown v SCI Funeral Servs. of Fla., Inc. (2003, SD Fla) 212 FRD 602).*

Truth in Lending Act, *15 USCS § 1638(b)(1)*, claim was not dismissed because whether car dealer disclosed terms after fact was irrelevant where it was alleged that he failed to disclose key terms before contract was signed and credit was extended. *Martinez v Rick Case Cars, Inc. (2003, SD Fla) 278 F Supp 2d 1371, 16 FLW Fed D 671.*

Car dealer did not violate Truth In Lending Act by obtaining buyer's signature on retail installment sales contract before providing buyer with copy; required timing for disclosure was satisfied by allowing buyer opportunity to read contract before signing it. *Padin v Oyster Point Dodge (2005, ED Va) 397 F Supp 2d 712.*

Virginia consumer loan company was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of action under Washington Consumer Protection Act (CPA), *Wash. Rev. Code § 19.86.010* et seq., which was filed by consumers for alleged failure to timely disclose yield spread premiums related to their mortgage agreements; Mortgage Brokers Practices Act (MBPA), *Wash. Rev. Code § 19.146.010* et seq., codified disclosure requirements of Real Estate Settlement Procedures Act and of Truth in Lending Act, and it allowed for claim to be brought under CPA when any portion of MBPA was

violated; however, it was not clear whether company was exempted from MBPA under *Wash. Rev. Code § 19.146.020(1)(a)* because questions remained regarding authority under which company operated in *State of Washington. Pierce v Novastar Mortg., Inc. (2006, WD Wash) 422 F Supp 2d 1230.*

**5. Location of disclosures**

Location of disclosures on both front and back side of document is permissible only if two-sided form is designed for mechanical or electronic processing. *Smith v Chapman (1980, CA5 Tex) 614 F2d 968.*

Seller of consumer goods on installment plan did not substantially comply with requirements of § 128 of Truth in Lending Act (*15 USCS § 1638*) where on retail installment contract space provided for listing number of payments was left blank, amount of final payment was not disclosed, abbreviation "d.p." was used instead of required phrase "cash down payment," language "Cr. Ser. Charges" with line through column where amount would appear was used to indicate absence of finance charge, and term "total" was used in lieu of required term "unpaid balance." *Sambolin v Klein Sales Co. (1976, SD NY) 422 F Supp 625.*

Creditor which charged purchaser of automobile $ 1.00 to list creditor's lien on certificate of title was required to disclose $ 1.00 fee not only in section of installment sales contract entitled "itemization of amount financed" but also in space marked "filing fees," pursuant to *12 CFR § 226.18(o), 226.17(a)(1),* and *226.18(c)(1). Lewis v Award Dodge, Inc. (1985, DC Conn) 620 F Supp 135.*

Fact that acceleration clause in connection with credit sale of automobile appeared on reverse side of contract does not violate disclosure requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and regulations promulgated thereunder where state law requires rebate of unearned interest to debtor after acceleration and where method of rebating unearned interest in event of prepayment was disclosed on front of instrument. *United States ex rel. Hornell v One 1976 Chevrolet Station Wagon (1976, DC NM) 425 F Supp 550,* affd in part and revd in part on other grounds (1978, CA10 NM) *585 F2d 978.*

**6. Delivery of disclosures to consumers**

Disclosure statement containing acknowledgment of borrowers that they have received fully completed copy of disclosure statement constitutes prima facie proof of delivery and defendants are entitled to summary judgment as to issue of delivery of disclosure statement in absence of evidence in support of plaintiffs' claim. *Whitlock v Midwest Acceptance Corp. (1978, CA8 Mo) 575 F2d 652.*

Bank's failure to give borrower who took car loan written copy of credit contract containing disclosures required under *15 USCS § 1638(a)* and Regulation Z until after lender signed contract resulted in violation of requirements. *Walters v First State Bank (2001, WD Va) 134 F Supp 2d 778* (criticized in *Spearman v Tom Wood Pontiac-GMC, Inc. (2001, SD Ind) 2001 US Dist LEXIS 22225)* and (criticized in *Stevens v Brookdale Dodge, Inc. (2002, DC Minn) 2002 US Dist LEXIS 25406).*

Form and timing requirements of Truth in Lending Act, *15 USCS §§ 1601* et seq., work together to mandate that consumers be given separate copy of disclosures to keep before they sign contract; that consumer is allowed to review applicable provisions and disclosures before signing contract is not same as being given copy of disclosures to keep and review prior to signing. *Kilbourn v Candy Ford-Mercury, Inc. (2002, WD Mich) 209 FRD 121* (criticized in *Brown v SCI Funeral Servs. of Fla., Inc. (2003, SD Fla) 212 FRD 602).*

Car seller's motion for summary judgment as to buyer's claim under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., that seller's disclosure's were not properly given was granted; TILA required seller to make required disclosures in writing on form buyer could retain before buyer became contractually obligated, and that actually occurred in this case because buyer was provided completed retail installment sales contract (RISC) before she signed any contract papers, and RISC was sufficient writing. *Harper v Lindsay Chevrolet Oldsmobile, LLC (2002, ED Va) 212*

*F Supp 2d 582.*

Nothing in regulations requires creditor to give consumer separate personal copy of disclosures at time before consummation where consummation takes place when consumer signs disclosure form or later. *Haun v Don Mealey Imps. (2003, MD Fla) 285 F Supp 2d 1297, 17 FLW Fed D 55.*

Borrowers failed to state claim for rescission under *15 USCS § 1635(a)* based on alleged failure under *15 USCS § 1638* by mortgage lender and loan servicer to disclose loan's finance charge, amount financed, and annual percentage rate; however, borrowers did sufficiently allege that they were not provided with number of copies of disclosures required under *12 CFR §§ 226.23(b)* and *226.17(d). Seldon v Home Loan Servs. (2009, ED Pa) 647 F Supp 2d 451, 74 FR Serv 3d 235.*

**Unpublished Opinions**

Unpublished: Seller of used car, which was being financed, provided buyers with required disclosures under Truth in Lending Act, *15 USCS § 1638*, and Regulation Z, *12 CFR § 226.18*, because seller's agent provided transaction documents and credit disclosures to buyers before signing, which was before transaction was consummated, and buyers had opportunity to read documents before signing. *Tripp v Charlie Falk's Auto Wholesale, Inc. (2008, CA4 Va) 2008 US App LEXIS 18850.*

**7. Identity of creditor**

In credit sale of mobile home bank is jointly liable with seller for failure to make necessary disclosures under Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) where bank has worked with seller of mobile home in past, bank is payee on note executed by debtor and bank established interest rate upon which other computations basic to cost of credit depended, including amount of installments and total finance charges. *Hinkle v Rock Springs Nat'l Bank (1976, CA10 Wyo) 538 F2d 295.*

Bank making consumer loan violated Truth in Lending Act (*15 USCS §§ 1601* et seq.) by failing to include its identity in disclosure form albeit failure to include identity was clerical error and debtors in fact knew identity of creditor. *In re Wilson (1975, SD Ohio) 411 F Supp 751.*

Although better practice requires disclosure of creditor's full address in disclosure statement, where creditor is mortgage lender located in one area of one state, full disclosure of name of creditor is all that is required under Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Houston v Atlanta Federal Sav. & Loan Asso. (1976, ND Ga) 414 F Supp 851.*

Requirement of Truth in Lending Act (*15 USCS §§ 1601* et seq.) that name of lender be revealed is not satisfied where various documents connected with credit sale of automobile all identify dealership as creditor whereas in fact dealership is not legal entity but is simply tradename for individual who is not identified anywhere in document. *Vines v Hodges (1976, DC Dist Col) 422 F Supp 1292.*

Disclosure statement issued by seller of automobile which identified seller by unregistered tradename does not comply with requirement to disclose identity of creditor. *Rainey v Credithrift of America # 5, Inc. (1983, La App 4th Cir) 441 So 2d 278.*

**8.--Assignments**

Statement in automobile retail installment contract between dealer and prospective buyer which notifies buyer that contract is accepted by dealer and assigned to finance company is sufficient disclosure of finance company's creditor status for purposes of *15 USCS §§ 1601* et seq. since statement discloses nature of relationship of finance company to transaction. *Ford Motor Credit Co. v Cenance (1981) 452 US 155, 68 L Ed 2d 744, 101 S Ct 2239.*

Regardless of whether parties are creditors for purposes of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.), designation of such parties as assignees adequately discloses their identity to debtor for purposes of Act. *Sharp v Ford Motor Credit Co. (1980, CA7 Ill) 615 F2d 423.*

Under *15 USCS § 1638*, seller and not credit company has duty of disclosure where seller is acting on its own behalf and not merely as conduit of credit company to obtain customers; cases holding that both seller and credit company have duty to disclose under § 1638 are distinguishable where they involve credit company which uses seller merely as contact to obtain creditors for discount company to whom credit obligation is immediately assigned. *Manning v Princeton Consumer Discount Co. (1975, ED Pa) 390 F Supp 320, 19 FR Serv 2d 1332.*

Bankruptcy court rejected Chapter 13 debtor's claim that home loan corporation that accepted assignment of note and mortgage debtor executed was liable for damages under *15 USCS § 1640(a)(1)* because mortgage company that assigned note and mortgage violated *15 USCS § 1638* when it prepared Truth and Lending Act (TILA) documents; there was no evidence mortgage company was aware of fact that two people who sold real property to debtor financed part of sale, and even if mortgage company was aware of that fact and violated TILA, there was no basis for holding home loan corporation liable, as assignee, for TILA violations mortgage company committed. *In re Miles (2008, BC ED Pa) 400 BR 441.*

**9. Descriptive explanation of terms**

Disclosure statement which lists: (1) cash price, (2) cash downpayment, and (3) unpaid balance--amount financed, does not violate Truth in Lending Act (*15 USCS §§ 1601* et seq.) for failure to include term "of cash price" after term "unpaid balance;" Act requires truth in lending but not sacrament in language and use of shibboleths or other sacred terms is unnecessary. *Dixon v D. H. Holmes Co. (1978, CA5 La) 566 F2d 571.*

Use of term "amount financed" in addition to term "unpaid balance," where there is no additional finance charges, is proper, and completely and accurately informs consumer of balance of purchase price. *Drew v Flagship First Nat'l Bank (1977, MD Fla) 448 F Supp 434.*

**Unpublished Opinions**

Unpublished: Where imprecise verb tense was used in descriptive explanation contained in "total of payments" portion of installment contract, which stated "the amount you will have to pay after you have made all payments as originally scheduled" rather than "the amount you will have paid," verb tense did not violate *15 USCS § 1638(a)(8)* and *12 C.F.R. § 226.18(h)* because reasonable person in purchaser's position would have understood disclosure. *Mize v Joe's Auto Sales, Inc. (2005, SD Ind) 2005 US Dist LEXIS 1648.*

**10. Remedies**

Consumer borrower is entitled to $ 2,000 in statutory penalties, costs, attorney's fees, and rescission of home improvement transaction, where neither aluminum siding creditor nor lender met strict disclosure requirements under TILA, because cash agreement signed before siding work began and lien contract signed after completion of work are facially deficient and could not be considered together. *Shepeard v Quality Siding & Window Factory (1990, DC Del) 730 F Supp 1295, 113 ALR Fed 727.*

In order to establish actual damages for creditor's failure to make disclosure of upcharge under *15 USCS § 1638(a)(2)(B)(iii)*, plaintiff must demonstrate that he read TILA disclosure statement, that he understood charges being disclosed, that he would have sought lower price had disclosure been accurate, and that he would have obtained lower price. *Rugambwa v Betten Motor Sales (2001, WD Mich) 200 FRD 358, 49 FR Serv 3d 681.*

**11.--Statutory damages**

Consumers may not recover statutory damages under *15 USCS § 1640(a)* for violations of *15 USCS § 1638(b)(1)* and its corresponding regulations, *12 C.F.R. § 226.17(b). McDonald v Checks-N-Advance, Inc. (In re Ferrell) (2008, CA9) 539 F3d 1186.*

Car dealer is not entitled to judgment on pleadings of buyer's TILA (*15 USCS §§ 1601* et seq.) claim for statutory damages, where § 1640(a) permits recovery of statutory damages for violations of § 1638(b)(1) because subsection is not "disclosure referred to in section 1638," or, alternatively, even if form and timing requirements of § 1638(b)(1) are considered to be "disclosures referred to in section 1638," statutory damages are available since dealer has not made disclosures required by §§ 1638(a)(3), (4), (5), and (6) in time and manner required by § 1638(b)(1). *Lozada v Dale Baker Oldsmobile, Inc. (2001, WD Mich) 145 F Supp 2d 878* (criticized in *Collins v Ray Skillman Olds-GMC Truck, Inc. (2001, SD Ind) 2001 US Dist LEXIS 22239)* and (criticized in *Kilbourn v Candy Ford-Mercury, Inc. (2002, WD Mich) 209 FRD 121)* and (criticized in *Malchow v GMI Acquisition, Inc. (2002, DC Minn) 2002 US Dist LEXIS 19321)* and (criticized in *Stevens v Brookdale Dodge, Inc. (2002, DC Minn) 2002 US Dist LEXIS 25406).*

In reading *15 USCS § 1638(a)(2)(B)(iii)* together with *15 USCS § 1640(a)*, it is clear that statutory damages are limited to violations that require disclosure of amount financed; statutory damages are not available under *15 USCS § 1638* for failure to disclose itemization of amount financed. *Rugambwa v Betten Motor Sales (2001, WD Mich) 200 FRD 358, 49 FR Serv 3d 681.*

Statutory damages are unavailable for *15 USCS § 1638(a)(2)(B)(iii)* violation. *Martin v Equity One Consumer Disc. Co. (2002, WD Va) 194 F Supp 2d 469.*

Corporation's assertion that putative class of purchasers could not seek statutory damages under *15 USCS § 1632* or *15 USCS § 1638(b)*, part of Truth in Lending Act, *15 USCS §§ 1601* et seq., would not defeat purchasers' assertions that they were entitled to certification as class under *Fed. R. Civ. P. 23*, but could be addressed by corporation later in dispositive motion. *Brown v SCI Funeral Servs. of Fla., Inc. (2003, SD Fla) 212 FRD 602.*

Purchasers' Truth in Lending Act (TILA) complaint was dismissed for failure to state claim because statutory damages under *15 USCS § 1640(a)* for violations of *15 USCS § 1638(a)(2)* were available for failure to disclose entire amount financed and failure to disclose itemization of amount financed did not subject seller to statutory liability under *TILA. Hart v V.B. Invs., Inc. (2005, MD Fla) 18 FLW Fed D 841.*

Used car dealer was creditor under *15 USCS § 1602(f)*, part of Truth in Lending Act and Regulation Z at 12 CFR pt. 226, and thus, was liable for dealer's failure to honor disclosed finance rate under *15 USCS § 1638(b)* and its attempt to force consumer to accept higher rate; thus, consumer was entitled to statutory damages under *15 USCS § 1640(a). Muro v Hermanos Auto Wholesalers, Inc. (2007, SD Fla) 514 F Supp 2d 1343.*

Under *15 USCS § 1640(a)*, recovery of statutory damages is plainly limited to specific violations of disclosure requirements of *15 USCS § 1638(a)*, and such damages are not available for violations not enumerated in statute. *McDonald v Checks-N-Advance, Inc. (In re Ferrell) (2006, BAP9) 358 BR 777.*

**Unpublished Opinions**

Unpublished: Assuming that imprecise verb tense in descriptive explanation contained in "total of payments" portion of installment contract violated *15 USCS § 1638(a)(8)* and *12 C.F.R. § 226.18(h)*, purchaser was not entitled to statutory damages under *15 USCS § 1640(a)* where statutory damages were available only for violations of subsections specifically enumerated in § 1640(a), which did not include *15 USCS § 1638(a)(8)* or *12 C.F.R. § 226.18(h). Mize v Joe's Auto Sales, Inc. (2005, SD Ind) 2005 US Dist LEXIS 1648.*

**12. Miscellaneous**

Consummation, or extension of credit, under *15 USCS § 1638*, encompassed unfunded, financing agreement

options to which consumer was contractually committed, and under which consumer could be bound at lender's sole discretion. *Nigh v Koons Buick Pontiac GMC, Inc. (2003, CA4 Va) 319 F3d 119,* revd, remanded (2004, US) *160 L Ed 2d 389, 125 S Ct 460, 18 FLW Fed S 13.*

Genuine issues of material fact precluded summary judgment for finance company on satellite dish buyer's claims under *15 USCS § 1638* related to company's failure to provide closed-end disclosure, where issue existed as to whether loan transaction was open-ended, and trier of fact would decide whether it was reasonable to anticipate repeated transactions on account after purchase of satellite television system. *Perry v Household Retail Servs. (1996, MD Ala) 953 F Supp 1370,* magistrate's recommendation (1997, MD Ala) *1997 US Dist LEXIS 22569,* adopted, approved, affd, objection overruled, class certif gr, in part, class certif den, in part (1998, MD Ala) *180 FRD 423* (criticized in *Shelley v AmSouth Bank (2000, SD Ala) 2000 US Dist LEXIS 11429).*

Buyers' allegation that automobile dealership's finance manager deliberately covered up Truth in Lending Act's disclosures with his hand and retained physical control of documents until buyers had signed them was sufficient to survive automobile dealership's motion to dismiss under *Fed. R. Civ. P. 12(b)(6). Cannon v Metro Ford, Inc. (2002, SD Fla) 242 F Supp 2d 1322.*

Automobile dealership was required to make Truth in Lending Act disclosures under *15 USCS § 1638(a), 1638(b)* to buyers because retail installment sale contract indicated that it was not made contingent upon buyers obtaining financing but that they agreed to credit terms therein. *Cannon v Metro Ford, Inc. (2002, SD Fla) 242 F Supp 2d 1322.*

Default judgment against corporation was proper as to Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claims even though TILA claims against answering defendants were dismissed as facts, transactions, and purposes engaged in and occupied by all three defendants were sufficiently distinct such that inconsistent judgments would not result; where plaintiff alleged that corporation acted as creditor that failed to make requisite disclosures, corporation was liable under *TILA. Jefferson v Briner, Inc. (2006, ED Va) 461 F Supp 2d 430.*

Borrowers who sought delaration that they had right to rescind mortgage loan because lender violated Truth in Lending Act (TILA), *15 USCS §§ 1632* and *1638(b),* could represent class under *Fed. R. Civ. P. 23* because borrowers otherwise met class action requirements. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 240 FRD 612.*

Court denied motion of defendants, real estate broker, real estate holding company, and related company, for summary judgment as to homeowners' Home Ownership and Equity Protection Act (HOEPA) and Truth in Lending Act (TILA) claims, which alleged that defendants violated disclosure requirements of both statutes as set forth in *15 USCS §§ 1602, 1638, 1639,* and *1641* and implementing regulations, *12 CFR §§ 226.31* and .32, and which sought rescission under *15 USCS § 1635* and *12 CFR § 226.23(a)(2),* because genuine issues of fact existed as to whether parties intended outright sale, in which case TILA and HOEPA were inapplicable, or whether, given facts surrounding transaction, transaction could be construed as equitable mortgage, in which case TILA and HOEPA applied, and with regard to rescission, given discretion within which court could condition right to rescission, it was not necessary that owners demonstrate they had means to secure necessary financing at instant stage of proceedings. *Jones v REES-MAX, LLC (2007, DC Minn) 514 F Supp 2d 1139.*

Documents and sophisticated borrowers' own notes demonstrated they knew month before settlement that loan at issue would be structured as two loans, and that they were paying, potentially dearly, for luxury of loan without income verification; thus, their Truth-in-Lending Act claim under *15 USCS § 1638(a)* was dismissed. *Parker v Long Beach Mortg. Co. (2008, ED Pa) 534 F Supp 2d 528, 69 FR Serv 3d 1171.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded; one-year statute of limitations under *15 USCS § 1640(e)* barred borrower's damages claim based on alleged disclosure violations under *15 USCS §§ 1632* and *1638. Saldate v Wilshire Credit Corp. (2010, ED Cal) 2010 US Dist LEXIS*

*21034,* complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220,* complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051.*

In case in which two borrowers sued lender, alleging misrepresentations and failure to disclose material information, in violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and lender filed *Fed. R. Civ. P. 12(c)* motion for judgment on pleadings, Truth-in-Lending Disclosure Statement, which was signed by both borrowers, and accompanying Truth-in-Lending Summary Statement set forth information required to be disclosed by TILA and Regulation Z, such as amount financed, annual percentage rate, and finance charge. borrowers did not state how or why those disclosures were deficient. *Payan v Greenpoint Mortg. Funding (2010, DC NJ) 681 F Supp 2d 564.*

Lender violated Truth in Lending Act, *15 USCS § 1601* et seq., because none of documents signed by debtor before closing included required disclosures; also, lender was creditor under *12 C.F.R. § 226.2(a)(17)(i),* debtor was consumer under *12 C.F.R. § 226.2(a)(11),* and $ 500 brokerage fee paid by debtor constituted finance charge under *12 C.F.R. § 226.4(a)(3). Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

To be "creditor" required to disclose, among other things, "the identity of creditor required to make disclosure," mortgagee must fall under both prongs of *15 USCS § 1602(f). Patchell v Option One Mortg. Corp. (In re Patchell) (2005, BC DC Mass) 336 BR 1.*

**Unpublished Opinions**

Unpublished: Debtor's initial pawn was merely extended and not satisfied and replaced nor cancelled so that new disclosures under *15 USCS §§ 1601(a)* and *1638(b),* and Regulation Z of TILA at *12 CFR § 226.20(a)* were not required in that Alabama Pawnshop Act did not prohibit extensions or renewals of initial maturity date, and pawn ticket and customer receipt both allowed for such extensions; therefore, pawnbroker's original lien remained valid under *Ala. Code § 5-19A-10. Gunn v Title Max of Ala., Inc. (In re Gunn) (2008, CA11 Ala) 2008 US App LEXIS 19734.*

Unpublished: Claims that insured failed to make disclosures required by Truth in Lending Act and Home Ownership and Equity Protection Act under *15 USCS §§ 1602, 1635, 1638, 1640,* did not require plaintiff to prove that insured knowingly or purposefully failed to make requisite disclosures, and thus, insurer was required to provide defense as to those claims under policy that only excluded risks that arose from event that insured deliberately caused or of which he was consciously aware. *Szelc v Stanger (2010, DC NJ) 2010 US Dist LEXIS 13146.*

**II.AMOUNT FINANCED 13. Generally**

Unofficial staff letter concerning disclosure of certain financial charges does not carry weight required to overrule District Court's interpretation of relevant state statute in absence of formal approval of letter by Federal Reserve Board. *Watts v Key Dodge Sales, Inc. (1983, CA5 La) 707 F2d 847,* reh den (1983, CA5 La) *716 F2d 901.*

Predecessor to *15 USCS § 1638* requires disclosure as single amount of total amount of credit made available, and such requirement is not fulfilled by disclosure of constituent parts of this total. *In re Chapman (1979, DC RI) 1 BR 501.*

**Unpublished Opinions**

Unpublished: Summary judgment was appropriate in Truth-in-Lending Act (TILA) action, where defendant dealer never extended credit to plaintiff purchaser, and so TILA did not apply to purchaser's cash purchase of used truck. *Bade v Courtesy Olds Mobile, Inc. (2006, CA9 Nev) 2006 US App LEXIS 6416.*

**14. Itemization**

Creditor's failure to itemize separately on disclosure statement amount of loan being extended to debtor or on debtor's behalf violates predecessor to *15 USCS § 1638* and regulations promulgated thereunder despite fact that

disclosure statement reveals total amount being financed and charges being made on loan so that amount of cash extended can be determined by simple arithmetic. *Pollock v General Finance Corp. (1976, CA5 Ga) 535 F2d 295, 19 UCCRS 1219,* reh den (1977, CA5 Ga) *552 F2d 1142, 21 UCCRS 1204,* cert den *(1977) 434 US 891, 54 L Ed 2d 176, 98 S Ct 265.*

Lenders did not violate requirement of *15 USCS § 1638(a)(2)(A)* to disclose amount financed where, in using official sample format for itemization provided by Federal Reserve Board, lender had placed on blank for "itemization of amount financed" $ 22,000, which was total amount available to borrower plus various charges, rather than $ 19,800 actually available to borrower, since difference stemmed from distinction made by statute. *Hefferman v Bitton (1989, CA9 Cal) 882 F2d 379* (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9) 342 F3d 899)* and (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9 Cal) 342 F3d 899).*

Lender violated predecessor to *15 USCS § 1638(a)(2)* by failing to individually itemize notarial fee and fees for certificates and recordation in connection with second mortgage by which loan was secured. *Simmons v American Budget Plan (1974, ED La) 386 F Supp 194.*

When only component of finance charge in credit sale of automobile is finance charge imposed for extension of credit, itemization of components of finance charge is not required by Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) or Regulation Z promulgated thereunder. *Cosby v Mellon Bank, N. A. (1976, WD Pa) 407 F Supp 233.*

Bank which financed customer's purchase of automobile from dealer is not liable under Truth in Lending Act (*15 USCS §§ 1601* et seq.) for dealer's failure to itemize separately from cash price of automobile amounts charged for inspection and for obtaining registration and certificate of title, since, although items were improperly included in price of automobile, responsibility was dealer's, not bank's, since such fees are not within purview of bank's relationship with customer. *Kramer v Marine Midland Bank (1983, SD NY) 559 F Supp 273.*

Where bank financed dental work for consumer patients, its failure to disclose as separate fee administrative charge paid by dentist to administrator of loan did not violate Truth in Lending Act, *15 USCS § 1601* et seq., and summary judgment was granted in favor of bank. *Jones v People's Heritage Bank (2006, SD Ga) 433 F Supp 2d 1328.*

If documentary fees and license, title, and registration fees are financed, they must be included in computation of amount financed, but itemized computation need not be disclosed unless debtor request that fees be so itemized and disclosed. *Chemical Bank v Mayo (1983, City Ct) 121 Misc 2d 781, 469 NYS2d 315.*

**Unpublished Opinions**

Unpublished: In contract to purchase car, when taxes and fees were listed separately as "other charges," it was clear that they were not part of "cash price;" car's seller complied with Truth In Lending Act, *15 USCS § 1601* et seq., by adding those charges to cash price to determine amount financed, as required by *15 USCS § 1638. Stone v Free Bridge Auto Sales, Inc. (2006, CA4 Va) 2006 US App LEXIS 14728.*

**15. Total amount financed**

Creditor's failure to itemize separately on disclosure statement amount of loan being extended to debtor or on debtor's behalf violates predecessor to *15 USCS § 1638* and regulations promulgated thereunder despite fact that disclosure statement reveals total amount being financed and charges being made on loan so that amount of cash extended can be determined by simple arithmetic. *Pollock v General Finance Corp. (1976, CA5 Ga) 535 F2d 295, 19 UCCRS 1219,* reh den (1977, CA5 Ga) *552 F2d 1142, 21 UCCRS 1204,* cert den *(1977) 434 US 891, 54 L Ed 2d 176, 98 S Ct 265.*

Lender is required, under predecessor to *15 USCS § 1638(a)(2),* to disclose total amount to be financed, all charges included in amount of credit extended but which are not part of finance charge, and amount of credit borrower will have

actual use of; where lender fails to disclose amount of cash to be given borrower, lender violates predecessor to § 1638 even though omitted figure can be computed merely by subtracting charges not part of finance charge from total amount to be financed. *Ballew v Associates Financial Services Co. (1976, DC Neb) 450 F Supp 253.*

Creditor's failure to use phrase "amount financed" rather than "unpaid balance", although technical error, is violation of Truth in Lending Act (*15 USCS § 1638*) even though two amounts are equal. *Chapman v Rhode Island Hospital Trust Nat'l Bank (1978, DC RI) 444 F Supp 439.*

Car dealership was entitled to summary judgment in consumer's action alleging violation of *15 USCS § 1638(a)(2)*, part of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., because TILA and its implementing regulation, 15 C.F.R. pt. 226, did not require amount of "negative equity" in vehicle traded in on another vehicle to be clearly and separately disclosed. *Slover-Becker v Pitre Chrysler Plymouth Jeep of Scottsdale, Inc. (2005, DC Ariz) 409 F Supp 2d 1158.*

**16. Net proceeds**

Failure of lender to show single lump sum figure for net proceeds made available to borrowers does not violate predecessor to *15 USCS § 1638(a)(2)* where net proceeds can readily be determined from disclosure statement by simple addition of amount used to retire prior indebtedness and amount paid to borrowers. *Barbieri v Commercial Credit Loans, Inc. (1979, CA5 Fla) 596 F2d 660.*

Lender is not excused from separately disclosing net loan proceeds under appropriate caption even though that amount fortuitously equals amount financed. *Dorsey v Citizens & Southern Financial Corp. (1982, CA11 Ga) 678 F2d 137.*

Disclosure of amount of loan is sufficient where disclosure statement lists only total amount of loan and does not break this down into refinancing of earlier loan, interest due, and additional cash paid to borrower; use of general term "loan proceeds" in disclosing amount financed is permissible, rather than disclosure of actual proceeds of loan. *Pridegon v Gates Credit Union (1982, CA7 Ill) 683 F2d 182, 34 UCCRS 717.*

Failure of lender to make disclosure of net loan proceeds separate from other required or permitted disclosures did not violate predecessor to *15 USCS § 1639*. *Sage v Freedom Mortg. Co. (1983, CA11 Ga) 704 F2d 1519.*

Failure of lender to disclose as separate figure net loan proceeds violated predecessor to *15 USCS § 1638*, notwithstanding figure could have been arrived at by calculating other figures. *Daigneault v Public Finance Corp. (1983, DC RI) 562 F Supp 194.*

**17. Down payment**

Buyer's down payment made to seller which was not itemized or disclosed in Truth in Lending statement constituted violation of Truth in Lending Act and Regulation Z, and because it was valid claim against seller, it was also valid claim against assignee by virtue of claim preservation provision in contract. *Cox v First Nat'l Bank (1986, SD Ohio) 633 F Supp 236.*

Where plaintiff has made down payment to seller which is not itemized or disclosed in Truth in Lending statement provided to plaintiff, plaintiff has valid claim against seller and also against defendant assignee of installment contract by virtue of claim preservation provision in contract. *Cox v First Nat'l Bank (1986, SD Ohio) 633 F Supp 236.*

**18. Insurance**

Where loan agreement between consumer and finance company states that credit life and disability insurance are not required for loan but that if borrower desires life insurance charge will be included in amount financed, and borrower chooses to take both life insurance and disability insurance, cost of each but not cost of total being listed on

loan agreement and total being listed on separate insurance policy, disclosure requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and regulations promulgated thereunder are satisfied. *Doggett v Ritter Fin. Co. (1975, CA4 Va) 528 F2d 860.*

Statement in loan agreement that if borrower desires credit life insurance or credit life and disability insurance charge therefor will be deducted from amount financed and that no charge is made for credit insurance violates Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z promulgated thereunder because it suggests that "amount financed" will be reduced by amount of insurance charges whereas, in fact, insurance premium is part of amount borrowed and is simply paid to insurer on behalf of borrower rather than being advanced to borrower. *Weaver v General Finance Corp. (1976, CA5 Ga) 528 F2d 589,* reh den (1976, CA5 Ga) *530 F2d 976.*

Court of appeals found that consumer and motor vehicle dealer consummated series of agreements dealer prepared so consumer could finance purchase of two trucks when consumer signed agreements, not when dealer found third party to finance purchases, and it affirmed district court's judgment that dealer violated Truth in Lending Act (TILA); however, because court of appeals also found that dealer committed third violation of TILA when it included charge for guaranteed auto protection insurance in one of agreements, it vacated district court's judgment awarding consumer $ 53,627 in attorney fees and remanded case so district court could determine if that award was appropriate. *Gibson v LTD, Inc. (2006, CA4 Va) 434 F3d 275.*

Sale of credit life and disability and property insurance to borrowers was made in connection with their loan and was, therefore, not subject to disclosure requirements that attach to credit sales under Truth in Lending Act (*15 USCS § 1605(b)*) and Regulation Z. *Bailey v Defenbaugh & Co. (1981, ND Miss) 513 F Supp 232.*

Bank properly excluded premiums for credit life insurance from finance charges disclosed under Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z (*12 CFR §§ 226.1* et seq.), where (1) insurance coverage was not factor in approval of credit and (2) borrower signed separate section on contract indicating desire for credit life insurance, notwithstanding that signed writing as to insurance was not separately dated, since Regulation Z does not require separate dating. *Kramer v Marine Midland Bank (1983, SD NY) 559 F Supp 273.*

Bank properly excluded premiums for vendor's single interest insurance from finance charge under *15 USCS § 1605(c)* on installments contract form used in connection with automobile financing transaction, where insurer waived right of subrogation against customer, amount of insurance premium was stated on face of installment contract, and contract clearly stated that customer had right to choose person through whom insurance would be obtained, notwithstanding that statement of amount of premium was not further qualified by stating that charge shown was charge if obtained through creditor; fact that premium charge was inadvertently placed on line for "miscellaneous" charges, one line above that for "physical damage insurance" is de minimis violation, since premium charge was placed under proper grouping "other charges." *Kramer v Marine Midland Bank (1983, SD NY) 559 F Supp 273.*

Retail installment financer's use, in "cost of insurance" portion of credit insurance box on retail installment contract, of cross-reference to disclosure, 4 inches above box, of premium cost listed in itemization of amount financed, complies with Truth-In-Lending regulations where insurance disclosure includes all required items in close proximity so that consumer can readily understand his rights and cost of insurance. *Palmucci v General Motors Acceptance Corp. (1985, DC Conn) 618 F Supp 460.*

Where bank used Regulation Z disclosure form to illicit from mortgage customer his desire for mortgage insurance and thereafter negligently failed to advise customer that he must procure it himself, bank breached its duty of disclosure, and may be held liable for any proximately caused injury to customer resulting from such negligence. *Stone v Davis (1981) 66 Ohio St 2d 74, 20 Ohio Ops 3d 64, 419 NE2d 1094,* cert den *(1981) 454 US 1081, 70 L Ed 2d 614, 102 S Ct 634.*

**19. Late or delinquency charges**

Mortgagee taking first mortgage is subject to Truth in Lending Act (*15 USCS §§ 1601* et seq.); where disclosure statement given with mortgage calls for payment of late charge if payments are not made when due whereas mortgage agreement itself calls for late charge only if payments are not made within 15 days of due date, disclosure statement is confusing and misleading thereby violating Act. *Houston v Atlanta Federal Sav. & Loan Asso. (1976, ND Ga) 414 F Supp 851.*

Lender's disclosure statement is not deficient under Truth in Lending Act (*15 USCS §§ 1601* et seq.) for including paragraph relative to delinquency charges on precomputed installments and for failure to include method of computing delinquency charges on simple interest loan where loan involved was at simple interest, since (1) consumer should realize paragraph discussing precomputed loans had no relevance to his simple interest loan and (2) requirements of Act) for disclosing delinquency charge does not encompass increased cost of interest due to consumer's failure to make timely payments. *Jasper County Sav. Bank v Gilbert (1982, Iowa) 328 NW2d 287.*

**20. Miscellaneous**

TILA does not require that every payment made to third party in connection with transaction be disclosed to customer, but only those payments to third parties that are made on consumer's behalf (*15 USCS § 1638(a)(2)(B)(iii)*). *Cornist v B.J.T. Auto Sales, Inc. (2001, CA6 Ky) 272 F3d 322.*

Furniture store did not violate *15 USCS § 1638(a)* by characterizing $ 12 credit application fee as part of "amount financed" on its disclosure forms, where regulations indicate that charge is not "finance charge" if it is application fee charged to all applicants for credit, whether or not credit is actually extended, because store does not lose benefit of safe harbor regulation merely because it cannot always "collect" fee from rejected applicants since it clearly "charges" fee to all applicants. *Allen v Aronson Furniture Co. (1997, ND Ill) 971 F Supp 1259.*

Automobile dealership was granted summary judgment on truck purchaser's claim that it violated *15 USCS § 1638(a)* by failing to accurately disclose amount financed and schedule of payments where extra amount purchaser was required to pay in state taxes upon registering truck was not financed with rest of purchaser's expenses and as result, taxes were not covered by Truth in Lending Act, *15 USCS § 1602* et seq. *Comer v Pers. Auto Sales, Inc. (2005, MD NC) 368 F Supp 2d 478.*

**III.FINANCE CHARGE 21. Generally**

Disclosure of finance charge which is obscured behind lines and words printed on form itself so as to be unreadable constitutes inadequate disclosure; furthermore, denomination of finance charge as "(ESTIMATED)" and abbreviation of total of payments as "(TOTAL PMTS)" constitutes improper disclosure of finance charge. *Smith v No. 2 Galesburg Crown Finance Corp. (1980, CA7 Ill) 615 F2d 407, 28 FR Serv 2d 1136, 28 UCCRS 212, 53 ALR Fed 406.*

Disclosure form which failed to utilize term "finance charge" but instead used words "total interest over 12 years", and which did not disclose final charge or total of payments information on one side of form together with other requisite information, does not comply with disclosure provisions; use of terms different from those required by Truth in Lending Act (*15 USCS §§ 1601* et seq.) may prevent consumer from making informed comparison of various types of credit available to him. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

**22. Itemization**

On selling goods on credit, creditor must identify nature of finance charge even where finance charge consists of single element, and creditor is also required to list separately "unpaid balance" despite fact that this amount is identical to amount financed which was listed. *Lewis v Walker-Thomas Furniture Co. (1976, DC Dist Col) 416 F Supp 514.*

**23. Accrual date**

Central purpose of regulatory requirement of disclosure of accrual date where different from transaction date is to permit accurate calculation of annual percentage rate; if transaction date and accrual date do not coincide, effect of interest rate will be more that rate derived from transaction date if accrual date is later and higher if accrual date is earlier; irregularly long first-payment period does not alone support inference that accrual date is later than transaction date since regulations permit creditor without disclosure to unilaterally reduce annual percentage rate and since regulations specifically contemplate irregular first payment period, either lengthened or shortened; burden is one debtor to prove date different from transaction date, thereby requiring disclosure. *Krenisky v Rollins Protective Services Co. (1984, CA2 Conn) 728 F2d 64.*

First-time buyer's claim that mortgage company and appraisal management service engaged in unfair practices and violated Truth in Lending Act, *15 USCS §§ 1601* et seq., by allowing lumping of appraisal fee and administrative fee into one fee on mortgage company's settlement statement was resolved by granting summary judgment, pursuant to *Fed. R. Civ. P. 56*, in favor of company and service, where it was shown that buyer had received good faith estimate of settlement costs months prior to mortgage settlement, and there was no requirement for further itemization under *15 USCS § 1638(a)(2)(B)* without buyer having requested same. *Szczubelek v Cendant Mortg. Corp. (2002, DC NJ) 215 FRD 107.*

Car dealer violated Truth in Lending Act (TILA) by back dating second purchase agreement to date of first agreement, which failed due to lack of agreeable financing; hence, since annual percentage rate stated on second agreement was incorrect, dealer had violated TILA; TILA did not allow calculation of annual percentage rate based on interest accrual date which was earlier than consummation date. *Rucker v Sheehy Alexandria, Inc. (2002, ED Va) 228 F Supp 2d 711.*

Car dealer did not violate Truth In Lending Act by calculating financing terms from date retail installment sales contract was signed rather than date vehicle transaction was to be funded, without labeling terms as estimates; funding condition did not affect accuracy of calculation. *Padin v Oyster Point Dodge (2005, ED Va) 397 F Supp 2d 712.*

**24. Annual percentage rate**

Creditor does not violate predecessor to *15 USCS § 1638(a)(4)* by disclosure of finance charges in terms of annual percentage rate in note while computing rate of interest on assumption that all payments of principal and interest will be made on due dates and not sooner or later. *Anderson v Southern Discount Co. (1978, CA4 NC) 582 F2d 883.*

Failure of lender to use term "annual percentage rate" in original disclosure statement in connection with mortgage transaction, rather than term "interest rate", violated requirements of Truth In Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z (*12 CFR §§ 226.1* et seq.), and rendered subsequent rate increase pursuant to variable rate provision in mortgage agreement new transaction, requiring issuance of new disclosure statement. *Nash v First Financial Sav. & Loan Asso. (1983, CA7 Wis) 703 F2d 233.*

District court properly granted summary judgment in favor of Government in its action seeking to collect amount of Health Education Assistance Loan indebtedness that debtor incurred while she was student at dental school; although Government committed timing violation as to disclosure of annual percentage rate as required under Truth in Lending Act (TILA), *15 USCS § 1638*, and under *12 CFR §§ 226.17(i)*, and *226.18(e)*, debtor was not entitled to recoupment because she did not establish actual damages under *15 USCS § 1640* and because Government was immune under *15 USCS § 1612(b)* from any civil or criminal penalties for violations of TILA's provisions. *United States v Petroff-Kline (2009, CA6 Ohio) 557 F3d 285, 2009 FED App 79P.*

Check-cashing service is liable to 47-year-old woman with eighth-grade education who recently filed for bankruptcy, where, inter alia, service listed annual percentage rate (APR) on disclosure form as 24 percent when true APR exceeded 400 percent, because service's deferred check-cashing transactions are essentially consumer loans which violate Truth in Lending Act (*15 USCS §§ 1601* et seq.), Regulation Z, and state consumer protection law. *Turner v E-Z*

*Check Cashing, Inc. (1999, MD Tenn) 35 F Supp 2d 1042.*

Disclosure statement prepared pursuant to *15 USCS § 1638(b)(1)* was not accurate representation of terms of legal obligations between parties, where disclosure statement overstated annual percentage rate and understated amount financed, and included erroneous payment schedule. *England v MG Invs., Inc. (2000, SD W Va) 93 F Supp 2d 718.*

In class action by car purchasers against car dealer alleging violations of federal Truth-In-Lending Act (TILA), *15 USCS § 1601* et seq., purchasers were entitled to single recovery under TILA where they demonstrated that dealer violated *15 USCS § 1638(a)* by: (1) failing to disclose documentary preparation fee that was assessed to purchasers financing purchase of automobile by credit, which was hidden finance charge under TILA, (2) failing to disclose finance charge as annual percentage rate, and (3) failing to fully and accurately disclose total of payments. *Hook v Baker (2004, SD Ohio) 352 F Supp 2d 839.*

Debtor was not entitled to summary judgment under *Fed. R. Civ. P. 56(c), Fed. R. Bankr. P. 7056,* on claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS §§ 1639* et seq., because when debtor's loan closed in July, 1997, *12 C.F.R. § 226.32* did not require disclosure of balloon payments, and annual percentage rate and monthly payment were clearly disclosed; thus, as matter of law there were no violations of *15 USCS §§ 1632, 1637, 1638(a),* (b), 1639. *Lewis v Delta Funding Corp. (In re Lewis) (2003, BC ED Pa) 290 BR 541* (criticized in *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962).*

Lender's disclosure statement is not deficient under Truth in Lending Act (*15 USCS §§ 1601* et seq.) for failure to state annual percentage rate of interest to nearest quarter of one percent where loan was simple interest loan at 15 percent interest and was stated as such, in contemplation that payments would be made when due, since increased cost of credit occasioned by consumer's failure to repay on time need not be spelled out. *Jasper County Sav. Bank v Gilbert (1982, Iowa) 328 NW2d 287.*

**25. Interest rate**

Additional interest charged at contractual rate in event of late payment falls within finance charges and does not constitute "default, delinquency or similar charges payable in event of late payments," for purposes of disclosure requirement under predecessor to *15 USCS § 1638(a)(4). Fisher v Beneficial Finance Co. (1974, DC RI) 383 F Supp 895.*

Mortgage brokers lacked knowledge of way in which lenders calculated interest rate, as required to support claim that brokers failed to accurately disclose interest rate as required by *15 USCS § 1638(a)(3). Noel v Fleet Fin., Inc. (1998, ED Mich) 34 F Supp 2d 451,* affd without op (2000, CA6 Mich) *208 F3d 214.*

Consumer's claim under *15 USCS § 1638(b)(1)* in connection with purchase of an auto was not established, because consumer could not prove actual damages; consumer's only possible claim, that consumer could have secured a lower interest rate, failed for lack of evidence that consumer could have obtained a lower rate contemporaneously with the purchase of auto. *Graham v RRR, LLC (2002, ED Va) 202 F Supp 2d 483,* affd (2003, CA4 Va) *55 Fed Appx 135.*

**Unpublished Opinions**

Unpublished: Mortgage company was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's claims for violation of *15 USCS § 1638* for violation of Unfair Competition Law, *Cal. Bus. & Prof. Code § 17200,* and for fraudulent concealment; borrower stated claims with respect to failure to clearly and conspicuously disclose interest rate structure applicable to her adjustable rate mortgage and consequent certainty that negative amortization would occur if borrower made only minimum payments. *Amparan v Plaza Home Mortg. (2008, ND Cal) 2008 US Dist LEXIS 109148.*

**26. Mortgages**

No disclosure of finance charges is required pursuant to predecessor to *15 USCS § 1638(a)(3)* where reinstated loan for purchase of dwelling remains secured, under state law, by original deed of trust. *Martinez v Tropical Sav. & Loan Asso. (1978, CA5 Tex) 572 F2d 1030.*

Bank's decision to begin charging interest on its mortgage notes at contract rate on daily basis (as distinguished from former practice of allowing late payments without charging additional interest for days that payment was late) does not penalize late payment within meaning of predecessor to *15 USCS § 1638(a)(4)*, but merely accounts precisely for amount of time which borrower takes to repay his obligation; therefore, although additional interest might cause amount of last payment on mortgage to be increased or might increase number of payments to be made, bank's practice does not change number, amount, or due dates of scheduled payments within meaning of predecessor to § 1638(a)(6). *Lipson v Burlington Sav. Bank (1977, DC Vt) 428 F Supp 1073.*

Mortgagors' claim that lender violated *15 USCS § 1638* by failing to disclose back end or upsell fees it received from end lenders must fail, because separate disclosure of fees, such as back end fee here, is not required nor even permitted when fees are reflected as part of "finance charge." *VanDenBroeck v CommonPoint Mortg. Co. (1998, WD Mich) 22 F Supp 2d 677, RICO Bus Disp Guide (CCH) P 9654,* affd (2000, CA6 Mich) *210 F3d 696, RICO Bus Disp Guide (CCH) P 9876, 2000 FED App 153P.*

Mortgage brokers lacked knowledge of way in which lenders calculated interest rate, as required to support claim that brokers failed to accurately disclose interest rate as required by *15 USCS § 1638(a)(3). Noel v Fleet Fin., Inc. (1998, ED Mich) 34 F Supp 2d 451,* affd without op (2000, CA6 Mich) *208 F3d 214.*

First-time buyer's claim that mortgage company and appraisal management service engaged in unfair practices and violated Truth in Lending Act, *15 USCS §§ 1601* et seq., by allowing lumping of appraisal fee and administrative fee into one fee on mortgage company's settlement statement was resolved by granting summary judgment, pursuant to *Fed. R. Civ. P. 56*, in favor of company and service, where it was shown that buyer had received good faith estimate of settlement costs months prior to mortgage settlement, and there was no requirement for further itemization under *15 USCS § 1638(a)(2)(B)* without buyer having requested same. *Szczubelek v Cendant Mortg. Corp. (2002, DC NJ) 215 FRD 107.*

**27. Delivery charges**

Express mail fee does not constitute finance charge that must be included on lender's disclosure statement if borrower can choose to avoid fee by having documents sent via regular mail. *Veale v Citibank, F.S.B. (1996, CA11 Fla) 85 F3d 577, 10 FLW Fed C 3,* cert den *(1997) 520 US 1198, 137 L Ed 2d 704, 117 S Ct 1556.*

Lending bank was not liable for failing to disclose finance charge under *15 USCS § 1638(a)*, where lender's third-party closing agent charged borrower $ 15 for express delivery charge incurred for mailing payoff check to prior lienholder, and borrower alleged that lender failed to disclose fee as finance charge, because express fee was not finance charge. *Curtis v Secor Bank (1995, MD Ala) 896 F Supp 1115.*

**28. Discounts**

For purpose of determining whether charge is exempt from TILA disclosure requirements as cost of doing business (i.e. creditor is not necessarily required to disclose to consumer that it plans on selling retail installment contract at discount), charge for cost of discount should be considered separately imposed on credit consumer, and therefore must be disclosed, when it is imposed in credit transactions but not in cash transactions. *Walker v Wallace Auto Sales (1998, CA7 Ill) 155 F3d 927.*

Used car dealer is not liable under *15 USCS § 1638* for increasing price of vehicle to cover cost of discount charged by subprime financing company, where, at most, manager and recap sheets reflect that dealer included cost of discount within negotiated price, because discount was not separately imposed on buyer, and was exempt from statutory

disclosure requirements as cost of doing business. *Sampler v City Chevrolet Buick Geo (1998, ND Ill) 10 F Supp 2d 934.*

Plaintiff consumers' truth in lending suit was dismissed on summary judgment, where discounts were offered to both cash and credit purchasers and were not part of finance charge that was not disclosed to consumers. *Virachack v Univ. Ford (2003, SD Cal) 259 F Supp 2d 1089,* affd (2005, CA9 Cal) *2005 US App LEXIS 9219.*

**29. Notary fee**

Automobile dealer not manufacturer is liable for failure to make necessary disclosures under Truth In Lending Act (*15 USCS §§ 1601* et seq.) although both were creditors in credit sale of automobile, since finance charges which were not disclosed consisted of overcharges for notary's fees and license, title, and registration fees, and these items were handled by dealer and were thus within its knowledge and within purview of its relationship with customer whereas manufacturer had nothing to do with such arrangements. *Williams v Bill Watson Ford, Inc. (1976, ED La) 423 F Supp 345.*

Notary fees assessed pursuant to purchase of automobile need not be included in finance charge if separately itemized on disclosure statement. *Rainey v Credithrift of America # 5, Inc. (1983, La App 4th Cir) 441 So 2d 278.*

**30. Cash transaction differentials**

Where customer who is buying item on credit is charged higher price than customer who buys same item for cash, credit customer is paying higher "cash" price and such price is part of cost of buying on credit; as such, higher cash price paid by credit customer is part of cost of buying on credit and is finance charge, and must be disclosed to consumer. *Walker v Wallace Auto Sales (1998, CA7 Ill) 155 F3d 927.*

For purpose of determining whether charge is exempt from TILA disclosure requirements as cost of doing business (i.e. creditor is not necessarily required to disclose to consumer that it plans on selling retail installment contract at discount), charge for cost of discount should be considered separately imposed on credit consumer, and therefore must be disclosed, when it is imposed in credit transactions but not in cash transactions. *Walker v Wallace Auto Sales (1998, CA7 Ill) 155 F3d 927.*

Automobile dealer was not required under *15 USCS § 1638* to include entire amount of extended warranty as finance charge on retail installment contract, even if dealer's markup for warranty was systematically higher on sales to credit customers than on sales to cash customers, where customers could purchase automobile from dealer on credit or for cash without purchasing extended warranty. *Cunningham v H.A.S., Inc. (1999, MD Ala) 74 F Supp 2d 1157.*

**31. Miscellaneous**

Statutory loan fees imposed pursuant to Georgia law, which fees lenders collected by adding them to other credit extended, with repayment of fees being made over life of loan, must be disclosed as prepaid finance charge. *Jones v Community Loan & Inv. Corp. (1976, CA5 Ga) 526 F2d 642.*

Florida intangible tax is not finance charge payable by consumer as incident to extension of credit that must be included on lender's disclosure statement, since tax is prescribed by law and paid to public official for perfecting security interest. *Veale v Citibank, F.S.B. (1996, CA11 Fla) 85 F3d 577, 10 FLW Fed C 3,* cert den *(1997) 520 US 1198, 137 L Ed 2d 704, 117 S Ct 1556.*

Failure of seller of land on credit to include fee for membership in housing development's association does not violate *15 USCS § 1638* since membership fee applies to both cash and credit purchasers of property and thus is not finance charge since it is not charge imposed by creditor as incident to extension of credit but rather is charge imposed by seller as incident to sale of property, regardless of whether sale is on credit. *Glover v Doe Valley Development Corp.*

*(1975, WD Ky) 408 F Supp 699.*

Automobile dealer did not violate *15 USCS § 1638*, where action is based on alleged malfunctions and defects in automobile sold and all finance charges were properly disclosed, because claim is in essence in warranty. *Frazee v Seaview Toyota Pontiac (1988, DC Conn) 695 F Supp 1406.*

In car buyers' suit alleging that lender, dealer, and general manager violated Truth in Lending Act, *15 USCS §§ 1601* et seq., through special financing program that involved acquisition fees, hidden finance charge and disclosure claims against dealer survived summary judgment because factual question existed as to whether dealer "separately imposed" acquisition fee on credit customers. *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841.*

Where plaintiff African-American car buyers, under *15 USCS § 1638*, part of Truth in Lending Act, alleged defendants, lender and car dealers, failed to disclose higher dealer mark-up than that which was charged to white buyers, claim failed because markups, which were element of total finance charge, did not have to be disclosed; allegations of racial animus went to discrimination claims but did nothing to support fraudulent nondisclosure claims. *Davis v GMAC (2005, ND Miss) 406 F Supp 2d 698.*

Price charged to automobile purchaser in excess of advertised price was hidden finance charge for purposes of Truth in Lending Act where undisputed evidence showed that advertised price was available to cash and prime lender creditors but was not available to purchaser because he required sub-prime lending and salesman knew that purchaser was sub-prime credit customer when he established price. *Diaz v Paragon Motors of Woodside, Inc. (2006, ED NY) 424 F Supp 2d 519.*

Where mortgagors asserted that mortgage lender improperly charged mortgagors basic rate for title insurance rather that lower refinance rate which was applicable based on title insurance obtained with regard to prior mortgage loan refinanced by new loan, mortgagors failed to show that lender knew of prior insurance to establish that rate was unreasonable and thus includable as part of finance charge under *15 USCS § 1605(a)* and subject to disclosure under *15 USCS §§ 1602(u), 1638(a)*; there was no credible evidence that mortgagors notified lender of existence of prior title insurance, lender's knowledge that mortgagors had prior mortgage loan did not place lender on notice of such prior insurance, and lender had no duty to inquire concerning existence of prior insurance. Glauser v Deutsche Bank Nat'l Trust Co.(In re Glauser) (2007, BC ED Pa) *365 BR 531.*

**Unpublished Opinions**

Unpublished: Seller of used car, which was being financed, did not violate disclosure provisions of Truth in Lending Act, *15 USCS § 1638(a)(3)*, and Regulation Z, *12 CFR § 226.18*, because seller did not fail to label processing fee as finance charge since fee applied to both cash and credit buyers and represented costs for title work. *Tripp v Charlie Falk's Auto Wholesale, Inc. (2008, CA4 Va) 2008 US App LEXIS 18850.*

**IV.PAYMENT, DEFAULT AND ACCELERATION 32. Number of payments**

*15 USCS § 1638*(a)(6) requires that loan disclosure statements specifically inform borrowers as to due dates or payment period for making payments on their loans, so that they know with certainty, based on statements alone, how often and/or when their loan payments are due; while use of word "monthly" is not required, disclosure statement that lists only dates first and last loan payments are due, without any reference to when payments are due (i.e. on first of every month, monthly, bi-weekly, etc.) violates § 1638(a)(6). *Hamm v Ameriquest Mortg. Co. (2007, CA7 Ill) 506 F3d 525.*

Lender's disclosure statement is not deficient under Truth in Lending Act (*15 USCS §§ 1601* et seq.) for burdening consumer with having to make simple arithmetical calculation to ascertain total number of payments on loan, where statement discloses number of payments at one amount and one final payment at another amount. *Jasper County Sav. Bank v Gilbert (1982, Iowa) 328 NW2d 287.*

Lender does not violate Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) by failing to disclose in single figure total number of payments on loan, where it discloses that total number of payments is one plus 24, since consumer is required to make no legally significant computation in order to determine that 25 payments are to be made. *SunAmerica Finance Corp. v Williams (1981, Cuyahoga Co) 2 Ohio App 3d 272, 2 Ohio BR 301, 442 NE2d 83.*

**33. Prepayment**

Conditional sales contracts which identify method of computing amount of unearned finance charge to be refunded to customers in event of prepayment in full as sum of digits method satisfies requirements of § 128 of Truth in Lending Act (*15 USCS § 1638*) and regulations promulgated thereunder, disclosure is not rendered inadequate by fact that each prepayment clause refers to deduction of acquisition from finance charge where amount of any such charge is left blank and, in fact, no acquisition charge is involved and none will be deducted in event of prepayment. *Grant v Imperial Motors (1976, CA5 Ga) 539 F2d 506.*

Dismissal under *Fed. R. Civ. P. 12(b)(6)* of homeowner's claim of violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., was affirmed because assignment fee charged for assignment of homeowners' mortgage to another bank as part of refinancing was not finance charge or prepayment penalty for which disclosure under *15 USCS § 1638* was required. *Pechinski v Astoria Fed. S&L Ass'n (2003, CA2 NY) 345 F3d 78.*

Where dealership did not timely provide to car buyer copy of retail installment sales contract, Truth in Lending Act (TILA) violation occurred under *15 USCS § 1638(b)(1)* but violation did not give rise to TILA statutory damages because (1) *15 USCS § 1638(b)* violation is not one of enumerated violations that warrant statutory damages award, and (2) plain meaning of *15 USCS § 1640(b)* barred any recovery for buyer because dealership provided copy within 60 days. *Baker v Sunny Chevrolet, Inc. (2003, CA6 Mich) 349 F3d 862, 2003 FED App 391P,* reh den, reh, en banc, den (2003, CA6) *2003 US App LEXIS 26619* and cert den (2004, US) *159 L Ed 2d 813, 124 S Ct 2908.*

Obligation under state law to rebate unearned credit insurance premiums in event of prepayment precludes holding that unearned premiums are penalty charges for prepayment which must be disclosed by finance company extending consumer loan under Truth in Lending Act (*15 USCS §§ 1601* et seq.) and regulations promulgated thereunder. *Ecenrode v Household Finance Corp. (1976, DC Del) 422 F Supp 1327.*

Mortgagors' claims that document preparation fees, facsimile fees, and recording fees charged when mortgagors prepaid their loans were undisclosed prepayment penalties survived dismissal; allegations stated that fees were included with total amount necessary to pay off mortgage debt and therefore appeared to be condition to prepayment in full. *McAnaney v Astoria Fin. Corp. (2005, ED NY) 357 F Supp 2d 578.*

**34. Rebates**

Alleged inconsistencies in disclosure provisions relating to rebates in cases of voluntary prepayment, confession of judgment, and default and acceleration, do not violate Regulation Z (*12 CFR §§ 226.1* et seq.), where transaction is governed by state law requiring involuntary acceleration rebate and voluntary rebate policies to be identical. *Stewart v Abraham Lincoln Mercury, Inc. (1983, CA5 La) 698 F2d 1289.*

Acceleration clause in credit sale of automobile to consumer is not charge which must be revealed under § 128 of Truth In Lending Act (*15 USCS § 1638*) where under state law creditor, upon acceleration, is required to rebate to debtor unearned interest on debt. *Williams v Bill Watson Ford, Inc. (1976, ED La) 423 F Supp 345.*

Acceleration of debt is conceptually distinct from prepayment; so long as unearned finance charges are rebated to borrower upon pre-payment, no default, delinquency, or similar charge is assessed borrower as result of his default; and there is no violation of Truth in Lending Act by lender's failing to disclose to borrower that it does not rebate unearned finance charges when, as result of borrower's default, it accelerates loan and institutes suit to recover all amounts due under defaulted loan prior to maturity. *Perry v Liberty Consumer Discount Co. (1977, ED Pa) 433 F Supp 1352,* affd

without op (1978, CA3 Pa) *577 F2d 728* and affd without op (1978, CA3 Pa) *577 F2d 728.*

Disclosure statement furnished by lender in connection with secured loan violated Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z where statement provides that rebate for prepayment in full shall be made in accordance with Rule of 78's, while loan note provides for refund in accordance with state statutes, and state has not statutorily approved use of Rule of 78's in credit transactions. *Lefler v Kentucky Finance Co. (1982, WD Ky) 546 F Supp 26,* affd in part and revd in part on other grounds (1984, CA6 Ky) *736 F2d 375.*

Creditor is not required to disclose default charges in context of acceleration where its rebate policy on acceleration is same as that upon prepayment, which is included in disclosure statement, since acceleration clause is default charge for disclosure purposes only when debtor receives rebate of unearned finance charges, and disclosure is required only where creditor's acceleration rebate policy differs from its prepayment rebate policy. *Nesbitt v Blazer Financial Services, Inc. (1982, ND Ill) 550 F Supp 819* (superseded by statute as stated in *Kedziora v Citicorp Nat'l Servs. (1991, ND Ill) 780 F Supp 516).*

Bank does not violate Truth in Lending Act (*15 USCS §§ 1601* et seq.) or Regulation Z (*12 CFR §§ 226.1* et seq.) where it identifies its method of calculating prepayment rebates as "Rule of 78's" and uses variation of Rule under which entire month in which prepayment is made is excluded in calculating rebate, since bank's practice comes within application of Rule as commonly understood. *Kramer v Marine Midland Bank (1983, SD NY) 559 F Supp 273.*

**35. Mortgages**

Mortgagors were entitled to recover damages in their *15 USCS § 1640* suits because their mortgagee violated *15 USCS § 1638(a)(6)* by failing to include in its disclosure statements payment period for their loans: (1) disclosure statements listed only dates of first and last mortgage payments and did state payment period and/or disclose when regular mortgage payments were to be made; (2) mortgagee violated § 1638(a)(6) because its disclosure statements did not explicitly inform mortgagors that they were required to make monthly mortgage payments for period of 30 years on their mortgage loans; and (3) mortgagors were entitled to recover in their suits, even if mortgagee's violation of Truth in Lending Act was unintentional. *Hamm v Ameriquest Mortg. Co. (2007, CA7 Ill) 506 F3d 525.*

Failure by mortgagee to disclose its right of acceleration as default charge does not violate Truth in Lending Act (*15 USCS §§ 1601* et seq.) where provision calls for acceleration of unpaid principal and accrued interest. *Houston v Atlanta Federal Sav. & Loan Asso. (1976, ND Ga) 414 F Supp 851.*

Because lending institution's right of acceleration on conventional note and mortgage can result only in acceleration of earned interest and can neither result in payment of additional moneys by borrower nor in windfall for creditor, disclosure of this acceleration clause is not required under predecessor to *15 USCS § 1638. Vega v First Federal Sav. & Loan Asso. (1977, ED Mich) 433 F Supp 624,* affd in part and revd in part on other grounds (1980, CA6 Mich) *622 F2d 918.*

**36.--Chattel mortgages**

Acceleration clause contained in chattel mortgage is not "charge" required to be disclosed under § 128(a)(9) of Truth in Lending Act predecessor to *15 USCS § 1638(a)(10). Smith v Avco Financial Services, Inc. (1976, CA5 La) 542 F2d 242.*

Acceleration clause contained in chattel mortgage made in connection with sale of automobile on credit does not require disclosure under Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) where, in event of default of any installment, entire unpaid balance of principal and accrued interest thereon will be due, but creditor will not retain any unearned interest. *Thompson v Twin City Finance Corp. (1976, WD La) 409 F Supp 924.*

**37. Unearned insurance premiums**

Defendant fails to comply with *15 USCS § 1638(a)(9)* by failing to disclose as default charge its contractual right to retain, under certain conditions upon default, unearned insurance premiums. *Reece v Allen Russell Ford, Inc. (1982, ND Ga) 540 F Supp 742.*

Bank's installment contract form violated Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z (*12 CFR § 226.6*) where provisions covering prepayment contained misleading statement that bank would credit or rebate unearned life insurance premiums, when bank's practice was not to credit unearned insurance charges, notwithstanding that bank may not be legally obligated to make such rebate or credit, since statement could reasonably be understood as promising reduction in indebtedness which bank was not prepared to make. *Kramer v Marine Midland Bank (1983, SD NY) 559 F Supp 273.*

**38. Deferral charges**

Deferral charge (charge made in exchange for privilege of postponing payment) is not same as delinquency charge (unilateral charge imposed without agreement upon late payment) under *15 USCS § 1638* and predecessor to 12 CFR § 226. *Franklin v First Money (1976, ED La) 427 F Supp 66,* affd (1979, CA5 La) *599 F2d 615.*

Lender's disclosure statement did not violate Truth in Lending Act (*15 USCS §§ 1601* et seq.) by including, in portion of contract under heading relating to default charges, provision for deferment charge "as provided by" specific section of state Consumer Credit and Protection Act, where language in other provisions of contract specifically relating to deferment charges reflects practically mirror image of state act. *U.S. Life Credit Corp. v Wilson (1982) 171 W Va 538, 301 SE2d 169, 42 ALR4th 285.*

**39. Litigation costs and fees**

Potential attorneys' fees, chargeable in event of default, need not be disclosed under predecessor to *15 USCS § 1638(a)* where imposition of attorney's fees is not automatic upon default and creditor is free to waive delinquencies, work out extension of payment agreements, seek agreement for repossession of collateral, or result to lawful self-help in its repossession. *Anderson v Southern Discount Co. (1978, CA4 NC) 582 F2d 883.*

Creditor's statement that, upon default, attorneys fees can be charged if account is actually turned over to attorney and he commences proceedings thereon, is adequate disclosure of finance charge within meaning of Act since it complies with state law concerning award of attorneys fees in event of default. *Ecenrode v Household Finance Corp. (1976, DC Del) 422 F Supp 1327.*

Lender need not disclose its assessment of attorney fees and other collection costs in event of default. *Vega v First Federal Sav. & Loan Asso. (1977, ED Mich) 433 F Supp 624,* affd in part and revd in part on other grounds (1980, CA6 Mich) *622 F2d 918.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not require disclosure of potential liability for attorney's fees; if creditor chooses to disclose that information, disclosure shall be stated so as not to mislead or confuse consumers; contract providing for attorney's fees in amount of 15 percent was misleading in light of state law allowing creditor to collect attorneys fees under quantum meruit theory, to limit of 15 percent. *Aldrich v Upstate Auto Wholesale, Inc. (1982, ND NY) 564 F Supp 390.*

**40. Miscellaneous**

Although mere contract right in lender to accelerate principal payment in event of default is not "charge" imposed and need not be disclosed and lender need not disclose rebate provisions of unearned interest in event of default if such are same as disclosed rebate provisions in event of voluntary prepayment, where creditor possesses under contract right to retain more unearned interest in event of accelerated payment pursuant to default than in that of voluntary prepayment or if he possesses right to impose any additional charge whatever in event of default, such right must be

disclosed to borrower regardless of whether or how such right is exercised in event of default. *McDaniel v Fulton Nat'l Bank (1978, CA5 Ga) 576 F2d 1156.*

"Total payment" for one-payment loan is not disclosure required by federal law, and therefore, must be kept separate from information such as finance charge and annual percentage rate. *Brown v Payday Check Advance, Inc. (2000, CA7 Ill) 202 F3d 987,* reh, en banc, den (2000, CA7 Ill) *2000 US App LEXIS 3537* and cert den *(2000) 531 US 820, 148 L Ed 2d 27, 121 S Ct 61* and (criticized in *Lozada v Dale Baker Oldsmobile, Inc. (2001, WD Mich) 145 F Supp 2d 878)* and (criticized in *Daenzer v Wayland Ford, Inc. (2002, WD Mich) 193 F Supp 2d 1030).*

Lender did not violate TILA's amount requirement by describing final payment of loan as balance of unpaid principal and interest because providing dollar figure was not only means of adhering to TILA's amount requirement under *15 USCS § 1638(a)(6). Carmichael v Payment Ctr., Inc. (2003, CA7 Ill) 336 F3d 636,* reh, en banc, den (2003, CA7 Ill) *2003 US App LEXIS 20763* and cert den *(2004) 541 US 987, 158 L Ed 2d 491, 124 S Ct 2015.*

Provision in agreement for purchase and sale of land stating that in event of default buyer will forfeit all payments made by him is in category of "default or similar charge payable in event of late payments" and is thus subject to requirement of Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) that such charges be disclosed on agreement above or adjacent to buyer's signature. *Glover v Doe Valley Development Corp. (1975, WD Ky) 408 F Supp 699.*

Failure of loan company to disclose refund from borrowers' prior loan with company as "scheduled payment" where refund was applied to first payment of new loan, did not violate Truth In Lending Act provision requiring creditor to disclose "the number, amount, and due dates or period of payments scheduled to repay indebtedness", because refund which was credited to new loan was not "scheduled payment." *Bailey v Defenbaugh & Co. (1981, ND Miss) 513 F Supp 232.*

"Federal box"--for federally mandated disclosure to borrowers--on automobile loan contract between automobile dealer and borrower properly includes notice that, in event contract is assigned to certain bank, bank has setoff against any deposits owed by bank to borrower under *15 USCS § 1638(b)(1),* where inclusion of notice is intended to inform borrower of significant remedy in event of default rather than to obscure other information printed in box, because setoff is analogous to and possibly subsumed in broad concept of method of payment, notwithstanding that setoff is not, within ordinary meaning of term, "security interest" under *15 USCS § 1637(a)(1)* requiring disclosure. *Goldberg v Delaware Olds, Inc. (1987, DC Del) 670 F Supp 125,* affd without op (1988, CA3 Del) *845 F2d 1011.*

Customer states viable Truth in Lending Act (*15 USCS §§ 1601* et seq.) claim against fence company, even though company argues that "30 days from completion" was best estimate of date on which monthly payments were to begin, because regulation states plainly that, in event of incomplete information, creditor should provide estimated date of completion and state that disclosure is estimate, and installment contract does not appear to comply with *15 USCS § 1638(a)(6)* and *12 CFR § 226.18. Graves v Tru-Link Fence Co. (1995, ND Ill) 905 F Supp 515.*

Debtor was not entitled to summary judgment under *Fed. R. Civ. P. 56(c), Fed. R. Bankr. P. 7056,* on claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS §§ 1639* et seq., because when debtor's loan closed in July, 1997, *12 C.F.R. § 226.32* did not require disclosure of balloon payments, and annual percentage rate and monthly payment were clearly disclosed; thus, as matter of law there were no violations of *15 USCS §§ 1632, 1637, 1638(a),* (b), 1639. *Lewis v Delta Funding Corp. (In re Lewis) (2003, BC ED Pa) 290 BR 541* (criticized in *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962).*

Where there is refinancing transaction, Regulation Z requires that new disclosures be made to consumer; refinancing occurs when existing obligation is satisfied and replaced by new obligation undertaken by same consumer; where contract does not disclose whether balance from prior contract was refinanced, whether finance charge is subtracted from contract so that new finance contract can be computed, or whether balance is included in computation of new finance charge, lack of disclosure constitutes violation. *Wise Furniture v Dehning (1984, Minn) 343 NW2d 26.*

**V.SECURITY INTEREST 41. Description of security interest**

Seller of automobile on credit satisfies requirement of Truth in Lending Act (*15 USCS §§ 1601* et seq.) by describing interest as purchase money security interest; creditor is not required to disclose right of repossession which is salient feature of this interest. *Grant v Imperial Motors (1976, CA5 Ga) 539 F2d 506.*

Failure of retail installment sale contract to explain that security interest held by seller would be transferred to assignee along with contract did not violate requirement of Truth-In-Lending Act (*15 USCS § 1638(a)(10)*) [now § 1638(a)(9)] that creditor describe type of security interest and property to which it attaches, as contract stated that after contract was sold, assignee would be consumer creditor and that any questions about payment should be directed to assignee. *Hutchings v Beneficial Finance Co. (1981, CA9 Or) 646 F2d 389.*

Phrase "and all other amounts due or to become due hereunder" in description of security interest does not violate regulation Z since it is not so confusing that reasonable borrower would fail to understand it; use of word "hereunder" makes it clear that collateral secures only indebtedness arising out of current loan. *Onadeko v Rainier Credit Co. (1982, CA9 Or) 678 F2d 113.*

Creditor's violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) by (1) failing to clearly identify in disclosure statement property in which security interest was being transferred, and (2) procuring signature of debtor to blank deed of trust in which creditor subsequently inserted description of debtor's property, entitles debtor to rescission of transaction, since nondisclosures were material, and to maximum statutory damages available under Act. *Williamson v Lafferty (1983, CA5 Miss) 698 F2d 767.*

Disclosure violated Regulation Z (*12 CFR §§ 226.1* et seq.) where promissory note contained statement that "all exemptions are hereby waived" and disclosure statement failed to set out scope of exemptions available to creditor under state law. *Stewart v Abraham Lincoln Mercury, Inc. (1983, CA5 La) 698 F2d 1289.*

Possibility of mechanic's lien is security interest which must be disclosed under Truth in Lending Act and Regulation Z even though lien may never be taken, and statement that real property may also be subject to construction liens under applicable state law did not comply with minimum requirements for disclosure of mechanic's lien since disclosure statement must at least disclose that mechanic's lien may arise and cite applicable provisions of state statutes. *Cox v First Nat'l Bank (1986, SD Ohio) 633 F Supp 236.*

Used car dealer violated Truth-in-Lending Act (*15 USCS §§ 1601* et seq.), where, in providing financing for purchase of used car, dealer did not disclose in clear and conspicuous manner that it took security interest in vehicle, because such disclosure is required under § 1638(a)(9). *Leathers v Peoria Toyota-Volvo (1993, CD Ill) 824 F Supp 155.*

**42.--Uniform Commercial Code reference**

Description of security interest contained in agreement is sufficient to meet requirements of predecessor to *15 USCS § 1638* and *12 CFR § 226.18 (m)*, despite fact that, according to borrower, description does not adequately disclose that agreement is limited to consensual security interest as defined in Uniform Commercial Code; agreement explicitly refers to rights and remedies under UCC. *Anthony v Community Loan & Inv. Corp. (1977, CA5 Ga) 559 F2d 1363, 22 UCCRS 1215,* reh den (1977, CA5 Ga) *564 F2d 416.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) was not violated by description of retained security interest in certain personal property of borrower, despite failure to specify that security interest was taken pursuant to Uniform Commercial Code, since only interest which could be created in such personal property under state law was interest under UCC. *Lefler v Kentucky Finance Co. (1984, CA6 Ky) 736 F2d 375.*

Disclosure statement was not defective by not stating whether security interest held by lender is mortgage or

interest under Uniform Commercial Code, since Regulation Z does not require creditors to provide detailed statement of type of interest secured or to cite specific statutory provision pursuant to which security interest is obtained. *Lefler v Kentucky Finance Co. (1982, WD Ky) 546 F Supp 26*, affd in part and revd in part on other grounds (1984, CA6 Ky) *736 F2d 375.*

*15 USCS § 1638*(a)(9) mandates that lender in some way state that security interest has been taken in it if credit is secured at all, in any way, whether by orthodox Article 9 security interest or by any other means. Van Jackson v Check '*N Go of Ill., Inc. (2000, ND Ill) 123 F Supp 2d 1079.*

Under former *15 USCS § 1639*, lender must describe security interest held or to be retained or acquired in connection with extension of credit and clear identification of property to which security interest relates; mere description of item of collateral, without description of type of security interest involved, is insufficient, and reference to Uniform Commercial Code on reverse side of note is insufficient to satisfy requirement. *Turner v Exchange Bank (1984, Ala Civ App) 450 So 2d 131.*

**43.--Personal property and chattel mortgages**

Truth in Lending Act (*15 USCS §§ 1601* et seq.) was not violated by description of retained security interest in certain personal property of borrower, despite failure to specify that security interest was taken pursuant to Uniform Commercial Code, since only interest which could be created in such personal property under state law was interest under UCC. *Lefler v Kentucky Finance Co. (1984, CA6 Ky) 736 F2d 375.*

Although household goods may be exempt under other laws from serving as collateral for security interests, bona fide attempt to describe security interest in household goods does not make TILA disclosure infirm. *Szumny v American Gen. Fin.,Inc. (2001, CA7 Ill) 246 F3d 1065.*

Provision in disclosure statement of consumer loan transaction which provides for security in form of chattel mortgage on all household goods belonging to borrower located at his address is sufficient description of type of security interest held by creditor. *Gillard v Aetna Fin. Co. (1976, ED La) 414 F Supp 737.*

Family rider/assignment of rents signed in connection with mortgage that gave lender security interest in borrower's personal property that extended beyond incidental interests to real property, and, thus, violated *15 USCS § 1638(a)(9)*, as well as Federal Reserve Board Regulation Z, by failing to disclose lender's security interests in borrower's personal property, where rider language disregarded consumer's intent to permanently attach building materials, appliances, and goods to realty, and, thus, could not be limited to fixtures. *Leon v Wash. Mut. Bank, F.A. (2001, ND Ill) 164 F Supp 2d 1034.*

Disclosure statement which identified type of security as "chattel mortgage" and which contradicted mortgage itself, which identified security as "collateral chattel mortgage" are inconsistent in view of distinctions under state law between collateral mortgages and chattel mortgages. *Rainey v Credithrift of America # 5, Inc. (1983, La App 4th Cir) 441 So 2d 278.*

**44. Identification or description of property**

Statement in retail installment contract that seller reserve purchase money security interest in goods sold until price was paid in full adequately described type of security interest reserved, and property to which it attached for purposes of Truth-In-Lending Act (*15 USCS § 1638*). *Hutchings v Beneficial Finance Co. (1981, CA9 Or) 646 F2d 389.*

Description in disclosure statement, by street address only, of property on which first mortgage is granted is inadequate description of property under Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Houston v Atlanta Federal Sav. & Loan Asso. (1976, ND Ga) 414 F Supp 851.*

Lender violated Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) by its inconsistent and incomplete use of standardized disclosure form in making refinancing loan to consumer, in which it failed to identify clearly property of consumer to which its security interest attached. *SunAmerica Finance Corp. v Williams (1981, Cuyahoga Co) 2 Ohio App 3d 272, 2 Ohio BR 301, 442 NE2d 83.*

**45.--After-acquired property**

Notation on disclosure statement that if box marked "furniture" is checked, security agreement covers all consumer goods of every kind then owned and thereafter acquired by borrowers in replacement thereof and now or thereafter located at borrower's place of residence is not sufficiently clear identification of property covered by security interest in light of regulation requiring lenders to describe or identify type of security interest acquired and to clearly identify property to which it relates; in light of Oregon statute which provides that no security interest attaches under after-acquired property clause, finance company's disclosure statement that security agreement covers all consumer goods then owned or thereafter acquired by borrower in replacement thereof does not meet standard of "meaningful disclosure" under Truth in Lending Act. *Woods v Beneficial Fin. Co. (1975, DC Or) 395 F Supp 9.*

Where words "now owned or hereafter acquired by debtors located in or about debtors' residence" are marked out and words "furniture listed on back" are added, there is detailed itemization of goods covered and no violation of predecessor to *15 USCS § 1638* or Regulation Z. *Ballew v Associates Financial Services Co. (1976, DC Neb) 450 F Supp 253.*

Statement is not defective for its failure to mention that, under state law, security interest can attach to after-acquired property only for 10 days after loan. *In re Dickson (1977, WD NC) 432 F Supp 752.*

Identification of security interest in disclosure statement as first mortgage, and apparent inconsistent identification of security interest as including after acquired personal property, constitutes material violation since disclosures failed to contain clear identification of collateral to which security interest was intended to attach. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

**46.--Personal property and household goods**

Ten-speed bicycle and fishing equipment are sufficiently described under Truth in Lending Act disclosure requirements by phrase "certain household items." *In re Dingledine (1990, CA7 Ill) 916 F2d 408, CCH Bankr L Rptr P 73712.*

Where words "now owned or hereafter acquired by debtors located in or about debtors' residence" are marked out and words "furniture listed on back" are added, there is detailed itemization of goods covered and no violation of predecessor to *15 USCS § 1638* or Regulation Z. *Ballew v Associates Financial Services Co. (1976, DC Neb) 450 F Supp 253.*

Creditor is not required by *15 USCS § 1638* and Regulation Z (*12 CFR § 226.6(a)*), in arranging items on disclosure statement, to group (1) number, amount and dates of payment and (2) amount financed, finance charge and annual percentage rate, but satisfies statutory and regulatory requirements by arranging information on 3 horizontal lines showing (1) number and amount of payments, total amount to be paid, and portion of total payment representing interests, (2) total amount financed, itemized charges, and net credit customer will have use of, and (3) term of loan, due date of each payment, and maturity date of loan, and by highlighting finance charge and annual percentage rate in bold type, since arrangement is logical and permits easy arithmetical computation. *Nesbitt v Blazer Financial Services, Inc. (1982, ND Ill) 550 F Supp 819* (superseded by statute as stated in *Kedziora v Citicorp Nat'l Servs. (1991, ND Ill) 780 F Supp 516).*

Whether rider to mortgage contracts created security interests, requiring disclosure under *15 USCS § 1638(a)(9),* or only incidental interests, prohibiting disclosure under 12 CFR § 226, was issue of first impression in First Circuit;

however, where it appeared that rider created security interest in "goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with property," court could not conclude that only reasonable interpretation was that it created only non-disclosable incidental interests. *Carye v Long Beach Mortg. Co. (2007, DC Mass) 470 F Supp 2d 3.*

**47. Confession of judgment**

Confession of judgment is not security interest which has to be described in disclosure statement in connection with credit sale of automobile. *Meyers v Clearview Dodge Sales (1976, CA5 La) 539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Creditor violates Regulation Z (*12 CFR § 226.8(b)(5)*) [now *12 CFR § 226.6(c)*] by failing to disclose (1) that after-acquired property is subject to security interest created by confession of judgment or cognovit clause in note and (2) that judgment may be entered on basis of cognovit clause without prior notice to debtor or hearing. *Nesbitt v Blazer Financial Services, Inc. (1982, ND Ill) 550 F Supp 819* (superseded by statute as stated in *Kedziora v Citicorp Nat'l Servs. (1991, ND Ill) 780 F Supp 516).*

**48. Unearned insurance premiums**

Provision of retail installment contract assigning to creditors proceeds of any returned or unearned insurance premiums is not "security interest" that must be disclosed pursuant to *15 USCS § 1638(a)(10)* [now § 1638(a)(9)] or Regulation Z. *Anderson Bros. Ford v Valencia (1981) 452 US 205, 68 L Ed 2d 783, 101 S Ct 2266.*

Failure to disclose, in automobile installment purchase contract, right of seller to any returned or unearned insurance premiums on policy covering physical damage to automobile did not violate *15 USCS § 1638(a)(10)* [now § 1638(a)(9)], and provision in contract which stated that "proceeds" from such insurance, by whomever obtained, shall be applied toward replacement of property or payment of indebtedness, was sufficient disclosure in that returned premiums are part of "proceeds" of such transaction, nothing in Truth in Lending Act (*15 USCS §§ 1601* et seq.) requiring exemplification of such interest on face of installment contract. *James v Ford Motor Credit Co. (1980, CA10 Colo) 638 F2d 147,* vacated, in part on other grounds, cert den, in part, remanded *(1981) 453 US 901, 69 L Ed 2d 988, 101 S Ct 3134.*

Right to apply unearned premiums, which lender advanced as part of loan and right to apply proceeds obtained from any insured loss toward payment of loan is not security interest which must be disclosed under predecessor to *15 USCS § 1638(a)(9). Rounds v Community Nat. Bank (1978, SD Ill) 454 F Supp 883.*

**49. Payday loans**

With respect to "payday loans," lender does not violate TILA or its implementing regulations by referring to postdated check as security, because such check gives lender rights in addition to those provided by loan agreement itself. *Hahn v McKenzie Check Advance of Ill., LLC (2000, CA7 Ill) 202 F3d 998.*

Post-dated checks payday lending company sought as additional avenue of securing full payment from its customers constituted security interests which had to be disclosed on loan agreement pursuant to *15 USCS § 1638(a)(9). Jump v ACP Enters. (2002, ND Ind) 224 F Supp 2d 1216.*

**50. Relationship with state laws**

Fact that creditor, which financed purchase of automobile, retained certificate of title to automobile pursuant to state law did not create security interest in automobile for which disclosure under *15 USCS § 1638* and *12 CFR § 226.8(b)(5)* [now contained in *12 CFR § 226.6(c)*] was required. *Barbe v Cumberland Capital Corp. (1979, ED La) 502 F Supp 17,* affd without op (1981, CA5 La) *636 F2d 311.*

Creditor's disclosure of security interest which is void under state law does not provide basis for relief under Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Reid v Finance One of Virginia, Inc. (1983, WD Va) 560 F Supp 791,* affd without op (1984, CA4 Va) *725 F2d 676.*

Security interest retained by seller of goods, although unenforceable under state law, are required to be disclosed on same page as and above or adjacent to place for customer's signature. *Wise Furniture v Dehning (1984, Minn) 343 NW2d 26.*

**51. Miscellaneous**

Under predecessor to § 1638, right of lending institution to charge promissory note, after maturity, to checking account maintained with it by consumer did not give rise to "security interest," to as to require disclosure statement furnished to debtor to refer to such right of setoff. *First Guaranty Bank v Alford (1985, La App 1st Cir) 470 So 2d 473.*

28 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1638a*

§ 1638a. Reset of hybrid adjustable rate mortgages [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]

(a) Hybrid adjustable rate mortgages defined. For purposes of this section, the term "hybrid adjustable rate mortgage" means a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

(b) Notice of reset and alternatives. During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including--

(A) refinancing;

(B) renegotiation of loan terms;

(C) payment forbearances; and

(D) pre-foreclosure sales.

(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably

available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [*12 USCS § 1441a-1*]).

(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.

(c) Savings clause. The Board may require the notice in paragraph (b) or other notice consistent with this Act for adjustable rate mortgage loans that are not hybrid adjustable rate mortgage loans.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 128A, as added July 21, 2010, P.L. 111-203, Title XIV, Subtitle B, § 1418(a), 124 Stat. 2153.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"This Act", referred to in this section, is Act May 29, 1968, P.L. 90-321, which appears generally as *15 USCS §§ 1601* et seq. For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

29 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639*

§ 1639. Requirements for certain mortgages [Caution: See prospective amendment note below.]

(a) Disclosures.

(1) Specific disclosures. In addition to other disclosures required under this *title [15 USCS §§ 1601* et seq.], for each mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*], the creditor shall provide the following disclosures in conspicuous type size:

(A) "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.".

(B) "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.".

(2) Annual percentage rate. In addition to the disclosures required under paragraph (1), the creditor shall disclose--

(A) in the case of a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment; or

(B) in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed pursuant to section 1204 of the Competitive Equality Banking Act of 1987 [*12 USCS § 3806*].

(b) Time of disclosures.

(1) In general. The disclosures required by this section shall be given not less than 3 business days prior to consummation of the transaction.

(2) New disclosures required.

(A) In general. After providing the disclosures required by this section, a creditor may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

(B) Telephone disclosure. A creditor may provide new disclosures pursuant to subparagraph (A) by telephone, if--

(i) the change is initiated by the consumer; and

(ii) at the consummation of the transaction under which the credit is extended--

(I) the creditor provides to the consumer the new disclosures, in writing; and

(II) the creditor and consumer certify in writing that the new disclosures were provided by telephone, by not later than 3 days prior to the date of consummation of the transaction.

(3) Modifications. The Board may, if it finds that such action is necessary to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of rights created under this subsection, to the extent and under the circumstances set forth in those regulations.

(c) No prepayment penalty.

(1) In general.

(A) Limitation on terms. A mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due.

(B) Construction. For purposes of this subsection, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method (as that term is defined in section 933(d) of the Housing and Community Development Act of 1992 [*15 USCS § 1615(d)*]).

(2) Exception. Notwithstanding paragraph (1), a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] may contain a prepayment penalty (including terms calculating a refund by a method that is not prohibited under section 933(b) of the Housing and Community Development Act of 1992 [*15 USCS § 1615(b)*] for the transaction in question) if--

(A) at the time the mortgage is consummated--

(i) the consumer is not liable for an amount of monthly indebtedness payments (including the amount of credit extended or to be extended under the transaction) that is greater than 50 percent of the monthly gross income of the consumer; and

(ii) the income and expenses of the consumer are verified by a financial statement signed by the consumer, by a credit report, and in the case of employment income, by payment records or by verification from the employer of the consumer (which verification may be in the form of a copy of a pay stub or other payment record supplied by the consumer);

(B) the penalty applies only to a prepayment made with amounts obtained by the consumer by means other than a refinancing by the creditor under the mortgage, or an affiliate of that creditor;

(C) the penalty does not apply after the end of the 5-year period beginning on the date on which the mortgage is consummated; and

(D) the penalty is not prohibited under other applicable law.

(d) Limitations after default. A mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. If the date of maturity of a mortgage referred to in subsection [section] 103(aa) [*15 USCS § 1602(aa)*] is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate shall be computed by any method that is not less favorable than the actuarial method (as that term is defined in section 933(d) of the Housing and Community Development Act of 1992 [*15 USCS § 1615(d)*]).

(e) No balloon payments. A mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance.

(f) No negative amortization. A mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(g) No prepaid payments. A mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.

(h) Prohibition on extending credit without regard to payment ability of consumer. A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in section 103(aa) [*15 USCS § 1602(aa)*] based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.

(i) Requirements for payments under home improvement contracts. A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*], other than--

(1) in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(2) at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.

(j) Recommended default [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(k) Late fees [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.].

(1) In general. No creditor may impose a late payment charge or fee in connection with a high-cost mortgage--

(A) in an amount in excess of 4 percent of the amount of the payment past due;

(B) unless the loan documents specifically authorize the charge or fee;

(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

(D) more than once with respect to a single late payment.

(2) Coordination with subsequent late fees. If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

(3) Failure to make installment payment. If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

(l) Acceleration of debt [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

(m) Restriction on financing points and fees [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate

of the creditor is the noteholder of the note being refinanced.
(2) Any points or fees.

(n) Consequence of failure to comply. Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this *title [15 USCS §§ 1601* et seq.], for the purpose of section 125 [*15 USCS § 1635*].

(o) "Affiliate" defined. For purposes of this section, the term "affiliate" has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 [*12 USCS § 1841(k)*].

(p) Discretionary regulatory authority of Board.
(1) Exemptions. The Board may, by regulation or order, exempt specific mortgage products or categories of mortgages from any or all of the prohibitions specified in subsections (c) through (i), if the Board finds that the exemption--
(A) is in the interest of the borrowing public; and
(B) will apply only to products that maintain and strengthen home ownership and equity protection.
(2) Prohibitions. The Board, by regulation or order, shall prohibit acts or practices in connection with--
(A) mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of this section; and
(B) refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

(q) Civil penalties in Federal Trade Commission enforcement actions. For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Federal Reserve Board pursuant to subsection (l)(2) of this section shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (*15 U.S.C. 57a*) regarding unfair or deceptive acts or practices.

(r) Prohibitions on evasions, structuring of transactions, and reciprocal arrangements [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. A creditor may not take any action in connection with a high-cost mortgage--
(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or
(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this title.

(s) Modification and deferral fees prohibited [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. A creditor, successor in interest, assignee, or any agent of any of the above, may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

(t) Payoff statement [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.].
(1) Fees.
(A) In general. Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.
(B) Transaction fee. When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

(C) Fee disclosure. Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

(D) Multiple requests. If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

(2) Prompt delivery. Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.

(u) Pre-loan counseling [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.].

(1) In general. A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

(2) Disclosures required prior to counseling. No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 [*12 USCS §§ 2601* et seq.] with respect to the transaction.

(3) Regulations. The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).

(v) Corrections and unintentional violations [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either--

(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer--

(A) make the loan satisfy the requirements of this chapter [USCS §§ 1631 et seq.]; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer--

(A) make the loan satisfy the requirements of this chapter [USCS §§ 1631 et seq.]; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Chapter 2, § 129, as added Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 152(d), 108 Stat. 2191.)

(As amended March 11, 2009, P.L. 111-8, Div D, Title VI, § 626(c), 123 Stat. 679; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (9), Title XIV, Subtitle C, §§ 1432, 1433, 124 Stat. 2107, 2109, 2160.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

A prior § 1639 (Act May 29, 1968, P.L. 90-321, Title I, Chapter 2, § 129, 82 Stat. 156) was repealed by Act March 31, 1980, P.L. 96-221, Title VI, § 614(d)(1), 94 Stat. 180, effective 2 years and 6 months after enactment of the 1980 Act, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note. It related to consumer loans not under open end credit plans; similar provisions appear as *15 USCS § 1638*.

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

**Amendment of subsec. (m), effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(9), 124 Stat. 2109 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking subsection (m) and inserting the following: "(m) Civil penalties in Federal Trade Commission enforcement actions. For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (*15 U.S.C. 57a*) regarding unfair or deceptive acts or practices.".

**Repeal of subsec. (c)(2) and amendment of subsec. (e), effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle C, § 1432, 124 Stat. 2160 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), provides:

"(a) Prepayment Penalty Provisions. Section 129(c)(2) of the Truth in Lending Act (*15 U.S.C. 1639(c)(2)*) is hereby repealed.

"(b) No Balloon Payments. Section 129(e) of the Truth in Lending Act (*15 U.S.C. 1639(e)*) is amended to read as follows:

" '(e) No balloon payments. No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.'.".

Amendments:

2009. Act March 11, 2009, added subsec. (m).

2010. Act July 21, 2010 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), redesignated subsecs. (j)-(m) as subsecs. (n)-(q), respectively; inserted new subsecs. (j)-(m); and added subsecs. (r)-(v).

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1602, 1610, 1640*.

Research Guide:

Federal Procedure:
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:14, 18, 20.

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection §§ 131, 158.*

Forms:
6 Bender's Federal Practice Forms, Form 33(II):501, Federal Rules of Civil Procedure.
16 Fed Procedural Forms L Ed, Trade Regulation and Unfair Trade Practices § 65:136.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection § 46.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.01, 1.05.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections §§ 2.01, 2.03-2.05.
1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit §§ 6.02, 6.03.
1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense §§ 13.07, 13.11.
3A Debtor-Creditor Law (Matthew Bender), ch 34, Consumer Bankruptcy § 34.10.

Bankruptcy:
8 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 1322, Contents of Plan P 1322.16.

Annotations:
Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141.*
Validity, Construction, and Application of Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 U.S.C.A. §§ 1602(aa), 1610, 1639,* and *1640* [*15 USCS §§ 1602(aa), 1610, 1639, 1640*]. *198 ALR Fed 631.*

Texts:
5 Banking Law (Matthew Bender), ch 117, Holder in Due Course: Good Faith and Notice § 117.04.
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.09.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.06.
2 The Law of Advertising (Matthew Bender), ch 17, The Jurisdiction of the Federal Trade Commission in Advertising § 17.02.

Law Review Articles:
Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

**Emerging Issues Analysis**

*Fisher and Khandwala on Attacking Foreclosure Rescue Scams*

There is more than one way to lose a house. Foreclosure rescue scammers can steal the title and equity from your client's home. What are you going to do about it? Linda E. Fisher and Leena Khandwala discuss available legal rights and remedies.

Interpretive Notes and Decisions:
**I.IN GENERAL** 1. Generally 2. Bankruptcy 3. Practice and procedure 4.--Summary judgment

**I.IN GENERAL 1. Generally**

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1)*, thus, since plaintiff car buyer failed to plead and could not prove detrimental reliance, his Truth in Lending Act claims against defendant bank failed; that *15 USCS §§ 1615, 1635, 1639* specifically provided for rescission and restitution-type remedies did not imply that detrimental reliance was not required to recover actual damages for disclosure violations. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

Mortgage company was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of lawsuit filed by borrowers who alleged violation of Home Ownership and Equity Protection Act (HOEPA), *15 USCS § 1639*; borrowers did not qualify for additional disclosures required by HOEPA because their loan fees were not greater than eight percent. *Lynch v RKS Mortg., Inc. (2008, ED Cal) 588 F Supp 2d 1254.*

Under Home Ownership Equity Protection Act, *15 USCS § 1639* et seq., exception of *15 USCS § 1639(c)(2)(B)* did not apply where there was no evidence that prepayment penalty applied only to prepayment made by funds obtained other than by refinancing by bank or its affiliate. *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683.*

**2. Bankruptcy**

Bank was entitled to dismissal of pro se borrower's action alleging violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership Equity Protection Act, *15 USCS § 1639*; because borrower had filed for Chapter 7 bankruptcy, causes of action were property of bankruptcy estate under *11 USCS § 541* and bankruptcy trustee was real party in interest under *Fed. R. Civ. P. 17. Runaj v Wells Fargo Bank (2009, SD Cal) 667 F Supp 2d 1199.*

Debtor was not entitled to summary judgment under *Fed. R. Civ. P. 56(c), Fed. R. Bankr. P. 7056*, on claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS §§ 1639* et seq., because when debtor's loan closed in July, 1997, *12 C.F.R. § 226.32* did not require disclosure of balloon payments, and annual percentage rate and monthly payment were clearly disclosed; thus, as matter of law there were no violations of *15 USCS §§ 1632, 1637, 1638(a)*, (b), 1639. *Lewis v Delta Funding Corp. (In re Lewis) (2003, BC ED Pa) 290 BR 541* (criticized in *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962).*

Successful Chapter 13 debtor in action for rescission under Truth in Lending Act, *15 USCS § 1601* et seq., and Homeowner's Equity Protection Act, *15 USCS § 1639*, was entitled to reasonable attorney's fees under *15 USCS § 1640(a)(3). Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

In Chapter 13 bankruptcy case, in which debtor challenged alleged predatory loan transaction, debtor had no claim under Home Ownership Equity Protection Act, *15 USCS § 1639* et seq., because points and fees, calculated pursuant to

*15 USCS §§ 1602(aa), 1605(c)* and *12 C.F.R. §§ 226.4(c)(7), 226.32(b)(1),* did not exceed eight percent of total loan amount. *Bell v Parkway Mortg., Inc. (In re Bell) (2004, BC ED Pa) 309 BR 139,* mod and reh den (2004, BC ED Pa) *314 BR 54, 59 FR Serv 3d 763.*

Chapter 13 debtor was denied relief on adversary proceeding seeking to use creditor's alleged violation of Truth in Lending Act, *15 USCS § 1601* et seq., to recoup against its claim based on foreclosure judgment where debtor failed to prove that she did not receive alleged requisite disclosures with regard to loan or that disclosure-inducing refinancing had occurred. *Ross v Citifinancial Mortg. Co. (In re Ross) (2006, BC ED Pa) 338 BR 266.*

Loan agreement debtor signed required him to arbitrate claims alleging that lender failed to provide disclosures required by *15 USCS § 1639(a)(1)* and *12 C.F.R. § 226.32(c)(1),* and that failure to provide disclosures violated Pennsylvania Unfair Trade Practices Act, *73 Pa. Stat. Ann. § 201-1* et seq., and it stayed debtor's bankruptcy action and referred those claims to arbitration; however, court found that provision in agreement which required debtor to pay costs of arbitration was unconscionable, and it ordered lender and bank that was assigned note and mortgage debtor signed to pay those costs. *Herrington v Wells Fargo Bank, Minn., N.A. (In re Herrington) (2007, BC ED Pa) 374 BR 133.*

Adversary proceeding Chapter 13 debtor filed against mortgage company, claiming that mortgage company violated Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS § 1639,* was not time-barred under one-year statute of limitations imposed by *15 USCS § 1640(e)* because mortgage company had filed secured claim against debtor's bankruptcy estate and debtor's claim was in nature of recoupment against mortgage company's claim; state law on recoupment also allowed debtor to seek payment of attorney fees and costs she incurred in suing mortgage company, but only to extent any recovery was limited to reducing company's allowed claim. *Wentz v Saxon Mortg. (In re Wentz) (2008, BC SD Ohio) 393 BR 545.*

Chapter 13 debtors were not barred by doctrine of res judicata or Rooker-Feldman doctrine from claiming that bank that was assigned loan and mortgage on their residence was liable under *15 USCS § 1639* and other sections of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., for violations lender allegedly committed when it refinanced mortgage; although bank obtained judgment of foreclosure by default in state court against debtors, that judgment did not preclude debtors' claims because Pa. R. Civ. P. 1148 law did not allow debtors to raise their claims under TILA and HOEPA in foreclosure action. *Blythe v HSBC Bank USA, N.A. (In re Blythe) (2009, BC ED Pa) 413 BR 205,* motions ruled upon (2009, BC ED Pa) *2009 Bankr LEXIS 2776.*

**3. Practice and procedure**

Creditor did not violate Home Ownership and Equity Protection Act (HOEPA), *15 USCS §§ 1602(aa)(1)(B), 1639(a),* by not including appraisal fee, title insurance fee, phone-bill charge, or principal disbursement in total points and fees of debtors' loan because (1) appraisal and title insurance fees, if bona fide and reasonable, were excluded from HOEPA's definition of total points and fees under *15 USCS § 1605(e)* and *12 CFR § 226.4(c)(7)*; (2) appraisal and title insurance fees were bona fide and reasonable because they did not violate Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2607(b),* as they were paid to unaffiliated third party for services actually performed and creditor derived no benefit from payments; and (3) *15 USCS § 1602(aa)(4)* did not include telephone charge and principal disbursement in total points and fees. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 451 F3d 913.*

Although homeowners' written acknowledgment of receipt of required disclosures in connection with mortgage loan created rebuttable presumption that disclosures were delivered, presumption was rebutted and summary judgment for lender was precluded by homeowners' testimony that disclosures were not given. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

Loan applicant's state law claims for consumer fraud, common law fraud, fruits of fraud, and conspiracy satisfied particularity requirement of *Fed. R. Civ. P. 9(b)* where according to applicant, broker's fee amount was manipulated downward by mortgage broker and lender from $ 9,250.00 to $ 6,350.00, at closing, in absence of any discussion,

notification or involvement with applicant and that this conduct and downward manipulation was done for purpose of allowing lender to avoid additional disclosures required by Home Ownership Equity Protection Act (HOEPA), *15 USCS§ 1639*, and there appeared to be no adequate business reason that would explain why mortgage broker would unilaterally agree to cut its fee, unless lender gained something from it (and that something was avoidance of HOEPA disclosures). *Cunningham v Equicredit Corp. (2003, ND Ill) 256 F Supp 2d 785.*

Creditor's motion to dismiss claims under Truth In Lending Act, *15 USCS § 1601* et seq., was denied where mortgage applicant alleged that 1) lender knew "at or before closing" that additional disguised broker's fee was "payable" to mortgage broker (as kickback); and 2) lender knew at or before closing that points and fees payable to applicant's consumers exceeded 8 percent; thus, triggering disclosure requirements of Home Ownership Equity Protection Act, *15 USCS § 1639*. *Cunningham v Equicredit Corp. (2003, ND Ill) 256 F Supp 2d 785.*

Law firm's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' claim that law firm violated Truth in Lending Act by failing to provide all of material disclosures set forth in *15 USCS § 1639(a)* was granted because complaint did not contain any allegations creating inference that law firm was creditor in borrowers' refinancing transaction pursuant to *15 USCS § 1602(f)(1)*. *Smith v Argent Mortg. Co., LLC (2006, DC Colo) 447 F Supp 2d 1194.*

Mortgage servicer's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' complaint alleging that mortgage servicer failed to provide all material disclosures required by *15 USCS § 1639(a)* and that borrowers timely rescinded transaction was denied because, although mortgage servicer did not have any involvement in initial mortgage transaction and therefore did not have any responsibility to provide disclosures at that time, complaint could support reasonable inference that mortgage servicer was, at least in part, responsible for decisions regarding rescission of transaction pursuant to *15 USCS § 1635(a)*. *Smith v Argent Mortg. Co. LLC (2006, DC Colo) 447 F Supp 2d 1200.*

Court denied motion of defendants, real estate broker, real estate holding company, and related company, for summary judgment as to homeowners' Home Ownership and Equity Protection Act (HOEPA) and Truth in Lending Act (TILA) claims, which alleged that defendants violated disclosure requirements of both statutes as set forth in *15 USCS §§ 1602*, *1638*, *1639*, and *1641* and implementing regulations, *12 CFR §§ 226.31* and .32, and which sought rescission under *15 USCS § 1635* and *12 CFR § 226.23(a)(2)*, because genuine issues of fact existed as to whether parties intended outright sale, in which case TILA and HOEPA were inapplicable, or whether, given facts surrounding transaction, transaction could be construed as equitable mortgage, in which case TILA and HOEPA applied, and with regard to rescission, given discretion within which court could condition right to rescission, it was not necessary that owners demonstrate they had means to secure necessary financing at instant stage of proceedings. *Jones v REES-MAX, LLC (2007, DC Minn) 514 F Supp 2d 1139.*

Homeowners had to amend their claims against lenders and loan servicers to allege facts demonstrating that their loans were covered by Home Ownership Equity Protection Act under *15 USCS §§ 1602(aa)*, *1639*. *Biggins v Wells Fargo & Co. (2009, ND Cal) 266 FRD 399, 74 FR Serv 3d 25.*

In case in which homeowner sued lender, asserting that it violated Home Ownership and Equity Protection Act (HOEPA), *15 USCS § 1639*, by engaging in pattern or practice of making high cost mortgage loans without regard to their ability to pay and lender filed *Fed. R. Civ. P. 12(b)(6)* motion to dismiss that claim, homeowner's loan was not high cost loan that triggered coverage of HOEPA since it did not meet either of criteria set forth in *15 USCS § 1602(aa)(1)* or *12 CFR § 226.32(a)*. *Palmer v GMAC Commer. Mortg. (2009, DC Dist Col) 628 F Supp 2d 186.*

Creditors' motion to dismiss debtor's claims under *15 USCS § 1639* was granted because debtor had not contested creditors' assertion that HOEPA did not apply to mortgage loan at issue because it fell under residential mortgage transaction exemption of *15 USCS § 1602(aa)(1)*. *Pouth Phrasavang v Deutsche Bank (2009, DC Dist Col) 656 F Supp 2d 196* (criticized in *Minter v Wells Fargo Bank, N.A. (2009, DC Md) 2009 US Dist LEXIS 120930).*

Successful Chapter 13 debtor in action for rescission under Truth in Lending Act, *15 USCS § 1601* et seq., and

Homeowner's Equity Protection Act, *15 USCS § 1639*, was entitled to reasonable attorney's fees under *15 USCS § 1640(a)(3)*. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Pursuant to *15 USCS § 1602(u)*, "material disclosures" are defined to include disclosures required by *15 USCS § 1639(a)*, and if debtors' contention was correct, then right to rescind continued until latter of three days after those material disclosures were provided or until three years after consummation of transaction under *15 USCS § 1635(a)* and (f). *Merriam v Chase Manhattan Mortg. Corp. (In re Merriam) (2005, BC WD NY) 333 BR 22.*

Lender violated Home Ownership and Equity Protection Act of 1994 because none of documents signed by debtor before closing included *15 USCS § 1639(a)* disclosures. *Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

Pursuant to *15 USCS § 1640*, Truth in Lending Act (TILA) claim was not compulsory to Florida mortgage foreclosure action; thus, bankruptcy debtor's subsequent TILA suit seeking to rescind mortgage based on creditor's failure to provide him with disclosures required under TILA and failure to comply with Home Ownership and Equity Protection Act, *15 USCS § 1639*, was not barred by principles of issue or claim preclusion. *Daniels v Funding USA, Inc. (In re Daniels) (2006, BC SD Fla) 350 BR 619, 20 FLW Fed B 3.*

**4.--Summary judgment**

In mortgage refinance for personal residence, summary judgment was properly granted in favor of lender because lender was not required to make certain disclosures required by Home Ownership and Equity Protection Act (HOEPA) amendment to Truth in Lending Act (TILA), for high cost loans where fees and points did not exceed eight percent of entire loan; payment from loan proceeds to sham creditor was properly not included in calculation because it was not fee paid to mortgage broker. *Cunningham v Nationscredit Fin. Servs. Corp. (2007, CA7 Ill) 497 F3d 714.*

Although homeowners' written acknowledgment of receipt of required disclosures in connection with mortgage loan created rebuttable presumption that disclosures were delivered, presumption was rebutted and summary judgment for lender was precluded by homeowners' testimony that disclosures were not given. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

Lender was entitled to summary judgment in action by borrowers seeking to rescind refinancing agreement for failure to provide borrowers with three-day advance disclosures as required under *15 USCS §§ 1639(a), 1602(aa)*, part of Home Ownership and Equity Protection Act; disclosures were not triggered because under plain language of *12 CFR § 226.32(a)(1)(ii)*, yield spread premium could not be included in eight percent trigger calculation under *15 USCS § 1602(aa)*. *Mills v Equicredit Corp. (2004, ED Mich) 344 F Supp 2d 1071.*

Loan assignee's motion for summary judgment as to payee's claims under Truth in Lending Act was denied where payee's loan qualified as high cost loan under Home Owner's Equity Protection Act (HOEPA) because points and fees paid by payee at closing clearly exceeded 8% trigger, so that reasonable jury could conclude that payee was entitled to HOEPA protection and thus holder-in-due-course defense was not available to assignee. *Short v Wells Fargo Bank Minn., N.A. (2005, SD W Va) 401 F Supp 2d 549.*

Claims that mortgage lender violated Truth in Lending Act, *15 USCS §§ 1601* et seq., by, inter alia, failing to provide borrowers with required disclosures for "high cost" mortgage failed on summary judgment because mortgage at issue was not high cost mortgage within meaning of *15 USCS § 1602(aa)(1)(A)* and (B); points and fees fell below eight percent threshold under § 1602(aa)(1)(B)(i), and borrowers failed to establish that fee paid to purported third-party creditor constituted disguised broker's fee or hidden finance charge. *Cunningham v Equicredit Corp. (2006, ND Ill) 427 F Supp 2d 838.*

Lender was entitled to summary judgment on borrower's claim that lender did not make additional disclosures required for high cost loan because loan at issue did not meet requirement of high cost loan when applicable total points

and fees payable by lender before closing did not exceed eight percent of total loan amount. *Frazier v Accredited Home Lenders, Inc. (2009, MD Ala) 607 F Supp 2d 1254.*

Lenders were entitled to summary judgment on lender's claim for violation of Home Owner Equity Protection Act because it was undisputed that loan at issue was purchase money mortgage loan. *McAnaney v Astoria Fin. Corp. (2009, ED NY) 665 F Supp 2d 132.*

Plaintiffs' claims under Truth In Lending Act, *15 USCS §§ 1601* et seq., were barred by one-year statute of limitations because disclosure of documents occurred in September 2001, plaintiffs did not file their claims until April 2006, and there were no grounds for equitable tolling based on fraudulent concealment. *Poskin v TD Banknorth, N.A. (2009, WD Pa) 687 F Supp 2d 530.*

Debtor was not entitled to summary judgment under *Fed. R. Civ. P. 56(c)*, *Fed. R. Bankr. P. 7056*, on claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS §§ 1639* et seq., because when debtor's loan closed in July, 1997, *12 C.F.R. § 226.32* did not require disclosure of balloon payments, and annual percentage rate and monthly payment were clearly disclosed; thus, as matter of law there were no violations of *15 USCS §§ 1632*, *1637*, *1638(a)*, (b), 1639. *Lewis v Delta Funding Corp. (In re Lewis) (2003, BC ED Pa) 290 BR 541* (criticized in *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962).*

**Unpublished Opinions**

Unpublished: Mortgagor was not entitled to damages, rescission, and injunction preventing foreclosure on grounds that lender failed to make certain disclosures mandated by *15 USCS §§ 1639(a)(1)* and *1602(aa)(1)*, because act did not apply to residential mortgages. *Booker v Wells Fargo Home Mortg., Inc. (2005, CA6 Mich) 138 Fed Appx 728.*

30 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639a*

§ 1639a. Duty of servicers of residential mortgages

(a) In general. Notwithstanding any other provision of law, whenever a servicer of residential mortgages agrees to enter into a qualified loss mitigation plan with respect to 1 or more residential mortgages originated before the date of enactment of the Helping Families Save Their Homes Act of 2009 [enacted May 20, 2009], including mortgages held in a securitization or other investment vehicle--

(1) to the extent that the servicer owes a duty to investors or other parties to maximize the net present value of such mortgages, the duty shall be construed to apply to all such investors and parties, and not to any individual party or group of parties; and

(2) the servicer shall be deemed to have satisfied the duty set forth in paragraph (1) if, before December 31, 2012, the servicer implements a qualified loss mitigation plan that meets the following criteria:

(A) Default on the payment of such mortgage has occurred, is imminent, or is reasonably foreseeable, as such terms are defined by guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008.

(B) The mortgagor occupies the property securing the mortgage as his or her principal residence.

(C) The servicer reasonably determined, consistent with the guidelines issued by the Secretary of the Treasury or his designee, that the application of such qualified loss mitigation plan to a mortgage or class of mortgages will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the anticipated recovery through foreclosures.

(b) No liability. A servicer that is deemed to be acting in the best interests of all investors or other parties under this section shall not be liable to any party who is owed a duty under subsection (a)(1), and shall not be subject to any injunction, stay, or other equitable relief to such party, based solely upon the implementation by the servicer of a qualified loss mitigation plan.

(c) Standard industry practice. The qualified loss mitigation plan guidelines issued by the Secretary of the Treasury

under the Emergency Economic Stabilization Act of 2008 shall constitute standard industry practice for purposes of all Federal and State laws.

(d) Scope of safe harbor. Any person, including a trustee, issuer, and loan originator, shall not be liable for monetary damages or be subject to an injunction, stay, or other equitable relief, based solely upon the cooperation of such person with a servicer when such cooperation is necessary for the servicer to implement a qualified loss mitigation plan that meets the requirements of subsection (a).

(e) Reporting. Each servicer that engages in qualified loss mitigation plans under this section shall regularly report to the Secretary of the Treasury the extent, scope, and results of the servicer's modification activities. The Secretary of the Treasury shall prescribe regulations or guidance specifying the form, content, and timing of such reports.

(f) Definitions. As used in this section--

(1) the term "qualified loss mitigation plan" means--

(A) a residential loan modification, workout, or other loss mitigation plan, including to the extent that the Secretary of the Treasury determines appropriate, a loan sale, real property disposition, trial modification, pre-foreclosure sale, and deed in lieu of foreclosure, that is described or authorized in guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008; and

(B) a refinancing of a mortgage under the Hope for Homeowners program;

(2) the term "servicer" means the person responsible for the servicing for others of residential mortgage loans (including of a pool of residential mortgage loans); and

(3) the term "securitization vehicle" means a trust, special purpose entity, or other legal structure that is used to facilitate the issuing of securities, participation certificates, or similar instruments backed by or referring to a pool of assets that includes residential mortgages (or instruments that are related to residential mortgages such as credit-linked notes).

(g) Rule of construction. No provision of subsection (b) or (d) shall be construed as affecting the liability of any servicer or person as described in subsection (d) for actual fraud in the origination or servicing of a loan or in the implementation of a qualified loss mitigation plan, or for the violation of a State or Federal law, including laws regulating the origination of mortgage loans, commonly referred to as predatory lending laws.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Chapter 2, § 129A [129] [129A], as added July 30, 2008, P.L. 110-289, Div A, Title IV, § 1403, 122 Stat. 2809; May 20, 2009, P.L. 111-22, Div A, Title II, § 201(b), 123 Stat. 1638; July 21, 2010, P.L. 111-203, Title XIV, Subtitle A, § 1402(a)(1), 124 Stat. 2138.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

The "Emergency Economic Stabilization Act of 2008", referred to in this section, is Division A of Act Oct. 3, 2008, P.L. 110-343, which appears generally as *12 USCS §§ 5201* et seq. For full classification of such Act, consult USCS Tables volumes.

Amendments:

2009. Act May 20, 2009, substituted this section for one which read:

"Fiduciary duty of servicers of pooled residential mortgages

"(a) In general. Except as may be established in any investment contract between a servicer of pooled residential mortgages and an investor, a servicer of pooled residential mortgages--

"(1) owes any duty to maximize the net present value of the pooled mortgages in an investment to all investors and parties having a direct or indirect interest in such investment, not to any individual party or group of parties; and

"(2) shall be deemed to act in the best interests of all such investors and parties if the servicer agrees to or implements a modification or workout plan, including any modification or refinancing undertaken pursuant to the HOPE for Homeowners Act of 2008, for a residential mortgage or a class of residential mortgages that constitute a part or all of the pooled mortgages in such investment, provided that any mortgage so modified meets the following criteria:

"(A) Default on the payment of such mortgage has occurred or is reasonably foreseeable.

"(B) The property securing such mortgage is occupied by the mortgagor of such mortgage.

"(C) The anticipated recovery on the principal outstanding obligation of the mortgage under the modification or workout plan exceeds, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure.

"(b) Definition. As used in this section, the term 'servicer' means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan).".

Redesignation:

This section, enacted as § 129A of Act May 29, 1968, P.L. 90-321, was redesignated § 129 of such Act by Act May 20, 2009, P.L. 111-22, Div A, Title II, § 201(b), 123 Stat. 1638. It was further redesignated § 129A of such Act by Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle A, § 1402(a)(1), 124 Stat. 2138.

Other provisions:

**Servicer safe harbor for mortgage loan modifications; congressional findings.** Act May 20, 2009, P.L. 111-22, Div A, Title II, § 201(a), 123 Stat. 1638, provides:

"Congress finds the following:

"(1) Increasing numbers of mortgage foreclosures are not only depriving many Americans of their homes, but are also destabilizing property values and negatively affecting State and local economies as well as the national economy.

"(2) In order to reduce the number of foreclosures and to stabilize property values, local economies, and the national economy, servicers must be given--

"(A) authorization to--

"(i) modify mortgage loans and engage in other loss mitigation activities consistent with applicable guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [Div A of Act Oct. 3, 2008, P.L. 110-343]; and

"(ii) refinance mortgage loans under the Hope for Homeowners program; and

"(B) a safe harbor to enable such servicers to exercise these authorities.".

Interpretive Notes and Decisions:

Borrowers conceded that their damages claim under *15 USCS § 1640(e)* was time-barred, and their TILA breach of fiduciary duty claim failed because *15 USCS § 1639a* did not create liability and did not create private right of action. *McGrew v Countrywide Home Loans, Inc. (2009, SD Cal) 628 F Supp 2d 1237.*

Putative class action in which holders of mortgage-backed securities alleged that pooling and servicing agreements

(PSAs) required loan servicers to purchase modified loans was remanded to state court pursuant to *28 USCS § 1447(c)* because holders' claims fell within Class Action Fairness Act of 2005's exception in *28 USCS § 1332(d)(9)(C)* for claims seeking to enforce terms of instruments creating and defining securities and holders' claims did not require interpretation of *15 USCS § 1639a*; loan servicers' contention that TILA required different interpretation of PSAs raised federal defense, which was insufficient to establish federal question jurisdiction under *28 USCS § 1331*. *Greenwich Fin. Servs. Distressed Mortg. Fund 3, LLC v Countrywide Fin. Corp. (2009, SD NY) 654 F Supp 2d 192.*

31 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639b*

§ 1639b. Residential mortgage loan origination [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note; see also prospective amendment note below.]

(a) Finding and purpose.

(1) Finding. The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

(2) Purpose. It is the purpose of this section and section 129C [*15 USCS § 1639c*] to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

(b) Duty of care.

(1) Standard. Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law--

(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [*12 USCS §§ 5101* et seq.]; and

(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

(2) Compliance procedures required. The Board shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [*12 USCS § 5106*].

(c) Prohibition on steering incentives.

(1) In general. For any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

(2) Restructuring of financing origination fee.

(A) In general. For any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator .

(B) Exception. Notwithstanding subparagraph (A), a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if--

(i) the mortgage originator does not receive any compensation directly from the consumer; and

(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Board may, by rule, waive or provide exemptions to this clause if the Board determines that such waiver or exemption is in the interest of consumers and in the public interest.

(3) Regulations. The Board shall prescribe regulations to prohibit--

(A) mortgage originators from steering any consumer to a residential mortgage loan that--

(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a) [*15 USCS § 1693c(a)*]); or

(ii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(b)(2) [*15 USCS § 1693c(b)(2)*]) to a residential mortgage loan that is not a qualified mortgage;

(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

(D) mortgage originators from--

(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a residential mortgage loan secured by a consumer's principal dwelling from another mortgage originator.

(4) Rules of construction. No provision of this subsection shall be construed as--

(A) permitting any yield spread premium or other similar compensation that would, for any residential mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);

(B) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

(C) restricting a consumer's ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator's right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer's decision about whether to finance such fees or costs; or

(D) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.

(d) Liability for violations.

(1) In general. For purposes of providing a cause of action for any failure by a mortgage originator, other than a

creditor, to comply with any requirement imposed under this section and any regulation prescribed under this section, section 130 [*15 USCS § 1640*] shall be applied with respect to any such failure by substituting "mortgage originator" for "creditor" each place such term appears in each such subsection.

(2) Maximum. The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney's fee.

(e) Discretionary regulatory authority.

(1) In general. The Board shall, by regulations, prohibit or condition terms, acts or practices relating to residential mortgage loans that the Board finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 129C [*15 USCS § 1639c*], necessary or proper to effectuate the purposes of this section and section 129C [*15 USCS § 1639c*], to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

(2) Application. The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105 [*15 USCS § 1604*].

(f) Applicability. Section 129B [this section] and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in *section 101(53D) of title 11, United States Code*.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Chapter 2, § 129B, as added and amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), Title XIV, Subtitle A, §§ 1402(a)(2), 1403-1405, 124 Stat. 2107, 2139.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

Other provisions:

**Rule of construction.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle B, § 1415, 124 Stat, 2153, provides: "Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act (as added by this title) [*15 USCS § 1639B* or *1639C*], no provision of such section 129B or 129C [*15 USCS § 1639B* or *1639C*] shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act [*15 USCS §§ 1601* et seq.] or any other provision of Federal or State law.

32 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639c*

§ 1639c. Minimum standards for residential mortgage loans [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note; see also prospective amendment note below.]

(a) Ability to repay.

(1) In general. In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(2) Multiple loans. If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(3) Basis for determination. A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

(4) Income verification. A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination

under this subsection shall include the verification of such income by the use of--

(A) Internal Revenue Service transcripts of tax returns; or

(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

(5) Exemption. With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

(C) Total points and fees (as defined in section 103(aa)(4) [*15 USCS § 1602(aa)(4)*], other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

(6) Nonstandard loans.

(A) Variable rate loans that defer repayment of any principal or interest. For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

(B) Interest-only loans. For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

(C) Calculation for negative amortization. In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

(D) Calculation process. For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming--

(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Board, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

(E) Refinance of hybrid loans with current lender. In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may--

(i) consider the mortgagor's good standing on the existing mortgage;

(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

(7) Fully-indexed rate defined. For purposes of this subsection, the term "fully indexed rate" means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

(8) Reverse mortgages and bridge loans. This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

(9) Seasonal income. If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

(b) Presumption of ability to repay.

(1) In general. Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this *title [15 USCS §§ 1601* et seq.], may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

(2) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) Qualified mortgage. The term "qualified mortgage" means any residential mortgage loan--

(i) for which the regular periodic payments for the loan may not--

(I) result in an increase of the principal balance; or

(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a "balloon payment" is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vi) that complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of this subsection.

(B) Average prime offer rate. The term "average prime offer rate" means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Board..

(C) Points and fees.

(i) In general. For purposes of subparagraph (A), the term "points and fees" means points and fees as defined by section 103(aa)(4) [*15 USCS § 1602(aa)(4)*] (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

(ii) Computation. For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

(iii) Bona fide discount points defined. For purposes of clause (ii), the term "bona fide discount points" means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(iv) Interest rate reduction. Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(D) Smaller loans. The Board shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Board shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

(E) Balloon loans. The Board may, by regulation, provide that the term "qualified mortgage" includes a balloon loan--

(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and

(iv) that is extended by a creditor that--

(I) operates predominantly in rural or underserved areas;

(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board;

(III) retains the balloon loans in portfolio; and

(IV) meets any asset size threshold and any other criteria as the Board may establish, consistent with the purposes of this subtitle [*15 USCS §§ 1631* et seq.].

(3) Regulations.

(A) In general. The Board shall prescribe regulations to carry out the purposes of this subsection.

(B) Revision of safe harbor criteria.

(i) In general. The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B [*15 USCS § 1639b*], to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

(ii) Loan definition. The following agencies shall, in consultation with the Board, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 129B [*15 USCS § 1639b*], to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (*12 U.S.C. 1707* et seq.).

(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans

Affairs.

(III) The Department of Agriculture, with regard loans guaranteed by the Secretary of Agriculture pursuant to *42 U.S.C. 1472(h)*.

(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.

(c) Prohibition on certain prepayment penalties.

(1) Prohibited on certain loans.

(A) In general. A residential mortgage loan that is not a "qualified mortgage", as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

(B) Exclusions. For purposes of this subsection, a "qualified mortgage" may not include a residential mortgage loan that--

(i) has an adjustable rate; or

(ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set--

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (*12 U.S.C. 1454(a)(2)*);

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (*12 U.S.C. 1454(a)(2)*); and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

(2) Publication of average prime offer rate and APR thresholds. The Board--

(A) shall publish, and update at least weekly, average prime offer rates;

(B) may publish multiple rates based on varying types of mortgage transactions; and

(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

(3) Phased-out penalties on qualified mortgages. A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

(4) Option for no prepayment penalty required. A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

(d) Single premium credit insurance prohibited. No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt

cancellation or suspension agreement or contract, except that--

(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

(e) Arbitration.

(1) In general. No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(2) Post-controversy agreements. Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(3) No waiver of statutory cause of action. No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

(f) Mortgages with negative amortization. No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated--

(1) the creditor provides the consumer with a statement that--

(A) the pending transaction will or may, as the case may be, result in negative amortization;

(B) describes negative amortization in such manner as the Board shall prescribe;

(C) negative amortization increases the outstanding principal balance of the account; and

(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

(g) Protection against loss of anti-deficiency protection.

(1) Definition. For purposes of this subsection, the term "anti-deficiency law" means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

(2) Notice at time of consummation. In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

(3) Notice before refinancing that would cause loss of protection. In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice

to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

(h) Policy regarding acceptance of partial payment. In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor--

(1) the creditor's policy regarding the acceptance of partial payments; and

(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

(i) Timeshare plans. This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in *section 101(53D) of title 11, United States Code*.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Chapter 2, § 129C, as added and amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), Title XIV, Subtitle B, §§ 1411(a)(2), 1412, 1414(a), (c), (d), 124 Stat. 2107, 2142, 2145, 2149, 2152.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

The "Mortgage Reform and Anti-Predatory Lending Act", referred to in subsec. (c)(2), is Title XIV of Act July 21, 2010, P.L. 111-203. For full classification of such Act, consult USCS Tables volumes.

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

Other provisions:

**Rule of construction.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle B, § 1411(a)(1), 124 Stat. 2142 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), provides: "No regulation, order, or guidance issued by the Bureau under this title [for full classification, consult USCS Tables volumes] shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution.".

33 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639d*

§ 1639d. Escrow or impound accounts relating to certain consumer credit transactions [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note; see also prospective amendment note below.]

(a) In general. Except as provided in subsection (b), (c), (d), or (e), a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

(b) When required. No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when--

(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that--

(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (*12 U.S.C. 1454(a)(2)*), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C [*15 USCS § 1639c*] by 1.5 or more percentage points; or

(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a

residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (*12 U.S.C. 1454(a)(2)*), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C *[15 USCS § 1539c]* by 2.5 or more percentage points; or

(4) so required pursuant to regulation.

(c) Exemptions. The Board may, by regulation, exempt from the requirements of subsection (a) a creditor that--

(1) operates predominantly in rural or underserved areas;

(2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Board;

(3) retains its mortgage loan originations in portfolio; and

(4) meets any asset size threshold and any other criteria the Board may establish, consistent with the purposes of this subtitle.

(d) Duration of mandatory escrow or impound account. An escrow or impound account established pursuant to subsection (b) shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, unless and until--

(1) such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance;

(2) such borrower is delinquent;

(3) such borrower otherwise has not complied with the legal obligation, as established by rule; or

(4) the underlying mortgage establishing the account is terminated.

(e) Limited exemptions for loans secured by shares in a cooperative or in which an association must maintain a master insurance policy. Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by dwellings or units, where the borrower must join an association as a condition of ownership, and that association has an obligation to the dwelling or unit owners to maintain a master policy insuring the dwellings or units.

(f) Clarification on escrow accounts for loans not meeting statutory test. For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property--

(1) on terms mutually agreeable to the parties to the loan;

(2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or

(3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973 [*42 USCS § 4012a(d)*].

(g) Administration of mandatory escrow or impound accounts.

(1) In general. Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution or credit union.

(2) Administration. Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with--

(A) the Real Estate Settlement Procedures Act of 1974 [*12 USCS §§ 2601* et seq.] and regulations prescribed under such Act;

(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

(3) Applicability of payment of interest. If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

(4) Penalty coordination with RESPA. Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 [*12 USCS §§ 2601* et seq.] or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

(h) Disclosures relating to mandatory escrow or impound account. In the case of any impound, trust, or escrow account that is required under subsection (b), the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

(1) The fact that an escrow or impound account will be established at consummation of the transaction.

(2) The amount required at closing to initially fund the escrow or impound account.

(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

(5) The fact that, if the consumer chooses to terminate the account in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

(6) Such other information as the Board determines necessary for the protection of the consumer.

(i) Definitions. For purposes of this section, the following definitions shall apply:

(1) Flood insurance. The term "flood insurance" means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968 [*42 USCS §§ 4001* et seq.].

(2) Hazard insurance. The term "hazard insurance" shall have the same meaning as provided for "hazard insurance", "casualty insurance", "homeowner"s insurance", or other similar term under the law of the State where the real property securing the consumer credit transaction is located.

(j) Disclosure notice required for consumers who waive escrow services.

(1) In general. If--

(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account,

the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

(2) Disclosure requirements. Any disclosure provided to a consumer under paragraph (1) shall include the following:

(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

(B) A clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such

creditor-placed insurance.

(D) Such other information as the Board determines necessary for the protection of the consumer.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 129D, as added and amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), Title XIV, Subtitle E, §§ 1461(a), 1462, 124 Stat. 2107, 2178, 2181.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

The "Flood Disaster Protection Act of 1973", referred to in subsec. (g), is Act Dec. 31, 1973, P.L. 93-234. For full classification of such Act, consult USCS Tables volumes.

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

Other provisions:

**Exemptions and modifications.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle E, § 1461(b), 124 Stat. 2181 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), provides: "The Board may prescribe rules that revise, add to, or subtract from the criteria of section 129D(b) of the Truth in Lending Act [subsec. (b) of this section] if the Board determines that such rules are in the interest of consumers and in the public interest.".

34 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639e*

§ 1639e. Appraisal independence requirements [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]

(a) In general. It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.

(b) Appraisal independence. For purposes of subsection (a), acts or practices that violate appraisal independence shall include--

(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

(c) Exceptions. The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.
(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.
(3) Correct errors in the appraisal report.

(d) Prohibitions on conflicts of interest. No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

(e) Mandatory reporting. Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

(f) No extension of credit. In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(g) Rules and interpretive guidelines.
(1) In general. Except as provided under paragraph (2), the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).
(2) Interim final regulations. The Board shall, for purposes of this section, prescribe interim final regulations no later than 90 days after the date of enactment of this section [enacted July 21, 2010] defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).

(h) Appraisal report portability. Consistent with the requirements of this section, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

(i) Customary and reasonable fee.
(1) In general. Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.

(2) Fee appraiser definition. For purposes of this section, the term 'fee appraiser' means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is--

(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice; or

(B) a company not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (*12 U.S.C. 3331* et seq.) [*12 USCS § 3353*] that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

(3) Exception for complex assignments. In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

(j) Sunset. Effective on the date the interim final regulations are promulgated pursuant to subsection (g), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

(k) Penalties.

(1) First violation. In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $ 10,000 for each day any such violation continues.

(2) Subsequent violations. In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting "$ 20,000" for "$ 10,000" with respect to all subsequent violations.

(3) Assessment. The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 129E, as added July 21, 2010, P.L. 111-203, Title XIV, Subtitle F, § 1472(a), 124 Stat. 2187.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:

This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

35 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639f*

§ 1639f. Requirements for prompt crediting of home loan payments [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]

(a) In general. In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

(b) Exception. If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 129F, as added July 21, 2010, P.L. 111-203, Title XIV, Subtitle E, § 1464(a), 124 Stat. 2184.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

36 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639g*

§ 1639g. Requests for payoff amounts of home loan [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]

A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 129G, as added July 21, 2010, P.L. 111-203, Title XIV, Subtitle E, § 1464(b), 124 Stat. 2184.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:

This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

37 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1639h*

§ 1639h. Property appraisal requirements [Caution: This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]

(a) In general. A creditor may not extend credit in the form of a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

(b) Appraisal requirements.
(1) Physical property visit. Subject to the rules prescribed under paragraph (4), an appraisal of property to be secured by a higher-risk mortgage does not meet the requirement of this section unless it is performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.
(2) Second appraisal under certain circumstances.
(A) In general. If the purpose of a higher-risk mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different certified or licensed appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.
(B) No cost to applicant. The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.
(3) Certified or licensed appraiser defined. For purposes of this section, the term "certified or licensed appraiser" means a person who--
(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and
(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [*12 USCS §§ 3331* et seq.], and the regulations prescribed under such title, as in effect on the date of the appraisal.
(4) Regulations.

(A) In general. The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau shall jointly prescribe regulations to implement this section.

(B) Exemption. The agencies listed in subparagraph (A) may jointly exempt, by rule, a class of loans from the requirements of this subsection or subsection (a) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

(c) Free copy of appraisal. A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a higher-risk mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

(d) Consumer notification. At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.

(e) Violations. In addition to any other liability to any person under this *title [15 USCS §§ 1601* et seq.], a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $ 2,000.

(f) Higher-risk mortgage defined. For purposes of this section, the term "higher-risk mortgage" means a residential mortgage loan, other than a reverse mortgage loan that is a qualified mortgage, as defined in section 129C [*15 USCS § 1639c*], secured by a principal dwelling--

(1) that is not a qualified mortgage, as defined in section 129C [*15 USCS § 1639c*]; and

(2) with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as defined in section 129C [*15 USCS § 1639c*], as of the date the interest rate is set--

(A) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (*12 U.S.C. 1454(a)(2)*);

(B) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (*12 U.S.C. 1454(a)(2)*); and

(C) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 129H, as added July 21, 2010, P.L. 111-203, Title XIV, Subtitle F, § 1471, 124 Stat. 2185.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:

This section is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.

38 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1640*

§ 1640. Civil liability [Caution: See prospective amendment notes below.]

(a) Individual or class action for damages; amount of award; factors determining amount of award. Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter [*15 USCS §§ 1631* et seq.], including any requirement under section 125 [*15 USCS § 1635*], subsection (f) or (g) of section 131 [*15 USCS § 1641*], or chapter 4 or 5 of this *title [15 USCS §§ 1666* et seq. or *1667* et seq.] with respect to any person is liable to such person in an amount equal to the sum of--

(1) any actual damage sustained by such person as a result of the failure;

(2) (A) (i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this *title [15 USCS §§ 1667* et seq.], *25* per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $ 100 nor greater than $ 1,000, (iii) in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of $ 500 and a maximum of $ 5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; or (iv) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $ 400 or greater than $ 4,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of $ 500,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 125 or 128(e)(7) [*15 USCS § 1635* or *1638(e)(7)*], the costs of the action, together with a reasonable attorney's fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 129 [*15 USCS § 1639*], an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply

is not material.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures referred to in subsections (a) and (b) of section 127 [*15 USCS § 1637*], a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125 [*15 USCS § 1635*], 127(a) [*15 USCS § 1637(a)*], or any of paragraphs (4) through (13) of section 127(b) [*15 USCS § 1637(b)*], or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 111(a)(2) [*15 USCS § 1610(a)(2)*] as any of the terms or items referred to in section 127(a), or any of paragraphs (4) through (13) of section 127(b) [*15 USCS § 1637(b)*]. In connection with the disclosures referred to in subsection (c) or (d) of section 127 [*15 USCS § 1637(c)* or (d)], a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 127(c)(1)(A)(ii)(I) or section 127(c)(4)(A)(i) [*15 USCS § 1637(c)(1)(A)(ii)(I)* or (c)(4)(A)(i)] or who uses the credit card or charge card. In connection with the disclosures referred to in section 128 [*15 USCS § 1638*], a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125 [*15 USCS § 1635*], of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of section 128(a) [*15 USCS § 1638(a)*], or section 128(b)(2)(C)(ii) [*15 USCS § 1638(b)(2)(C)(ii)*], of subparagraphs (A), (B), (D), (F), or (J) of section 128(e)(2) [*15 USCS § 1638(e)(2)*] (for purposes of paragraph (2) or (4) of section 128(e) [*15 USCS § 1638(e)*]), or paragraph (4)(C), (6), (7), or (8) of section 128(e) [*15 USCS § 1638(e)*], or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 111(a)(2) [*15 USCS § 1610(a)(2)*] as any of the terms referred to in any of those paragraphs of section 128(a) [*15 USCS § 1638(a)*] or section 128(b)(2)(C)(ii) [*15 USCS § 1638(b)(2)(C)(ii)*]. With respect to any failure to make disclosures required under this chapter [*15 USCS §§ 1631* et seq.] or chapter 4 or 5 of this *title [15 USCS §§ 1666* et seq. or *1667* et seq.], liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 131 [*15 USCS § 1641*].

(b) Correction of errors. A creditor or assignee has no liability under this section or section 108 or section 112 [*15 USCS § 1607* or *1611*] for any failure to comply with any requirement imposed under this chapter or chapter 5 [*15 USCS §§ 1631* et seq. or *1667* et seq.], if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 108(e)(1) [*15 USCS § 1607(e)(1)*] or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(c) Unintentional violations; bona fide errors. A creditor or assignee may not be held liable in any action brought under this section or section 125 [*15 USCS § 1635*] for a violation of this *title [15 USCS §§ 1601* et seq.] if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this *title [15 USCS §§ 1601* et seq.] is not a bona fide error.

(d) Liability in transaction or lease involving multiple obligors. When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) for a violation of this *title [15 USCS §§ 1601* et seq.].

(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement. Any action under this section may

be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation or, in the case of a violation involving a private education loan (as that term is defined in section 140(a) [*15 USCS § 1650(a)*]), 1 year from the date on which the first regular payment of principal is due under the loan. This subsection does not bar a person from asserting a violation of this *title [15 USCS §§ 1601* et seq.] in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 129 [*15 USCS § 1639*] may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 108 [*15 USCS § 1607*] and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may--

(1) intervene in the action;

(2) upon intervening--

(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

(B) be heard on all matters arising in the action; and

(3) file a petition for appeal.

(f) Good faith compliance with rule, regulation, or interpretation of Board or with interpretation or approval of duly authorized official or employee of Federal Reserve System. No provision of this section, section 108(b), section 108(c), section 108(e), or section 112 [*15 USCS § 1607(b)*, (c), (e), or § 1611] imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Recovery for multiple failures to disclose. The multiple failure to disclose to any person any information required under this chapter [*15 USCS §§ 1631* et seq.] or chapter 4 or 5 of this *title [15 USCS §§ 1666* et seq. or *1667* et seq.] to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, and consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 125 [*15 USCS § 1635*].

(h) Offset from amount owed to creditor or assignee; rights of defaulting consumer. A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a)(2) against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this *title [15 USCS §§ 1601* et seq.] has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this *title [15 USCS §§ 1601* et seq.] as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this *title [15 USCS §§ 1601* et seq.].

(i) Class action moratorium.

(1) In general. During the period beginning on the date of the enactment of the Truth in Lending Class Action Relief Act of 1995 [enacted May 18, 1995] and ending on October 1, 1995, no court may enter any order certifying any class in any action under this *title [15 USCS §§ 1601* et seq.]--

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor--

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 128 [*15 USCS § 1638*];

(ii) to properly make any other disclosure required under section 128 [*15 USCS § 1638*] as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 125(a) [*15 USCS § 1635(a)*] due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Board or from among forms based on such model forms.

(2) Exceptions for certain alleged violations. Paragraph (1) shall not apply with respect to any action--

(A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 107(c) [*15 USCS § 1606(c)*]; or

(B) described in paragraph (1)(B)(iii), if--

(i) no notice relating to rescission rights under section 125(a) [*15 USCS § 1635(a)*] was provided in any form; or

(ii) proper notice was not provided for any reason other than the reason described in such paragraph.

(j) Private educational lender. A private educational lender (as that term is defined in section 140(a) [*15 USCS § 1650(a)*]) has no liability under this section for failure to comply with section 128(e)(3) [*15 USCS § 1638(e)(3)*]).

(k) Defense to foreclosure [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.].

(1) In general. Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of paragraph (1) or (2) of section 129B(c) [*15 USCS § 1639b(c)*], or of section 129C(a) [*15 USCS § 1639c(a)*], as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages under subsection (e).

(2) Amount of recoupment or setoff.

(A) In general. The amount of recoupment or set-off under paragraph (1) shall equal the amount to which the consumer would be entitled under subsection (a) for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney's fee.

(B) Special rule. Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages under subsection (e), the amount of recoupment or set-off under paragraph (1) derived from damages under subsection (a)(4) shall not exceed the amount to which the consumer would have been entitled under subsection (a)(4) for damages computed up to the day preceding the expiration of the applicable time limit.

(l) Exemption from liability and rescission in case of borrower fraud or deception [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. In addition to any other remedy available by law or contract, no creditor or assignee shall be liable to an obligor under this section, if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 130, 82 Stat. 157; Oct. 28, 1974, P.L. 93-495, Title IV, §§ 406-408(a)-(d), 88 Stat. 1518; Feb. 27, 1976, P.L. 94-222, § 3(b), 90 Stat. 197; March 23, 1976, P.L. 94-240, § 4, 90 Stat. 260; March 31, 1980, P.L. 96-221, Title VI, § 615, 94 Stat. 180; Nov. 3, 1988, P.L. 100-583, § 3, 102 Stat. 2966; Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 153(a), (b), 108 Stat. 2195; May 18, 1995, P.L. 104-12, § 2, 109 Stat. 161; Sept. 30, 1995, P.L. 104-29, § 6, 109 Stat. 274.)

(As amended July 30, 2008, P.L. 110-289, Div B, Title V, § 2502(b), 122 Stat. 2857; Aug. 14, 2008, P.L. 110-315, Title X, Subtitle A, § 1012(a), 122 Stat. 3482; May 20, 2009, P.L. 111-22, Div A, Title IV, § 404(b), 123 Stat. 1658; May 22, 2009, P.L. 111-24, Title I, § 107, Title II, § 201(b), 123 Stat. 1743, 1745; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), Title XIV, Subtitle B, §§ 1413, 1416, 1417, 1422, 124 Stat. 2107, 2148, 2153, 2157.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

**Amendment of subsecs. (a) and (e), effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle B, § 1416, 124 Stat. 2153 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), provides:

"(a) Increase in Amount of Civil Money Penalties for Certain Violations. Section 130(a) of the Truth in Lending Act (*15 U.S.C. 1640(a)*) is amended--

"(1) in paragraph (2)(A)(ii)--

"(A) by striking '$ 100' and inserting '$ 200'; and

"(B) by striking '$ 1,000' and inserting '$ 2,000';

"(2) in paragraph (2)(B), by striking '$ 500,000' and inserting '$ 1,000,000'; and

"(3) in paragraph (4), by inserting ', paragraph (1) or (2) of section 129B(c), or section 129C(a)' after 'section 129'.

"(b) Statute of Limitations Extended for Section 129 Violations. Section 130(e) of the Truth in Lending Act (*15 U.S.C. 1640(e)*) is amended--

"(1) in the first sentence, by striking 'Any action' and inserting 'Except as provided in the subsequent sentence, any action'; and

"(2) by inserting after the first sentence the following new sentence: 'Any action under this section with respect to any violation of section 129, 129B, or 129C [*15 USCS § 1639, 1639B*, or *1639C*] may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.'.".

**Amendment of subsec. (e), effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203.** Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle B, § 1422, 124 Stat. 2157 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), provides: "Section 130(e) of the Truth in Lending Act (*15 U.S.C. 1640(e)*) is amended by striking 'section 129 may also' and inserting 'section 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H of this Act [*15 USCS § 1639, 1639b, 1639c, 1639d, 1639e, 1639f, 1639g*, or *1639h*] may also'.".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1974. Act Oct. 28, 1974 (effective 10/28/74, as provided by § 416 of such Act which appears as *15 USCS § 1665a* note; see applicability provision treated as other provisions note to this section), substituted subsec. (a) for one which read:

"(a) Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this chapter to be disclosed to that person is liable to that person in an amount equal to the sum of

"(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than $ 100 nor greater than $ 1,000; and

"(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.".

Such Act further, in subsec. (b), inserted "for any failure to comply with any requirement imposed under this chapter,"; in subsec. (c) substituted "title" for "chapter"; and added subsecs. (f)-(h).

1976. Act Feb. 27, 1976, substituted subsec. (f) for former one which read: "No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.".

Act March 23, 1976 (effective one year after its enactment on March 23, 1976, as provided by § 6 of such Act, which appears as *15 USCS § 1667* note), in subsec. (a), in preamble, inserted "or 5", in clause (2)(A), inserted "(i)" and ", or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of the title, 25 per centum of the total amount of monthly payments under the lease"; in clause (2)(B), substituted "$ 500,000" for "$ 100,000"; in subsec. (b), inserted "or chapter 5"; deleted "finance" following "required to pay a"; and in subsec. (g), inserted "or chapter 4 or 5 of this title" and ", consumer lease".

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), in subsec. (a), in the introductory matter inserted ", including any requirement under section 125", in para. (2)(B), substituted "under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor" for "in such action", in para. (3), inserted "or in any action in which a person is determined to have a right of rescission under section 125", and in the concluding matter inserted "In connection with the disclosures referred to in section 127, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, section 127(a), or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 127(b) or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms or items referred to in section 127(a) or any of those paragraphs of section 127(b). In connection with the disclosures referred to in section 128, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125 or of paragraph (2) (insofar as it requires a disclosure of the 'amount financed'), (3), (4), (5), (6), or (9) of section 128(a), or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms referred to in any of those paragraphs of section 128(a). With respect to any failure to make disclosures required under this chapter or chapter 4 or 5 of this title, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 131."; substituted subsecs. (b)-(d) for ones which read:

"(b) A creditor has no liability under this section for any failure to comply with any requirement imposed under this chapter or chapter 5, if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a charge in excess of the amount of percentage rate actually disclosed.

"(c) A creditor may not be held liable in any action brought under this section for a violation of this title if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

"(d) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in real property may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter, and that it maintained procedures reasonably adapted to apprise it of the existence of any such violations.".

Such Act further in subsec. (e), inserted "This subsection does not bar a person from asserting a violation of this title in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law."; in subsec. (f), inserted ", section 108(b) section 108(c), section 108(e),"; in subsec. (g), inserted "This subsection does not bar any remedy permitted by section 125."; and substituted subsec. (h) for former one which read: "A person may not take any action to offset any amount for which a creditor is potentially liable to such person under subsection (a)(2) against any amount owing to such creditor by such person, unless the amount of the creditor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party.".

1988. Nov. 3, 1988, in subsec. (a), in the concluding matter, following the first appearance of "In connection with the disclosures referred to", substituted "in subsections (a) and (b) of section 127" for "in section 127", and inserted the sentence beginning "In connection with the disclosures referred to in subsection (c) or (d) . . .".

1994. Act Sept. 23, 1994, in subsec. (a)(2)(B), deleted "and" after the concluding semicolon, in para. (3), substituted "; and" for a concluding period, and added para. (4); and, in subsec. (e), inserted the sentences beginning: "An action to enforce a violation . . .", "The State attorney general . . .", "If prior notice is not feasible . . .", and "The Federal agency . . .", including paras. (1)-(3).

1995. Act May 18, 1995, added subsec. (i).

Act Sept. 30, 1995, in subsec. (a)(2), substituted "(ii)" for "or (ii)" and inserted ", or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $ 200 or greater than $ 2,000".

2008. Act July 30, 2008, in subsec. (a), in para. (2)(A)(iii), substituted "not less than $ 400 or greater than $ 4,000" for "not less than $ 200 or greater than $ 2,000", and in the concluding matter, inserted "or section 128(b)(2)(C)(ii)," and "or section 128(b)(2)(C)(ii).

Act Aug. 14, 2008 (effective on the earlier of the date on which regulations issued become effective or 18 months after enactment, as provided by § 1012(b) of such Act, which appears as a note to this section), in subsec. (a), in para. (3), inserted "or 128(e)(7)", in the concluding matter, substituted "125," for "125 or" preceding "of paragraph (2) (insofar as it requires a disclosure of the 'amount financed')", and inserted "of subparagraphs (A), (B), (D), (F), or (J) of section 128(e)(2) (for purposes of paragraph (2) or (4) of section 128(e)), or paragraph (4)(C), (6), (7), or (8) of section 128(e),"; in subsec. (e), inserted "or, in the case of a violation involving a private education loan (as that term is defined in section 140(a)), 1 year from the date on which the first regular payment of principal is due under the loan"; and added subsec. (j).

2009. Act May 20, 2009, in subsec. (a), inserted "subsection (f) or (g) of section 131,".

Act May 22, 2009 (effective 9 months after enactment, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note), in subsec. (a), in para. (2)(A), substituted cl. (iii) and "or (iv) in the" for "or (iii) in the", and, in the concluding matter, substituted the sentence beginning "In connection with the disclosures referred to in subsections (a) and (b) of section 127 . . ." for "In connection with the disclosures referred to in subsections (a) and (b) of section 127, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, section 127(a), or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 127(b) or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms or items referred to in section 127(a) or any of those paragraphs of section 127(b).".

2010. Act July 21, 2010 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), added subsecs. (k) and (l).

Other provisions:

**Applicability of amendments made by Act Oct. 28, 1974.** Act Oct. 28, 1974, P.L. 93-495, § 408(e), 88 Stat. 1519, provides: "The amendments made by sections 406, 407, and 408 [amending this section] shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act [*15 USCS §§ 1631-1645, 1666-1666j*], unless prior to the date of enactment of this Act such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise.".

**Effective date of Act Aug. 14, 2008 amendments.** Act Aug. 14, 2008, P.L. 110-315, Title X, Subtitle A, § 1012(b), 122 Stat. 3482, provides: "The amendments made by this section shall have the same effective date as provisions referred to in section 1003(b) [*15 USCS § 1638* note].".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *12 USCS § 3806*; *15 USCS §§ 1610, 1635, 1667d*.

Research Guide:

Federal Procedure:

5 Moore's Federal Practice (Matthew Bender 3d ed.), ch 23, Class Actions § 23.04.
10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 54, Judgment; Costs § 54.171.
13 Moore's Federal Practice (Matthew Bender 3d ed.), ch 68, Offer of Judgment § 68.02.
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:9, 11, 13-30, 72, 73.
8 Fed Proc L Ed, Courts and Judicial System § 20:444.
33A Fed Proc L Ed, Trial § 77:1.

Am Jur:

*9C Am Jur 2d, Bankruptcy § 2646*.
*17 Am Jur 2d, Consumer and Borrower Protection §§ 117, 129, 131, 145-151, 153, 154, 156, 158-160, 163-165, 245*.
*32B Am Jur 2d, Federal Courts § 1552*.
*47 Am Jur 2d, Justices of the Peace § 20*.
*70 Am Jur 2d, Sequestration § 45*.

Am Jur Trials:

16 Am Jur Trials, Action for Harassment of Debtor, p. 619.
86 Am Jur Trials, Arbitration Highways to the Courthouse--A Litigator's Roadmap, p. 111.

Am Jur Proof of Facts:

81 Am Jur Proof of Facts 3d, Identity Theft and Other Misuses of Credit and Debit Cards, p. 113.
3 Am Jur Proof of Facts, Credit, p. 453.

Forms:
1 *Bender's Federal Practice Forms, Forms 8(II):100, 8(II):101, 8(II):102, 8(II):103*, Federal Rules of Civil Procedure.
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:24-30, 37-43, 46, 47, 49-52, 69, 70, 93-99, 110, 127, 128, 162, 163.
15 Fed Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits (2010) § 61:48.
7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards §§ 41, 71, 72.
17C Am Jur Pl & Pr Forms (2006), Moneylenders and Pawnbrokers, §§ 5-12.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection §§ 4, 37, 46-48, 85, 89.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.05, 1.07-1.10.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections §§ 2.03, 2.05.
1 Debtor-Creditor Law (Matthew Bender), ch 3, The Consumer Leasing Act and Automobile Leases §§ 3.03-3.07.
1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.03.
1 Debtor-Creditor Law (Matthew Bender), ch 7, Rent-to-Own Transactions § 7.07.
1A Debtor-Creditor Law (Matthew Bender), ch 8, Fair Debt Collection §§ 8.04, 8.05.
1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense §§ 13.07, 13.18.
1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards §§ 15.02, 15.07.
1A Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.03.
7 Debtor-Creditor Law (Matthew Bender), ch 61, Recognition and Enforcement of Foreign Judgments § 61.03.

Bankruptcy:
2 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 110, Bankruptcy Petition Preparers P 110.10.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.2, 62.4, 62.16.

Annotations:
Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141*.
Recovery of Computer-Assisted Research Costs as Part of or in Addition to Attorney's Fees Under Federal Fee-Shifting Statutes. *28 ALR Fed 2d 397*.
Civil remedies of consumer for violations of Truth In Lending Act (*15 USCS §§ 1601-1665*). *11 ALR Fed 815*.
Time limitations under *15 USCS § 1640(e)* on Truth in Lending Act suits. *36 ALR Fed 657*.
Right to set off debt discharged in bankruptcy against claim brought under truth in lending act (*15 USCS §§ 1601* et seq.) *43 ALR Fed 413*.
Claim for underlying debt as compulsory or permissive in action asserting creditor's civil liability under § 130(a) of

Truth in Lending Act (*15 USCS § 1640(a)*) for violation of Act. *51 ALR Fed 509.*

Survivability of action brought under truth in lending Act (*15 USCS §§ 1601* et seq.). *53 ALR Fed 431.*

What constitutes "adversary adjudication" by administrative agency entitling prevailing party to award of attorneys' fees under Equal Access to Justice Act (*5 USCS § 504*). *96 ALR Fed 336.*

Civil remedies of consumer for violations of credit transactions provisions of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.), as amended by Truth in Lending Simplification and Reform Act of 1982. *113 ALR Fed 173.*

Construction and application of Consumer Leasing Act (*15 USCS §§ 1667-1667e*). *129 ALR Fed 587.*

Award of Attorney's Fees Under § 130(a) of Truth In Lending Act (*15 USCS § 1640(a)*). *140 ALR Fed 557.*

What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such error" within meaning of § 130(c) of Act (*15 U.S.C.A. § 1640(c)* [*15 USCS § 1640(c)*]). *153 ALR Fed 193.*

Validity, Construction, and Application of Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 U.S.C.A. §§ 1602(aa), 1610, 1639,* and *1640* [*15 USCS §§ 1602(aa), 1610, 1639, 1640*]. *198 ALR Fed 631.*

Validity of Arbitration Clause Precluding Class Actions. *13 ALR6th 145.*

Texts:

7 Banking Law (Matthew Bender), ch 151, Truth in Savings Act § 151.07.
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.02-152.08.
7 Banking Law (Matthew Bender), ch 153, Fair Credit Reporting Act §§ 153.07, 153.09.
7 Banking Law (Matthew Bender), ch 154, Equal Credit Opportunity Act § 154.04.
7 Banking Law (Matthew Bender), ch 155, Fair Debt Collection Practices Act § 155.05.
7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.05, 156.08.
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.09.
8 Banking Law (Matthew Bender), ch 164, Electronic Fund Transfer Act § 164.05.
9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.07.
2 The Law of Advertising (Matthew Bender), ch 15, Federal Remedies Available to Consumers §§ 15.04, 15.06.
3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions §§ 52.05, 52.06.

Law Review Articles:

Nash. Multiple-Creditor Transactions and the Truth in Lending Act. *97 Banking L J 37,* January 1980.

Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377,* May 1994.

Credit Defenses under the Truth in Lending Act: The Diminishing Radius of *15 USC § 1640(c). 18 BC Ind & Com L Rev 712,* April 1977.

Truth in Lending Act-Defendant's Debt Counterclaim-Compulsory or Permissive. *28 Case W Res L Rev 434,* Winter 1978.

Rosenberg; Alop. Remedies Under Truth-In-Lending Act: Selected Issues. *60 Chi B Rec 40,* July-Aug 1978.

Private Remedies Under the Truth-In-Lending Act: The Relationship Between Rescission and Civil Liability. *57 Iowa L Rev 199, 1971-1972.*

Class Actions Under Truth and Lending Act. *26 Loyola L Rev 333,* Spring 1980.

The Permissibility of Counterclaims Where Truth in Lending is Involved. *32 Okla L Rev 165,* Winter 1979.

Truth in Lending Act: A Summary of the Consumer's Remedies. *22 SD L Rev 322,* Spring 1977.

Berger. Court Awarded Attorney's Fees: What Is "Reasonable"? *126 U Pa L Rev 281, 1977.*

Scott, Constitutional Regulation of Provisional Creditor Remedies: The Cost of Procedural Due Process. *61 Va L Rev 807, 1975.*

Truth in Lending and the Statute of Limitations. *21 Vill L Rev 904,* Oct 1976.

Truth in Lending and the Federal Class Action. *22 Vill L Rev 418*, Jan 1977.

Restrictions on Defenses and Counterclaims Based on Truth in Lending Violations. *13 Wake Forest L Rev 189*, Spring 1977.

Consumer Protection--Truth In Lending Act "Creditor" Definition and Election of Remedies. *21 Wayne L Rev 977, 1974-75.*

**Emerging Issues Analysis**

1. *Hudson Cook on Correction of Federal Truth in Lending Mistakes*

Section 130 of the Truth in Lending Act, *15 U.S.C. § 1640*, provides protections to creditors that have made mistakes. These range from complete protection from liability to eventual protection pursuant to a limitations period to corrective measures a creditor can take to cure a violation. Robert A. Cook and Daniel J. Laudicina discuss the protections offered by TILA §§ 130(b)-130(g) and the pitfalls surrounding some of these protections.

2. *Robert M. Jaworski on Back to the Future with the Mortgage Reform and Anti-Predatory Lending Act (Part of Dodd-Frank)*

Robert M. Jaworski analyzes the Mortgage Reform and Anti-Predatory Lending Act (in Dodd-Frank Act), including the significant changes that it makes to the Truth in Lending Act (e.g., incentives for qualified mortgages, anti-steering prohibitions, defenses to foreclosure, disclosure & servicing requirements, & appraisal-related rules) and RESPA (e.g., changes to rules re: qualified written requests); and what this reform suggests about the future.

Interpretive Notes and Decisions:
**I.IN GENERAL** 1. Generally 2. Application 3.--Regulations 4. Relationship with state laws 5. Technical or de minimis violations 6. Arbitration 7. Nature of action 8. Actual knowledge as affecting right of action 9. Federal Rules of Civil Procedure 10. Res judicata 11. Dismissals 12. Summary judgment 13. Jury trial 14. Appeal and review 15. Miscellaneous

**II.JURISDICTION** 16. Generally 17. Concurrent jurisdiction 18. Pendent jurisdiction

**III.PARTIES** 19. Generally 20. Standing 21. Trustees in bankruptcy 22. Miscellaneous

**IV.PLEADINGS** 23. Relation back 24. Counterclaims 25.--Permissive and compulsory counterclaims 26. Miscellaneous

**V.DEFENSES**

**A.In General** 27. Generally

**B.Correction of Errors** 28. Generally 29. Particular cases

**C.Unintentional Violations Resulting From Bona Fide Errors** 30. Reasonable procedures to avoid errors 31.--Particular cases 32. Clerical errors 33.--Particular cases 34. Good faith 35. Mistake of law 36.--Particular cases 37. Miscellaneous

**D.Good Faith Compliance or Conformity** 38. Generally 39. Evidence 40. Staff opinion letters and interpretations 41. Pamphlets and publications of Federal Reserve Board 42. Miscellaneous

**VI.STATUTE OF LIMITATIONS** 43. Generally 44. Relationship with state laws 45. Accrual of statute of limitations 46.--Particular cases 47. Continuing violations 48. Bankruptcy extension 49. Tolling of statute of limitations 50.--Fraudulent concealment 51. Rescission cases 52. Miscellaneous

**VII.ATTORNEY'S FEES AND COSTS**

**A.In General** 53. Generally 54. Purpose 55. Mandatory nature of award of fees 56. Prevailing defendants 57. Pro se litigants 58. Legal services organizations and legal aid societies 59. Untimely actions 60. State action 61. Appellate work performed by attorney 62. Settlements 63. Miscellaneous

**B.Reasonableness and Amount** 64. Generally 65. Factors considered 66. Adjustment for unsuccessful claims 67. Disproportionality in comparison to amount of recovery 68.--Particular cases 69. Miscellaneous

**VIII.RECOUPMENT AND SETOFF**

**A.Recoupment** 70. Generally 71. Bankruptcy

**B.Setoff** 72. Generally 73. Bankruptcy 74. Attorney's fees 75. Miscellaneous

**IX.REMEDIES**

**A.In General** 76. Election of remedies 77. Restitution 78. Rescission 79.--Recoverability of damages 80. Miscellaneous

**B.Damages**

**1.In General** 81. Generally 82. Relationship with state laws 83. Prejudgment interest 84. Miscellaneous

**2.Number of Recoveries** 85. Multiple violations 86.--Particular cases 87. Multiple creditors 88. Multiple obligors

**3.Actual Damages** 89. Generally 90. Causal relationship between damages and injury or loss 91.--Proximate cause 92. Reliance, detrimental reliance, and evidence thereof 93. Miscellaneous

**4.Statutory Damages**

**a.In General** 94. Generally 95. No proof or recovery of actual damages required 96. No harm, loss or damage required 97. Finance charge doubled 98.--Calculation 99. Miscellaneous

**b.Class Actions** 100. Generally 101. Purpose of statutory amendments 102. Federal Rule of Civil Procedure 23 requirements 103. Maximum recovery 104.--Net worth 105. Pro rata shares of class members 106. Actual damages 107. Individual damages 108. State cases 109. Miscellaneous

**I.IN GENERAL 1. Generally**

Truth in Lending Act imposes civil penalty, purpose of which is to provide incentive for private litigants to institute actions and thereby enforce provisions of Act. *Griggs v Provident Consumer Discount Co. (1982, CA3 Pa) 680 F2d 927, 34 FR Serv 2d 219,* vacated on other grounds, remanded *(1982) 459 US 56, 74 L Ed 2d 225, 103 S Ct 400, 35 FR Serv 2d 365* (superseded by statute as stated in *Burt v Ware (1994, CA5 La) 14 F3d 256, 28 FR Serv 3d 204)* and (superseded by statute as stated in *Woodard v Hardenfelder (1994, ED NY) 845 F Supp 960)* and (superseded by statute as stated in *Leader Nat'l Ins. Co. v Industrial Indem. Ins. Co. (1994, CA9 Wash) 19 F3d 444, 94 CDOS 1866, 94 Daily Journal DAR 3435, 28 FR Serv 3d 488)* and (superseded by statute as stated in *Wallis v J.R. Simplot Co. (1994, CA9 Idaho) 28 FR Serv 3d 1464)* and (superseded by statute as stated in *Hatfield v Board of County Comm'rs (1995, CA10*

*Wyo) 52 F3d 858, 31 FR Serv 3d 1258)* and (superseded by statute as stated in *Schroeder v McDonald (1995, CA9 Hawaii) 55 F3d 454, 95 CDOS 3701, 32 FR Serv 3d 196).*

Civil penalty provisions of *15 USCS § 1640* are not punitive and penal as applied, and thus due process clause of Fifth Amendment to Constitution is not violated, in cases involving unintentional or hypertechnical violations of statute. *Franklin v First Money (1976, ED La) 427 F Supp 66,* affd (1979, CA5 La) *599 F2d 615.*

**2. Application**

Civil penalty provision of *15 USCS § 1640* applies both to failure to disclose information specifically required by statute and to failure to abide by regulations promulgated by Federal Reserve Board to govern such disclosure. *Mourning v Family Publications Serv. (1973) 411 US 356, 36 L Ed 2d 318, 93 S Ct 1652.*

*15 USCS § 1640* applies in determining liability of any person under Truth in Lending Act (*15 USCS § 1605(a)*) unless, prior to date of enactment of Act adding *15 USCS § 1640*, such liability has been determined by final judgment and no further review is available. *Jones v Community Loan Inv. Corp. (1976, CA5 Ga) 544 F2d 1228,* reh den (1977, CA5 Ga) *545 F2d 1298* and cert den *(1977) 431 US 934, 53 L Ed 2d 250, 97 S Ct 2642.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not provide cause of action when lender engages in "bait and switch" techniques, but only requires that lender make certain disclosures with respect to offered terms, and where disclosures made by creditor were accurate with respect to offered terms, fact that creditor may not have intended to loan money under stated terms did not make disclosures with respect to stated terms inaccurate. *Clark v Troy & Nichols, Inc. (1989, CA5 La) 864 F2d 1261,* reh den (1989, CA5) *1989 US App LEXIS 4735* and reh den, en banc (1989, CA5 La) *874 F2d 812.*

*15 USCS § 1640*(a) means that "only" violations of statutes specifically enumerated therein support statutory damages; thus, TILA does not support theory of derivative violations under which errors in form of disclosure must be treated as nondisclosure of key statutory terms. *Brown v Payday Check Advance, Inc. (2000, CA7 Ill) 202 F3d 987,* reh, en banc, den (2000, CA7 Ill) *2000 US App LEXIS 3537* and cert den *(2000) 531 US 820, 148 L Ed 2d 27, 121 S Ct 61* and (criticized in *Lozada v Dale Baker Oldsmobile, Inc. (2001, WD Mich) 145 F Supp 2d 878)* and (criticized in *Daenzer v Wayland Ford, Inc. (2002, WD Mich) 193 F Supp 2d 1030).*

Under Truth in Lending Act, creditors may be liable to credit customers for disclosures that do not meet express statutory or regulatory requirements, or for disclosures which do not further Truth in Lending Act's main concern with meaningful disclosure. *Paull v Chrysler Credit Corp. (1982, ND Ill) 544 F Supp 848,* affd (1983, CA7 Ill) *705 F2d 944.*

Plaintiffs did not raise actually disputed and substantial federal issue where their breach of contract and negligence claims were state law-based claims, and their attempt to directly implicate federal law under Fair Credit Billing Act (FCBA) failed because defendant moving company was not "creditor" and thus, neither FCBA nor any other section of Truth in Lending Act, *15 USCS §§ 1601* et seq., applied. *Rotblut v Ben Hur Moving & Storage, Inc. (2008, SD NY) 585 F Supp 2d 557.*

Borrower failed to sufficiently plead violation of Truth in Lending Act by lender and servicer under *15 USCS § 1635* because residential mortgage transactions, as defined under *15 USCS § 1602*, were excluded from three-year right of rescission and his claim for statutory damages was likely barred by one-year limitations period of *15 USCS § 1640(e). Delino v Platinum Cmty. Bank (2009, SD Cal) 628 F Supp 2d 1226.*

*15 USCS § 1641* deals with assignee liability under Truth in Lending Act, *15 USCS §§ 1601* et seq., and provides that assignee may be just as liable as creditor; if liability is found, then *15 USCS § 1640* awards attorney fees and costs against culpable assignee; there is simply no differentiation between creditors and assignees as far as relief under § 1640 is concerned. *Blythe v HSBC Bank USA, N.A. (In re Blythe) (2009, BC ED Pa) 413 BR 205,* motions ruled upon (2009,

BC ED Pa) *2009 Bankr LEXIS 2776.*

Credit extended and interest charged by contractor after consumers' refusal to pay in accordance with terms of written agreement did not come within purview of Truth in Lending Act (*15 USCS §§ 1601* et seq.) where original transaction was on cash basis and not within terms of Act, nature and character of underlying obligation being determinative of whether Act is applicable. *Florida State Constructors Services, Inc. v Randall (1979, Fla App D3) 368 So 2d 421,* cert den (1979, Fla) *378 So 2d 348.*

**3.--Regulations**

Court may impose civil penalty for violation of Regulation Z in that defendant failed to disclose "deferred payment price," although *15 USCS § 1640* imposes liability only for failure to disclose information required by language of Truth in Lending Act itself; penalty provision applies both to failure to disclose information required by statute and to failure to abide by regulations promulgated by Board. *Walker v College Toyota, Inc. (1974, WD Va) 399 F Supp 778,* affd (1975, CA4 Va) *519 F2d 447.*

Because any reference to requirements imposed by Consumer Credit Protection Act is also reference to relevant regulations (*15 USCS § 1602*), penalty for violation of regulations is no different from penalty for any other violation of Act. *Jumbo v Nester Motors, Inc. (1977, DC Ariz) 428 F Supp 1085.*

Pleadings do not fail, as matter of law, to state cause of action since provisions of Regulation Z apply to all persons who in ordinary course of business regularly extend, or offer to extend, or arrange, or offer to arrange, for extension of consumer credit, and since such protective provisions have been held to apply to automobile dealers in such circumstances. *Robinette v Griffith (1979, WD Va) 483 F Supp 28.*

Defendant's arbitration clause did not limit any of substantive remedies that would have otherwise been available to plaintiff under *15 USCS § 1640*; only procedural limitation defendant imposed was ban on class actions, however, Court of Appeals for Eleventh Circuit has held that such prohibition was enforceable even if it precluded plaintiff from utilizing class action procedures in vindicating statutory rights under Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., and, therefore, defendant's arbitration provision did not prohibit plaintiff from vindicating her statutory rights under either TILA or Fair Credit Billing Act, *15 USCS §§ 1666* et seq. *Gipson v Cross Country Bank (2003, MD Ala) 294 F Supp 2d 1251,* motion gr, injunction gr, stay gr (2005, MD Ala) *354 F Supp 2d 1278.*

Defendant's arbitration clause's prohibition on class actions was not unconscionable under state law; because arbitration clause did not limit plaintiff's right to recover costs and attorneys fees under *15 USCS § 1640,* court rejected argument that plaintiff had no economic incentive to pursue her claim on individual basis. *Gipson v Cross Country Bank (2003, MD Ala) 294 F Supp 2d 1251,* motion gr, injunction gr, stay gr (2005, MD Ala) *354 F Supp 2d 1278.*

Because Congress intended *15 USCS § 1640(a)*'s remedies to apply to any creditor or assignee that violated Truth in Lending Act, *15 USCS § 1601,* court rejected mortgage company's assertion that, as assignee, it could not be held liable for its failure to respond to homeowners' rescission notice. *Egipciaco Ruiz v R&G Fin. Corp. (2004, DC Puerto Rico) 313 F Supp 2d 48.*

**4. Relationship with state laws**

Creditor is not exempted from liability for defects in disclosure statement merely because loan agreement is later found to have been in violation of state law, even if state law makes transaction void and not merely voidable. *Pinkett v Credithrift of Am. (1977, ND Ga) 430 F Supp 113.*

Although likely inadvertent, failure to give each borrower two copies of "Notice of Right to Cancel" at closing was not "clerical" for purposes of bona fide error defense at *Mass. Gen. Laws, ch. 140D, § 32(c),* and at *15 USCS § 1640(c),* its federal counterpart. *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449.*

Because *15 USCS § 1640(e)* is Act of Congress, state procedure laws cannot be applied to expand time limit set in that statute; demand under § 1640 brought more than 1 year from date of sale was pre-empted, despite state law that incidental demand would not be barred if it was not barred at time of main demand and was filed within 90 days of date of service of main demand. *Sears, Roebuck & Co. v Reese (1977, La App 4th Cir) 347 So 2d 853.*

**5. Technical or de minimis violations**

Once violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is found, no matter how technical, court does not have discretion not to impose civil liability under Act. *Grant v Imperial Motors (1976, CA5 Ga) 539 F2d 506.*

Courts are not free to dismiss actions brought under *15 USCS § 1640* as trifles demeaning to dignity of federal judiciary; action by purchaser of used car who entered into finance contract which contained erroneously stated interest rate is not de minimis under § 1640 even though his actual damages are only $ 1.76. *Villanueva v Motor Town, Inc. (1980, CA7 Ill) 619 F2d 632.*

Although Truth in Lending Act allows monetary recovery even if failure to disclose finance charge caused borrower no harm, exception exists for those cases in which violation of Act was hypertechnical. *Cowen v Bank United, FSB (1995, CA7 Ill) 70 F3d 937, 33 FR Serv 3d 138.*

Liability can be imposed under § 130 of Truth in Lending Act (*15 USCS § 1640*) for creditor's technical failure to make disclosures required under Act on disclosure statement notwithstanding fact that debtor was aware of information required to be disclosed through conversation with employee of creditor. *Lauletta v Valley Buick (1976, WD Pa) 421 F Supp 1036.*

Finding of even one technical violation of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) requires imposition of liability under *15 USCS § 1640*. *O'Neil v Four States Builders & Remodelers, Inc. (1979, ED Pa) 484 F Supp 18.*

In borrowers' suit regarding second mortgage that mortgage company immediately assigned to assignee, on assignee's motion to dismiss, borrowers could not state claim under Federal Truth in Lending Act, *15 USCS § 1601* et seq., based upon mortgage company's designation of assignee as recipient of borrowers' rescission notice because technical violation of Federal Reserve Board Regulation Z, 12 C.F.R. pt. 226 (2004), was minor deviation with no potential for actual harm. *Rodrigues v Members Mortg. Co. (2004, DC Mass) 323 F Supp 2d 202.*

Even minor statutory and regulatory strictures must be followed in detail, and once court finds violation, no matter how technical, it has no discretion with respect to imposition of liability. *Rainey v Credithrift of America # 5, Inc. (1983, La App 4th Cir) 441 So 2d 278.*

Violation of TILA should be found only when, taken as a whole, disclosure document substantially fails to adhere to disclosure requirements so as to impair stated purpose of assuring meaningful disclosure of credit terms; if disclosure rules are substantially followed, no liability attaches to minor deviation which does not impair meaningful disclosure of credit terms. *Chemical Bank v Mayo (1983, City Ct) 121 Misc 2d 781, 469 NYS2d 315.*

Federal Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not provide damages for de minimis failure to disclose; $ 5.53 error arising out of erroneous computation of license plate charge and $ 2.50 charge called "official fees" is de minimis violation which supports take-nothing judgment. *Wayne Strand Pontiac-GMC v Molina (1983, Tex App Corpus Christi) 653 SW2d 45.*

**6. Arbitration**

Claims under Truth in Lending Act (*15 USCS §§ 1601* et seq.) can be referred to arbitration under arbitration clause contained in loan agreement, even when plaintiff seeks to bring such claims as class action on behalf of multiple claimants. *Johnson v West Suburban Bank (2000, CA3 Del) 225 F3d 366, 48 FR Serv 3d 168,* cert den *(2001) 531 US*

*1145, 148 L Ed 2d 957, 121 S Ct 1081* and (criticized in *Lytle v CitiFinancial Servs. (2002) 2002 PA Super 327, 810 A2d 643)* and (criticized in *Discover Bank v Superior Court (2005, Cal) 2005 Cal LEXIS 6866).*

Lender's practice of requiring customer to sign arbitration agreement before obtaining consumer loan does not violate *15 USCS § 1691(a)(3)* of Equal Credit Opportunity Act; for purposes of *15 USCS § 1691(a)(3)*, Congress did not create non-waivable right to pursue Truth in Lending Act (*15 USCS §§ 1601* et seq.) claims in judicial forum, either individually or through class action. *Bowen v First Family Fin. Servs. (2000, CA11 Ala) 233 F3d 1331, 14 FLW Fed C 174.*

Contractual provision to arbitrate TILA claims is enforceable even if it precludes plaintiff from utilizing class action procedures in vindicating statutory rights under *TILA. Randolph v Green Tree Fin. Corp. (2001, CA11 Ala) 244 F3d 814, 14 FLW Fed C 463.*

Enforcement of arbitration clause in retail installment contract for purchase of manufactured home would have precluded purchaser from effectively vindicating rights afforded her by *15 USCS § 1640*, and, thus, clause was unenforceable, where arbitral forum was financially inaccessible to her, and even though deferral or reduction of initial arbitration fees owing to "extreme hardship" was available, such waivers were extremely rare, and purchaser had insufficient funds to pay share of anticipated fee and expenses of arbitrator, which could not be waived or deferred. *Camacho v Holiday Homes, Inc. (2001, WD Va) 167 F Supp 2d 892* (criticized in *Rickard v Teynor's Homes, Inc. (2003, ND Ohio) 279 F Supp 2d 910)* and (criticized in *Garrett v Hooters-Toledo (2003, ND Ohio) 295 F Supp 2d 774).*

Defendant mortgage borrowers' federal statutory claims against plaintiff bank could be arbitrated even though arbitration agreements prohibited common law punitive damages; borrowers' federal, statutory, lender-liability claims under *12 USCS § 2601*, *15 USCS § 1640*, and *15 USCS § 1641(d)(1)* could be arbitrated and bank's motion to compel arbitration was granted. *New South Fed. Sav. Bank v Anding (2005, SD Miss) 414 F Supp 2d 636.*

Arbitration agreement did not appear to prevent vindication of right to recover attorneys' fees pursuant to *15 USCS § 1640(a)(3)*; in any event, court could sever any aspect of arbitration agreement that would impede vindication of plaintiff's rights under Truth in Lending Act, *15 USCS §§ 1605* et seq. *Jones v GMC (2009, DC Ariz) 640 F Supp 2d 1124.*

Creditor was entitled to compel arbitration of debtors' complaint for damages under *15 USCS § 1640(a)*; compelling arbitration, whether or not claims were core proceedings under *28 USCS § 157*, would have had only minimal impact on creditors that was not sufficient to override Federal Arbitration Act's mandate and national policy favoring enforcement of arbitration agreements pursuant to *9 USCS § 2*. *Rozell v CitiFinancial Auto Corp. (In re Rozell) (2006, BC ND Ala) 357 BR 638.*

Although Chapter 13 debtor's adversary proceeding against bank alleging violations of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., was core proceeding under *28 USCS § 157(b)(2)(C)*, bank's motion to compel arbitration pursuant to arbitration provision in loan agreement was granted because arbitration of TILA claims were not derived from U.S. Bankruptcy Code and resolution of TILA claims through arbitration would not materially impact Chapter 13 proceeding or other creditors involved. *Cooley v Wells Fargo Fin. (In re Cooley) (2007, BC ND Ala) 362 BR 514.*

**7. Nature of action**

Cause of action under *15 USCS § 1640* is remedial, not penal, in nature. *Murphy v Household Finance Corp. (1977, CA6 Ohio) 560 F2d 206.*

Civil recovery provisions of *15 USCS § 1640* are both penal and remedial in nature, and cannot be characterized solely as one or other. *Riggs v Government Employees Fin. Corp. (1980, CA9 Cal) 623 F2d 68, 6 BCD 818.*

**8. Actual knowledge as affecting right of action**

Liability can be imposed under § 130 of Truth in Lending Act (*15 USCS § 1640*) for creditor's technical failure to make disclosures required under Act on disclosure statement notwithstanding fact that debtor was aware of information required to be disclosed through conversation with employee of creditor. *Lauletta v Valley Buick (1976, WD Pa) 421 F Supp 1036.*

In action under Truth in Lending Act (*15 USCS §§ 1601* et seq.), plaintiff should not win recovery of finance charges and attorney's fees unless there is some relationship between alleged violation of Act and congressional purposes of meaningful disclosure and informed debtors; if debtor was fully informed and completely understood terms of credit agreement but creditor failed to comply with some requirement of Act which did not impede debtor's understanding of terms of loan, there is no sensible rationale, either in law or in equity, for awarding damages. *Dzadovsky v Lyons Ford Sales, Inc. (1978, WD Pa) 452 F Supp 606,* affd (1979, CA3 Pa) *593 F2d 538.*

Purchaser's TILA (*15 USCS §§ 1601* et seq.) timing claim against car dealer is denied summarily, where he acknowledges he had "opportunity to look over papers" given to him in connection with his purchase before he signed them, because provision of retail installment contract with all sales terms prior to signature grants buyer opportunity to review terms prior to signing and to defer if terms are not agreeable. *Nigh v Koons Buick Pontiac GMC, Inc. (2001, ED Va) 143 F Supp 2d 535*, affd (2003, CA4 Va) *319 F3d 119*, revd, remanded (2004, US) *160 L Ed 2d 389, 125 S Ct 460, 18 FLW Fed S 13.*

There is no good reason why Eleventh Circuit's analysis of interplay between arbitration, class actions and Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., in context of pure TILA claims does not apply with equal force to Fair Credit Billing Act, *15 USCS § 1666 - 1666j*, claims, especially given fact that both statutes rely on same remedial statutory provision, *15 USCS § 1640. Taylor v Citibank USA, N.A. (2003, MD Ala) 292 F Supp 2d 1333.*

In action in which credit card holder filed suit against bank claiming that certain terms and conditions for bank's credit card issued to holder and others violated section of Fair Credit Billing Act (FCBA), *15 USCS § 1666(c)* and regulations issued thereunder court found that bank's arbitration provision did not prohibit holder from vindicating his statutory rights under either Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., or FCBA; bank's arbitration clause did not limit any of substantive remedies that would otherwise be available to holder under *15 USCS § 1640. Taylor v Citibank USA, N.A. (2003, MD Ala) 292 F Supp 2d 1333.*

Bank's arbitration clause was enforceable even though it prohibited consumer from seeking class-wide relief for her claim under Fair Credit Billing Act, *15 USCS § 1640*, since arbitration clause did not limit any of substantive remedies that would have otherwise been available to consumer under *15 USCS § 1640. Billups v Bankfirst (2003, MD Ala) 294 F Supp 2d 1265.*

Homeowners released any Truth In Lending Act (TILA) claims by joining in class action because waiver that they signed as part of class action settlement did not thwart statutory intent of TILA, which was to protect consumers' right to rescission as result of predatory lending practices; however, Congress did not intend for this right to be nonwaivable and invalidating release may have undermined ability of individuals and State Attorneys General to negotiate future settlements. *Tucker v Beneficial Mortg. Co. (2006, ED Va) 437 F Supp 2d 584.*

Debtor-borrower was entitled to rescission, damages, costs, and attorney's fees, pending evidentiary hearing, where lender failed to provide second copy of consumer right of rescission under Regulation Z, 12 C.F.R. part 226, and other disclosures required by law. *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602.*

**Unpublished Opinions**

Unpublished: Claims that insured failed to make disclosures required by Truth in Lending Act and Home Ownership and Equity Protection Act under *15 USCS §§ 1602, 1635, 1638, 1640,* did not require plaintiff to prove that

insured knowingly or purposefully failed to make requisite disclosures, and thus, insurer was required to provide defense as to those claims under policy that only excluded risks that arose from event that insured deliberately caused or of which he was consciously aware. *Szelc v Stanger (2010, DC NJ) 2010 US Dist LEXIS 13146.*

**9. Federal Rules of Civil Procedure**

In computing 1-year period of limitations contained in *15 USCS § 1640(e)*, day of transaction is excluded and last day of period is included. *Lawson v Conyers Chrysler, Plymouth, & Dodge Trucks, Inc. (1979, CA5 Ga) 600 F2d 465, 27 FR Serv 2d 1153.*

Failure to file claim within limitations period specified in *15 USCS § 1640* deprives federal court of jurisdiction to entertain such claim; Federal Rules of Civil Procedure do not alter this situation since rules govern procedural matters only when action is properly before court. *Rust v Quality Car Corral, Inc. (1980, CA6 Ohio) 614 F2d 1118, 29 FR Serv 2d 228* (criticized in *Bartlik v United States DOL (1995, CA6) 62 F3d 163, 10 BNA IER Cas 1571, 130 CCH LC P 11407, 32 FR Serv 3d 1032, 1995 FED App 247P)* and (ovrld as stated in *Pugh v Brook (In re Pugh) (1998, CA11 Fla) 158 F3d 530, 33 BCD 471, 40 CBC2d 1369)* and (ovrld as stated in *Johnson v Riddle (2002, CA10 Utah) 305 F3d 1107)* and (ovrld as stated in *Moglia v Inland Plywood Co. (In re Outboard Marine Corp.) (2003, BC ND Ill) 299 BR 488, 50 CBC2d 1509).*

*USCS Rules of Civil Procedure, Rule 6(a)* is applicable to Truth in Lending Act (*15 USCS §§ 1601* et seq.) and where final day of time period falls on Saturday, litigant may file papers on following Monday. *Souife v First Nat'l Bank of Commerce (1978, ED La) 452 F Supp 818, 25 FR Serv 2d 922,* affd in part and revd in part on other grounds (1980, CA5 La) *628 F2d 480,* op replaced (1981, CA5 La) *653 F2d 142.*

**10. Res judicata**

Action in federal District Court under Truth in Lending Act (*15 USCS §§ 1601* et seq.) was barred by doctrine of res judicata where identical causes of action asserted in case at bar were adjudicated between same parties in prior state-court action. *Mays v Brent (1977, CA5 Ga) 546 F2d 1154,* cert den *(1977) 434 US 850, 54 L Ed 2d 118, 98 S Ct 160,* reh den *(1978) 434 US 1042, 54 L Ed 2d 792, 98 S Ct 786.*

Where dealership did not timely provide to car buyer copy of retail installment sales contract, Truth in Lending Act (TILA) violation occurred under *15 USCS § 1638(b)(1)* but violation did not give rise to TILA statutory damages because (1) *15 USCS § 1638(b)* violation is not one of enumerated violations that warrant statutory damages award, and (2) plain meaning of *15 USCS § 1640(b)* barred any recovery for buyer because dealership provided copy within 60 days. *Baker v Sunny Chevrolet, Inc. (2003, CA6 Mich) 349 F3d 862, 2003 FED App 391P,* reh den, reh, en banc, den (2003, CA6) *2003 US App LEXIS 26619* and cert den (2004, US) *159 L Ed 2d 813, 124 S Ct 2908.*

Failure of plaintiff to have raised federal statutory claim as counterclaim in prior state court proceeding initiated by defendant bank suing upon unpaid consumer loan would not constitute bar to plaintiff litigating federal claim under *15 USCS § 1640*. *Daughtrey v First Bank & Trust Co. (1977, ND Ind) 435 F Supp 218.*

**Unpublished Opinions**

Unpublished: Truth-in-Lending Act (TILA) claims asserted by two Chapter 13 debtors in adversary proceeding complaint were time-barred under *15 USCS § 1640(e)*, because (1) debtors raised their TILA claims in attempt to avoid pre-petition sheriff's sale, in which mortgage creditor had acquired title to their mortgaged property; (2) claims were untimely under § 1640(e) because debtors had not asserted them within one year of obtaining mortgage; and (3) although debtors could have timely asserted claims as defense in mortgage creditor's foreclosure action, they had failed to do so, and, therefore, doctrine of res judicata, arising from foreclosure judgment, applied to bar them from subsequently raising claims in their adversary proceeding complaint. *Rocco v J.P. Morgan Chase Bank (In re Rocco) (2007, CA3 Pa) 2007 US App LEXIS 27445.*

**11. Dismissals**

Courts are not free to dismiss actions brought under *15 USCS § 1640* as trifles demeaning to dignity of federal judiciary; action by purchaser of used car who entered into finance contract which contained erroneously stated interest rate is not de minimis under § 1640 even though his actual damages are only $ 1.76. *Villanueva v Motor Town, Inc. (1980, CA7 Ill) 619 F2d 632.*

Complaint of borrowers who executed note and deed of trust to secure mortgage loan made 16 years earlier, alleging violation of TILA due to invalidity of balloon payment, is dismissed, where borrowers were provided with annual loan and escrow statements that showed remaining balance due on loan for each year borrowers made loan payments, because borrowers' claim is barred by one-year statute of limitations in *15 USCS § 1640(e)*. *Mulligan v Resolution Trust Corp. (1995, DC Dist Col) 903 F Supp 121*.

Individual's claims that department store failed to provide written acknowledgement within 30 days after receiving notice of claimed billing error and that it did not resolve dispute within 90 days were dismissed as untimely where alleged violations occurred more than one year prior to individual filing suit. *Burnstein v Saks Fifth Ave. & Co. (2002, ED Mich) 208 F Supp 2d 765,* affd (2003, CA6 Mich) *85 Fed Appx 430.*

Plaintiff cardholders could not rely on presumption of reliance and therefore had to prove detrimental reliance for actual damages under Truth in Lending Act (TILA); thus, cardholders' TILA claims were dismissed without prejudice and with leave to renew. *In re Currency Conversion Fee Antitrust Litig. (2003, SD NY) 265 F Supp 2d 385, 2003-2 CCH Trade Cases P 74099.*

Purchasers' Truth in Lending Act (TILA) complaint was dismissed for failure to state claim because statutory damages under *15 USCS § 1640(a)* for violations of *15 USCS § 1638(a)(2)* were available for failure to disclose entire amount financed and failure to disclose itemization of amount financed did not subject seller to statutory liability under *TILA. Hart v V.B. Invs., Inc. (2005, MD Fla) 18 FLW Fed D 841*.

Mortgage company was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of action under *15 USCS § 1640*, because borrowers stated claim that mortgage company did not clearly and conspicuously disclose certainty of negative amortization for purposes of *12 CFR § 226.19(b)(2)(vii)* and fact that initial interest rate under their option adjustable rate mortgage loan agreement was discounted for purposes of *12 CFR § 226.19(b)(2)(v)*. *Velazquez v GMAC Mortg. Corp. (2008, CD Cal) 605 F Supp 2d 1049.*

Mortgage company was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's claim under Truth in Lending Act (TILA) that *15 USCS § 1606* annual percentage rate (APR) disclosures failed to clearly and conspicuously disclose single APR; because APR was term of art defined in regulations, any perceived inconsistency arose from company's compliance with TILA requirements. *Velazquez v GMAC Mortg. Corp. (2008, CD Cal) 605 F Supp 2d 1049.*

Although borrowers' claims for damages under *15 USCS § 1604(a)* were barred by one-year limitations period of *15 USCS § 1640(e)*, borrowers had to allege that they were not provided notice of their right to rescind and that lender failed to make material disclosures so as to plead claim for rescission under *15 USCS § 1635(a)*. *Kelley v Mortgage Elec. Registration Sys. (2009, ND Cal) 642 F Supp 2d 1048.*

Borrowers' Truth in Lending Act claim was not barred on motion to dismiss based on statute of limitations of *15 USCS § 1640(e)* because there were factual issues yet to be resolved; however, borrowers failed to state claim for rescission under *15 USCS § 1635* because notice provisions did not apply to residential transactions as defined under *15 USCS § 1602(w)*. *Urbina v Homeview Lending, Inc. (2009, DC Nev) 681 F Supp 2d 1254.*

Where Chapter 13 debtors alleged that it had right to rescind loan under Truth in Lending Act, *15 USCS §§ 1601* et seq., due to disclosure violations, but that loan originator and assignee failed to honor their request to rescind loan, claims survived motion to dismiss because they sufficiently asserted claim for recission and for damages that

conceivably could entitle them to recovery. *Hopkins v First NLC Fin. Servs. (In re Hopkins) (2007, BC ED Pa) 372 BR 734.*

**Unpublished Opinions**

Unpublished: Credit card holder's claim against bank under Truth in Lending Act, *15 USCS §§ 1501* et seq., was properly dismissed under *Fed. R. Civ. P. 12(b)(1)* because claim had become moot, which deprived district court of jurisdiction over it: (1) because he failed to timely respond to it, holder was deemed to have rejected bank's *Fed. R. Civ. P. 68* offer of judgment; and (2) denial of offer mooted holder's claim because bank's offered $ 900 payment exceeded statutory damages potentially available to holder under § 1640(a)(2)(A)(i), and holder could not recover attorney fees because he was proceeding pro se in suit. *Goodmann v People's Bank (2006, CA3 NJ) 2006 US App LEXIS 31555.*

Unpublished: District court properly concluded that mortgagor could not hold mortgagee's assignee liable under Truth in Lending Act (TILA), *15 USCS § 1640(a)*, as matter of law, arising from assignee's failure to make required TILA disclosures, including disclosure of her recission rights as required by *15 USCS § 1635(a)*, because mortgagor did not allege facts showing that assignee was "creditor" as defined in *15 USCS § 1602(f)* and *12 C.F.R. § 226.2(a)(17)*; there were two required elements for "creditor" under TILA, and assignee did not meet second element because her name did not appear on face of any of mortgage loan documents that mortgagor had signed. *Parker v Potter (2007, CA11 Fla) 2007 US App LEXIS 3391.*

Unpublished: Borrowers' *12 USCS § 2607* illegal fee claim, relating to loans that closed more than one year before complaint was filed, was not subject to dismissal for untimeliness because one-year limitation of *12 USCS § 2614* is subject to equitable tolling and concealment was adequately pleaded; moreover, same analysis applied to timeliness under *15 USCS § 1640(e)* of borrowers' Truth in Lending claim under *15 USCS § 1601*. *Bassett v Ruggles (2009, ED Cal) 2009 US Dist LEXIS 83349.*

**12. Summary judgment**

Summary judgment in favor of bank with regard to plaintiffs claims under *15 USCS 1640* was affirmed because even though plaintiff, authorized user of card, was "consumer" in ordinary sense of word, and even though it would make sense for bank to discuss disputes with him and no practical sense to discuss it with credit card account holders who did not buy items and would not likely know much about them, plaintiff was not "consumer" in bizarre usage of *Regulation Z. Edwards v Wells Fargo & Co. (2010, CA9 Nev) 606 F3d 555.*

Lender is entitled to summary judgment on one count of borrowers' Truth in Lending Act (*15 USCS §§ 1601* et seq.) complaint, where borrowers allege that annual percentage rate is disclosed as "None" on loan form, because affidavit of assistant branch manager showed that misprint was result of slipped carbon in printing computer, and lender could rely on bona fide error defense of *15 USCS § 1640(c). Doubet v USA Financial Services, Inc. (1987, CD Ill) 714 F Supp 980.*

To avoid summary judgment, defendant relying on *15 USCS § 1640(f)* good faith defense may not rest on conclusory allegation that it acted in conformity with Federal Reserve Board interpretations; defendant must point to specific regulations or interpretations which support its position. *Lopez v Orlor, Inc. (1997, DC Conn) 176 FRD 35* (criticized in *Turner v Beneficial Corp. (2001, CA11 Ala) 242 F3d 1023, RICO Bus Disp Guide (CCH) P 10026, 14 FLW Fed C 426).*

Car dealer is granted summary judgment on issue of whether it inaccurately disclosed "license fee" to buyers by failing to indicate fact of or amount of upcharge, even though federal court disagrees with dealer's interpretation and holds that it must disclose either fact that there is upcharge or amount of upcharge, where dealer's reasonable interpretation of commentary was in agreement with that made by many other courts, because *15 USCS § 1640(f)* "good-faith" defense applies. *Brown v Coleman Invs. (1998, MD La) 993 F Supp 439.*

**Unpublished Opinions**

Unpublished: Summary judgment was properly entered against two former debtors as to their Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claims because TILA claims were time-barred because (1) pursuant to *15 USCS § 1640(e)*, one-year statute of limitations applied to TILA claims; and (2) debtors had waited well more than year after they last borrowed money from two creditors, who were sued in suit, to assert their TILA claims. *Kramer v Kubicka (2007, CA3 NJ) 2007 US App LEXIS 5802.*

**13. Jury trial**

Statutory duty to disclose, imposed by *15 USCS § 1631*, merely enlarges creditor's duty beyond that imposed by common law and *15 USCS § 1640* is nothing more than prayer for statutorily-authorized punitive damages and thus District Court erred in denying defendants' demand for jury trial. *Barber v Kimbrell's (1978, CA4 NC) 577 F2d 216, 25 FR Serv 2d 815*, cert den *(1978) 439 US 934, 58 L Ed 2d 330, 99 S Ct 329* and (criticized in *Strang v JHM Mortgage Sec. Ltd. Partnership (1995, ED Va) 890 F Supp 499)* and (superseded by statute as stated in *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841).*

Lender, in action by plaintiff borrower alleging certain violations of, inter alia, Truth in Lending Act (*15 USCS §§ 1601* et seq.) and seeking civil penalty only, has right to jury trial due to parallel between instant action and actions by government seeking civil penalty under various federal statutes where normal rules governing right to jury trial apply. *Mosley v National Finance Co. (1977, MD NC) 440 F Supp 621.*

**14. Appeal and review**

Where bank unequivocally stipulated to restitution remedy if it violated Truth in Lending Act or Regulation Z in not disclosing composite annual percentage rate, bank is foreclosed from attacking appropriateness of restitution remedy on appeal. *Sentinel Fed. Sav. & Loan Ass'n v Office of Thrift Supervision (1991, CA8) 946 F2d 85.*

Court of appeals reviews district court's award of statutory damages under TILA under de novo standard of review, and its award of attorney's fees and costs for abuse of discretion. *Purtle v Eldridge Auto Sales (1996, CA6 Tenn) 91 F3d 797, 1996 FED App 247P*, cert den *(1997) 520 US 1252, 138 L Ed 2d 177, 117 S Ct 2411.*

District court erred when it granted summary judgment to one mortgagor and not another in their *15 USCS § 1640* suits against same mortgagee because mortgagee violated *15 USCS § 1638(a)(6)* by failing to include in its disclosure statements payment period for mortgagors' loans: (1) disclosure statements listed only dates of first and last mortgage payments and did state payment period and/or disclose when regular mortgage payments were to be made; (2) mortgagee violated § 1638(a)(6) because its disclosure statements did not explicitly inform mortgagors that they were required to make monthly mortgage payments for period of 30 years on their mortgage loans; and (3) mortgagors were entitled to recover in their suits, even if mortgagee's violation of Truth in Lending Act was unintentional. *Hamm v Ameriquest Mortg. Co. (2007, CA7 Ill) 506 F3d 525.*

**15. Miscellaneous**

General federal venue statute (*28 USCS § 1391*) applies to action brought in district court which alleges violations of Truth in Lending Act. *King v Russell (1992, CA9 Ariz) 963 F2d 1301, 92 CDOS 4005, 92 Daily Journal DAR 6295, 22 FR Serv 3d 1209*, cert den *(1993) 507 US 913, 122 L Ed 2d 660, 113 S Ct 1263*, motion gr, reh den *(1993) 507 US 1047, 123 L Ed 2d 507, 113 S Ct 1891.*

Provisions of *15 USCS § 1640(e)* establish subject matter jurisdiction but do not deal with service of process or in personam jurisdiction at all; service must be made as required by federal laws. *Bernard v Richter's Jewelry Co. (1971, DC NY) 53 FRD 606, 15 FR Serv 2d 1189.*

Since *15 USCS § 1640(e)* merely states that actions may be filed in Federal District Court or other court of competent jurisdiction, there is no apparent prohibition in Truth in Lending Act which would preclude case from being referred to special master, and, in light of overwhelmingly heavy case load under Act, reference of such cases to bankruptcy judges was absolutely warranted. *Mullinax v Willett Lincoln--Mercury, Inc. (1974, ND Ga) 381 F Supp 422, 19 FR Serv 2d 183.*

General release discharging dealer of any claims arising out of purchase of automobile executed by purchaser before commencing action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not bar action under Act, since validating release would thwart policy of Act and plaintiff may not have known what rights she was releasing. *Parker v De Kalb Chrysler Plymouth (1978, ND Ga) 459 F Supp 184,* affd (1982, CA11 Ga) *673 F2d 1178.*

Motion pursuant to *Fed. R. Civ. P. 59(e)* to alter or amend order compelling arbitration and staying action alleging that bank violated Fair Credit Billing Act, *15 USCS §§ 1666-1666j,* as enforced by Truth in Lending Act (TILA), *15 USCS § 1640,* was denied because: (1) individual did not explain why court's decision resulted in manifest error, nor did she present any new evidence, but rather, she simply stated her disagreement with court's factual conclusion that she agreed to arbitration provision in her credit card agreement; (2) individual's motion did not change court's conclusion that it properly relied on appeals court case, which held that because there was no right to pursue TILA claims through class actions, contractual provision to arbitrate TILA claims was enforceable even if it precluded plaintiff from utilizing class action procedures in vindicating statutory rights under TILA, to reject individual's argument that court should not have enforced her agreement to arbitrate because high costs of arbitration effectively prevented her from bringing class-wide claim in arbitration; and (3) court did not conclusively decide whether arbitration agreement prohibited class arbitration, which was decision for arbitrator, and thus no modification was necessary. *Taylor v First N. Am. Nat'l Bank (2004, MD Ala) 331 F Supp 2d 1354.*

Where plaintiff homeowner alleged that she refinanced existing mortgage on her home, that defendants, title company and its principal, in connection with predatory lending scheme that targeted African-Americans, acted as settlement agents for refinancing, but did not allege that either defendant extended consumer credit or that they regularly did so, claim under *15 USCS §§ 1602(f), 1640(a)* failed. *Beard v Worldwide Mortg. Corp. (2005, WD Tenn) 354 F Supp 2d 789.*

Clam under Liability under Truth in Lending Act, *15 USCS §§ 1601* et seq., was established because consumer alleged (1) that corporation was "creditor" under Truth in Lending Act, (2) that corporation regularly extended consumer credit, which were payable in more than four installments, (3) that consumer was indebted to corporation, and (4) violations of disclosure requirements of Act, i.e. failure to disclose correct amount of payment due at inception or failure to provide accurate close-end disclosures before consummation and failure to provide written disclosure in form consumer could keep. *Rodriguez v Auto Sales, Inc. (2007, DC Conn) 477 F Supp 2d 477.*

Borrowers conceded that their damages claim under *15 USCS § 1640(e)* was time-barred, and their TILA breach of fiduciary duty claim failed because *15 USCS § 1639a* did not create liability and did not create private right of action. *McGrew v Countrywide Home Loans, Inc. (2009, SD Cal) 628 F Supp 2d 1237.*

Where creditor obtained state court foreclosure judgment against Chapter 13 debtor, debtor's claims for damages and recoupment under Truth in Lending Act, were not barred by Rooker-Feldman doctrine because relief sought by debtor was not inextricably intertwined with state court foreclosure judgment; additionally, claims were not precluded by res judicata because they could not have been litigated in state court lawsuit. *Randall v Bank One Nat'l Ass'n (In re Randall) (2006, BC ED Pa) 358 BR 145.*

Parol evidence is admissible to show that creditor specifically required purchase of disability insurance notwithstanding contrary recitation in contract. *Marine Midland Bank v Burley (1980, 4th Dept) 73 App Div 2d 1041, 425 NYS2d 429.*

**Unpublished Opinions**

Unpublished: In case brought under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., in which home owners' refinanced mortgage went into default and was foreclosed in state court judgment, district court did not err in dismissing home owners' TILA claims as barred by Rooker-Feldman doctrine since claims were inextricably intertwined with those litigated by state court judgment; Rooker-Feldman doctrine was broad enough to bar all federal claims that were, or should have been, central to state court decision, even if those claims sought form of relief that might not have been available from state court. *Velardo v Fremont Inv. & Loan (2008, CA11 Fla) 2008 US App LEXIS 22711.*

**II.JURISDICTION 16. Generally**

Bankruptcy court had jurisdiction over Truth in Lending claim because claim arose before it was interposed against creditor's reclamation petition in proceeding under Chapter XIII of Bankruptcy Act, and creditor's failure to object at any point to bankruptcy judge's exercise of jurisdiction gave bankruptcy judge jurisdiction by consent. *In re Garner (1977, CA5 Ga) 556 F2d 772.*

Provisions of Truth in Lending Act provide separate jurisdiction for separate remedies: *15 USCS § 1607* when Federal Reserve Board acts on its own initiative in regard to violations by member banks, and § 1640 when private party brings civil action under Truth in Lending Act. *Ratner v Chemical Bank New York Trust Co. (1969, DC NY) 309 F Supp 983.*

Provisions of *15 USCS § 1640(e)* establish subject matter jurisdiction but do not deal with service of process or in personam jurisdiction at all; service must be made as required by federal laws. *Bernard v Richter's Jewelry Co. (1971, DC NY) 53 FRD 606, 15 FR Serv 2d 1189.*

Remedial provisions of Consumer Credit Protection Act (*15 USCS § 1640*) contemplate separate federal suits as private attorneys-general for recovery of minimal amounts. *Young v Trailwood Lakes, Inc. (1974, ED Ky) 61 FRD 666, 18 FR Serv 2d 464.*

In Truth in Lending Act (*15 USCS §§ 1601* et seq.) suit based upon failure to make disclosures in connection with loan, court's jurisdiction depends upon extension of credit wherein underlying transaction is consumer credit transaction and not one for business or commercial purposes. *Quinn v A.I. Credit Corp. (1985, ED Pa) 615 F Supp 151.*

**17. Concurrent jurisdiction**

Under *15 USCS § 1640(e)*, state court was "court of competent jurisdiction" where plaintiff brought suit for balance due upon promissory note secured by chattel mortgage and special mortgage upon real estate and defendant asserted defense under Truth in Lending Act, and case would not be removed to Federal District Court. *Bastrop Loan Co. v Burley (1975, WD La) 392 F Supp 970.*

Even if transaction alleged to be in violation of Truth in Lending Act is regulated by state law, there nonetheless remains federal cause of action for violations of state disclosure requirements as incorporated into federal law by § 226.12 of Regulation Z, which was promulgated in order to assure that concurrent jurisdiction of federal and state courts created by *15 USCS § 1640(e)* should continue to have substantive provisions to which such jurisdiction shall apply. *Solevo v Aldens, Inc. (1975, DC Conn) 395 F Supp 861.*

Where Federal Reserve Board, in accordance with *15 USCS § 1633*, exempted transactions in Connecticut from requirements of Federal Truth in Lending Act with proviso that exemption should not be construed to affect concurrent jurisdiction of federal and state courts, federal court retained subject matter jurisdiction over lending transaction in Connecticut; exemption applied only to federal administration of statute and did not pertain to civil liability provisions of Act (*15 USCS § 1640*). *Whitman v Connecticut Bank & Trust Co. (1975, DC Conn) 400 F Supp 1341.*

In action brought under *15 USCS § 1640(e)* in federal district court, state law and procedure do not control issue, even though state courts might have had jurisdiction to hear same action under § 1640(e). *Daughtrey v First Bank & Trust Co. (1977, ND Ind) 435 F Supp 218.*

Under *15 USCS § 1640(e)* state and federal courts have concurrent jurisdiction of actions under Truth in Lending Act (*15 USCS §§ 1601* et seq.) and where lender has instituted state court action upon loan default in which Truth in Lending Act violation is compulsory counterclaim, concurrent action under Truth in Lending Act in federal court is not precluded so long as state loan default action continues without final judgment; stay of federal court action could not be granted since such relief is legal in nature rather than equitable. *Mitchell v General Finance Corp. (1978, ND Ga) 79 FRD 82, 26 FR Serv 2d 235.*

Concurrent jurisdiction provision of *15 USCS § 1640* does not bar removal of action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Real Estate Settlement Procedures Act (*12 USCS §§ 2601* et seq.) from state to federal court on motion of defendant. *Sicinski v Reliance Funding Corp. (1978, SD NY) 461 F Supp 649, 26 FR Serv 2d 860* (criticized in *Town of Moreau v New York State Dep't of Envtl. Conservation (1997, ND NY) 1997 US Dist LEXIS 6519).*

Language of *15 USCS § 1640(e)* connotes bringing of suit as initial matter in either state or federal court but not necessarily right to carry it out to conclusion in either court. *Butler v Rye (1982, WD Mo) 544 F Supp 143.*

Borrower's claim must be brought as counterclaim in related state action under *15 USCS § 1640(e)*, where statutory damages of $ 1,000 are sought and state court has jurisdiction over disputes up to $ 2,500, because court is one of "competent jurisdiction"; claimed attorney's fees may not be used to defeat state jurisdiction. *Brady v C.F. Schwartz Motor Co. (1989, DC Del) 723 F Supp 1045.*

State courts are not free to refuse jurisdiction over claims based on rights created under *15 USCS §§ 1601* et seq. *Brown v Credit Center, Inc. (1983, Miss) 444 So 2d 358.*

Under *15 USCS § 1640(e)*, state court was court of competent jurisdiction for claim under Federal Truth in Lending Act, because (1) state court which enforces claims under its laws which are similar to claim established by federal law may not decline to enforce federal law when federal legislation has not been restricted to federal judicial system, and (2) actions based on state's usury laws are very similar to Truth in Lending Act claims and former actions must be brought in state court. *Perry v American Finance Corp. (1977, Del Super Ct) 372 A2d 224.*

Under § 130(e) of Truth In Lending Act (*15 USCS § 1640(e)*), state courts have jurisdiction concurrent with that of federal courts, and it was therefore improper for county court to refuse jurisdiction over action seeking money damages under civil liability provision of *15 USCS § 1640*. *Lewis v Delta Loans, Inc. (1974, Miss) 300 So 2d 142.*

Class actions for alleged violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) may be brought in state courts. *Vickers v Home Federal Sav. & Loan Asso. (1977, 4th Dept) 56 App Div 2d 62, 390 NYS2d 747.*

**18. Pendent jurisdiction**

When federal claims are dismissed prior to full trials, refusal to exercise pendent jurisdiction over state claim is proper; however, reversal of judgments pertaining to federal claims requires district court, on remand, to determine whether in light of viability of federal claims, it is appropriate to exercise pendent jurisdiction over state claims. *Smith v No. 2 Galesburg Crown Finance Corp. (1980, CA7 Ill) 615 F2d 407, 28 FR Serv 2d 1136, 28 UCCRS 212, 53 ALR Fed 406.*

Court of appeals found that consumer and motor vehicle dealer consummated series of agreements dealer prepared so consumer could finance purchase of two trucks when consumer signed agreements, not when dealer found third party to finance purchases, and it affirmed district court's judgment that dealer violated Truth in Lending Act (TILA);

however, because court of appeals also found that dealer committed third violation of TILA when it included charge for guaranteed auto protection insurance in one of agreements, it vacated district court's judgment awarding consumer $ 53,627 in attorney fees and remanded case so district court could determine if that award was appropriate. *Gibson v LTD, Inc. (2006, CA4 Va) 434 F3d 275.*

Nothing in Truth-in-Lending Act or in its legislative history gives any indication that Congress intended that federal court should, under procedure which could roughly be analogized to removal, exercise jurisdiction conferred by *15 USCS § 1640(e)* to determine alleged violations of Act with respect to one or more sale-purchase transactions which are themselves already subject of prior-instituted and pending state court replevin proceeding, where those alleged violations of Act can be asserted in defense or by way of counterclaim. *Wheeler v Adams Co. (1971, DC Md) 322 F Supp 645.*

Court is reluctant to exercise pendent jurisdiction where statutory claim on which primary jurisdiction is based is plainly insubstantial or without merit or where there is no real or substantial connection between pendent claim and deficiencies in disclosures alleged in support of primary claim; hence, where disclosures made satisfied Truth In Lending Act (*15 USCS §§ 1601* et seq.), thereby rendering plaintiff's claim entirely without merit, pendent claim of usury should not be entertained, but where, on record before it, court cannot say as matter of law that claim of improper disclosure is insubstantial or without merit, pendent jurisdiction will be granted where plaintiff alleges that he was induced to buy used equipment by means of false and fraudulent representations made by agent of seller. *Hughes v Ford Motor Credit Co. (1973, ED Ark) 360 F Supp 15, 17 FR Serv 2d 1343.*

Unless special circumstances warrant otherwise, Federal District Court will refuse to take jurisdiction of state claims, such as usury, appended to federal truth-in-lending actions; plaintiffs wishing to bring all their claims in single forum can take advantage of provision for concurrent jurisdiction in *15 USCS § 1640(e)* by pursuing those claims in state court. *Solevo v Aldens, Inc. (1975, DC Conn) 395 F Supp 861.*

Merely pendent state law claims should not be routinely allowed in truth-in-lending cases lest state law questions disproportionately burden federal docket; hence, in absence of special circumstances, federal court would not exercise pendent jurisdiction over count seeking recovery for lender's alleged imposition of finance charge in excess of that permitted by state law. *Ball v Connecticut Bank & Trust Co. (1975, DC Conn) 404 F Supp 1, 21 FR Serv 2d 1258.*

Federal District Court which had jurisdiction over class action claiming that defendant had violated Federal Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) also had pendent jurisdiction over class action suit claiming that defendant had also violated State Consumer Protection Act terms of which were substantially similar to Federal Act. *Kaminski v Shawmut Credit Union (1976, DC Mass) 416 F Supp 1119, 21 FR Serv 2d 1332.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not provide justification for permitting plaintiffs in federal court to raise ancillary quarrels concerning pendent state claims concerning such matters as alleged poor quality of goods or services purchased. *Copley v Rona Enters. (1976, SD Ohio) 423 F Supp 979.*

District Court should not exercise pendent jurisdiction over state claims in plaintiff's Truth in Lending complaint. *Di Stasio v Roberts Furniture Co. (1979, ED Pa) 28 FR Serv 2d 448.*

Pendent jurisdiction is not appropriate where state issues raised in claimants complaint are difficult and unsettled and where danger of multitude of state law debtor-creditor actions brought to federal court on coattails of truth-in-lending cases is great. *Ector v Southern Discount Co. (1979, ND Ga) 484 F Supp 654.*

Exercise of pendent jurisdiction over state claims is matter of discretion, and pendent jurisdiction over state claims in truth-in-lending cases requires cautious exercise of discretion; pendent jurisdiction over state claims should be declined where plaintiffs present state law claims tangentially related to federal truth-in-lending claim; plaintiffs who wish to bring all their actions in single forum may take advantage of concurrent jurisdiction in *15 USCS § 1640(e)* by pursuing claims in state court. *Parizo v Toyota Motor Sales, Inc. (1983, DC Conn) 574 F Supp 138.*

Upon dismissal of federal Truth in Lending Act (*15 USCS §§ 1601* et seq.) claim, it is inappropriate for federal court to retain jurisdiction over state claims arising out of same transaction. *Parry v Ford Motor Credit Co. (1983, SD Ohio) 575 F Supp 204.*

**III.PARTIES 19. Generally**

Since scheme of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is to create system of private attorneys general to aid in enforcement, basis of liability under *15 USCS § 1640* is failure to disclose information and there is no requirement that plaintiff himself be deceived in order to sue in public interest. *McGowan v King, Inc. (1978, CA5 Miss) 569 F2d 845.*

Since one of legislative purposes of Truth in Lending Act is to enable consumers to compare various available credit terms, any proven violation of disclosure requirements of Act is presumed to injure borrower by frustrating that purpose and, therefore, borrower may bring action under Truth in Lending Act without showing of financial loss. *Dzadovsky v Lyons Ford Sales, Inc. (1979, CA3 Pa) 593 F2d 538.*

Action under Truth-In-Lending Act is primarily remedial rather than penal; therefore, as matter of federal common law, such action survives death of claimant. *Smith v No. 2 Galesburg Crown Finance Corp. (1980, CA7 Ill) 615 F2d 407, 28 FR Serv 2d 1136, 28 UCCRS 212, 53 ALR Fed 406.*

Only creditors are subject to Act's civil penalties under *15 USCS § 1640*. *Redic v Gary H. Watts Realty Co. (1985, CA4 NC) 762 F2d 1181,* cert den *(1985) 474 US 920, 88 L Ed 2d 257, 106 S Ct 249.*

Language in *15 USCS § 1640(a)* that "any creditor" is liable for damages and attorney's fees for Truth in Lending Act violations does not mean that assignee cannot be held liable for failure to respond to notice of rescission; such reading would be contrary to text of § 1640 as whole and would undermine policies underlying Truth in Lending Act and its private enforcement mechanism. *Fairbanks Capital Corp. v Jenkins (2002, ND Ill) 225 F Supp 2d 910* (criticized in *Walker v Gateway Fin. Corp. (2003, ND Ill) 286 F Supp 2d 965).*

**20. Standing**

Debtor has standing to sue creditor who failed to make disclosures required in monthly statement to debtors on open end credit plan since Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not impose simply general duty of "adequate disclosure" upon creditors and provide for suit only by debtors able to show that they were "aggrieved" by creditor's inadequate performance, but gives debtor right to specific information and therefore defines injury in fact as failure to disclose such information. *White v Arlen Realty & Dev. Corp. (1975, CA4 Md) 540 F2d 645.*

Attorney, by virtue of contingent fee contract for prosecution of client's claim under Truth in Lending Act, does not have recognizable interest in penalty and has no standing to continue suit to recover fee as his interest is not within zone of interest protected by Truth in Lending Act; provision of *15 USCS § 1640(a)(3)* permitting recovery of attorney's fees to successful petitioner, does not authorize attorney, upon plaintiff's settlement with defendant, to continue suit since award is right of successful plaintiff, not his attorney. *Smith v South Side Loan Co. (1978, CA5 Ga) 567 F2d 306.*

Consumer debtor who had taken loan from finance company which had in turn assigned debt to collection agency had standing to sue collection agency in her own behalf and as representative of class consisting of similarly situated consumer debtors whose creditors had assigned debts to same collection agency which allegedly entered into new agreements with debtors whereby they would repay accelerated debt under modified payment schedule which contained finance charges or payable in more than 4 installments without giving disclosures required by Truth In Lending Act (*15 USCS §§ 1601* et seq.) and regulations promulgated thereunder. *Agostine v Sidcon Corp. (1975, ED Pa) 69 FRD 437, 21 FR Serv 2d 329.*

Bankrupt cardholder has standing to sue credit card issuer for Truth-in-Lending Act (*15 USCS §§ 1601* et seq.)

violations, even though combination of cardholder's consumer claim recoveries and fees awarded to his attorney exceed $ 1,000 in consumer credit claims he exempted from bankruptcy petition, because attorney fees recovered under *15 USCS § 1640* are distinct from consumer's recovery and are not added to such recovery to exhaust cardholder's $ 1,000 bankruptcy exemption. *Schmidt v Citibank (South Dakota) N.A. (CBSD) (1987, DC Conn) 677 F Supp 687.*

Credit card recipient lacked standing under *15 USCS § 1640* to pursue failure-to-disclose claim under *15 USCS § 1637(c)* against issuers of allegedly unsolicited credit card, as recipient never accepted or used card and never paid any fees. *Muro v Target Corp. (2007, ND Ill) 250 FRD 350.*

**Unpublished Opinions**

Unpublished: Summary judgment in favor of defendant in plaintiff's Consumer Leasing Act, *15 USCS §§ 1667* et seq., action based on plaintiff's lack of standing was not proper because, once defendant applied early termination charge, *15 USCS § 1667b(b)*, to plaintiff and failed to take requisite corrective actions under *15 USCS § 1640(b)*, plaintiff incurred injury for which statutory damages were recoverable. *Higginbotham v Ford Motor Credit Co. (2008, CA11 Fla) 2008 US App LEXIS 6431.*

Unpublished: While plaintiff daughter argued she assumed her mother's mortgage, she was never added to loan, depriving her of standing to bring claims under Fair Debt Collection Practices Act, *15 USCS §§ 1692c*-g, 1692j, Real Estate and Settlement Procedure Act, *12 USCS § 2605(f)*, Truth in Lending Act, *15 USCS § 1640(a)*, and 815 ILCS 505/1(e) of Illinois Consumer Fraud and Deceptive Business Practices Act against defendant mortgagee; thus, her claims were subject to dismissal for lack of standing, for failure to state claim under *28 USCS § 1915(e)(2)(B)(ii). Johnson v Ocwen Loan Servicing (2010, CA11 Fla) 2010 US App LEXIS 5339.*

**21. Trustees in bankruptcy**

Bankrupt's cause of action against lending company for recovery under *15 USCS § 1640(a)* passes to trustee in bankruptcy pursuant to former *11 USCS § 110*. *Murphy v Household Finance Corp. (1977, CA6 Ohio) 560 F2d 206.*

Truth-in-Lending claims under *15 USCS § 1640* are transferable to Trustee in bankruptcy. *Riggs v Government Employees Fin. Corp. (1980, CA9 Cal) 623 F2d 68, 6 BCD 818.*

Bankrupt's cause of action against lending institution for statutory damages under *15 USCS § 1640(a)* passes to trustee in bankruptcy pursuant to Bankruptcy Act (*11 USCS §§ 101* et seq.). *In re Wood (1980, CA5 Ga) 643 F2d 188, 23 CBC 389.*

Cause of action under Truth in Lending Act is transferable to trustee in bankruptcy as remedial, rather than penal, cause of action which would also survive death of holder. *Porter v Household Fin. Corp. (1974, SD Ohio) 385 F Supp 336, 46 Ohio Misc 53, 75 Ohio Ops 2d 426.*

In absence of court approval of abandonment by trustee in bankruptcy of bankrupt debtor's claim against creditor bank for violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.), debtor's claim against creditor must be dismissed despite debtor's submission of affidavit by trustee, dated several months after filing of lawsuit, abandoning cause of action on behalf of bankruptcy estate. *Bryson v Bank of New York (1984, SD NY) 584 F Supp 1306.*

**22. Miscellaneous**

Guarantor, along with primary obligor, is entitled to recover damages under *15 USCS § 1640* where disclosure violative of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is made only to primary obligor. *Barash v Gale Employees Credit Union (1981, CA7 Ill) 659 F2d 765.*

Complaint would be dismissed as to defendant banks where plaintiff admitted that he never entered into any credit

transaction with them, and therefore none of defendants could be liable to plaintiff under *15 USCS § 1631* which makes explicit that only person to whom duty of disclosure is owed can recover for breach of that duty; in order for bank to be obligated to disclose credit terms to individual, that individual must be doing business with bank; where complaint fails to place plaintiff in category of debtor having any dealings with, let alone being injured by, actions of defendant banks, plaintiff cannot maintain action under Truth in Lending Act, and plaintiff cannot cure defect by claiming to sue representatively on behalf of those who may have been so injured. *Weiner v Bank of King of Prussia (1973, ED Pa) 358 F Supp 684, 1973-2 CCH Trade Cases P 74845, 17 FR Serv 2d 1536.*

Widow is entitled to recover as administratrix of her husband's estate, as well as in her own right as plaintiff, upon finding of lender's violation of Truth in Lending Act in action originally brought by her and her now-deceased husband as coplaintiffs, in which it was deemed that each coplaintiff might recover separately full amount prescribed by law for such violation. *Simmons v American Budget Plan (1974, ED La) 386 F Supp 194.*

Loan applicant may maintain action against bank for violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) notwithstanding that no loan was ever made, where application was submitted in good faith belief that applicant was being considered for loan; requirement of "consummation" of transaction as pre-requisite to attachment of right of action under Act is met where consumer, on basis of information his "comparison shopping" has generated, makes choice and commits himself to purchase of credit, without regard for degree of commitment of lender. *Bryson v Bank of New York (1984, SD NY) 584 F Supp 1306.*

Mortgage broker could not be held liable to Chapter 13 debtor for failing to provide disclosures under Truth in Lending Act, *15 USCS §§ 1601* et seq., because broker was not "creditor" as defined under *15 USCS § 1602*; debtor's mortgage loan obligation was initially payable to lender, not to broker. *Maroun v New York Mortg. Co., LLC (In re Maroun) (2010, BC DC NH) 2010 BNH 8, 427 BR 200.*

**IV.PLEADINGS 23. Relation back**

Allegations of violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) contained in amended complaint filed after expiration of statute of limitations were not barred since allegations related back to date of original pleading and defendant had adequate notice that plaintiffs were challenging legality of loan agreement under Act. *Ecenrode v Household Finance Corp. (1976, DC Del) 422 F Supp 1327.*

Claim of class members in class action under Truth in Lending Act (*15 USCS § 1640*) relates back to date of filing of complaint in name of class, and action was not untimely as to unnamed class members, even though class was not certified until after expiration of 1 year statute of limitations under § 1640. *Jacklitch v Redstone Federal Credit Union (1979, ND Ala) 463 F Supp 1134.*

Amended complaint,, concerning same transactions as original complaint, relates back to date of original filing for purposes of statute of limitations. *Aldrich v Upstate Auto Wholesale, Inc. (1982, ND NY) 564 F Supp 390.*

Claim for violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) relates back to original complaint stating claim arising out of same transaction or occurrence. *Huskie v Ames Bros. Motor & Supply Co. (1984, App) 139 Ariz 396, 678 P2d 977, 38 UCCRS 618.*

**24. Counterclaims**

Bank which violates Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) by failing to make required disclosures in credit sale of mobile home can, in suit against it under § 130 of Act (*15 USCS § 1640*), counterclaim for debt, and for repossession of mobile home which had served as collateral for loan. *Hinkle v Rock Springs Nat'l Bank (1976, CA10 Wyo) 538 F2d 295.*

*15 USCS § 1640*(e) is bar to counterclaim asserted in bankruptcy proceedings where such counterclaim is made

more than one year after occurrence of violation since such counterclaim seeks to assert separate cause of action for independent wrong and seeks affirmative relief; Truth in Lending Act claim is not directed at, or answer to, underlying debt. *Basham v Finance America Corp. (1978, CA7 Ill) 583 F2d 918, 26 UCCRS 787,* cert den *(1979) 439 US 1128, 59 L Ed 2d 89, 99 S Ct 1046* and cert den *(1979) 444 US 825, 62 L Ed 2d 32, 100 S Ct 47.*

Counterclaim based upon violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is barred by one year statute of limitations. *Fleming v Federal Land Bank (1983) 167 Ga App 326, 306 SE2d 332.*

One year limitation period does not bar counterclaim alleging violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *In re Estate of Graff (1983, 3d Dist) 117 Ill App 3d 900, 73 Ill Dec 161, 453 NE2d 1150.*

Although failure to denominate claim as counterclaim does not preclude its treatment as such, claim which was filed at time in which no action was pending cannot be treated as counterclaim and is barred by statute of limitations. *Patterson v DAC Corp. of North Carolina (1984) 66 NC App 110, 310 SE2d 783.*

*15 USCS § 1640*(h)--requiring judicial determination of claim before set-off from debt may occur--does not apply to claim being asserted as defense or counterclaim to suit on note and does not alter rule that violation of Truth in Lending Act may be asserted as counterclaim despite expiration of one-year period of *15 USCS § 1640(e). Public Finance Corp. v Riddle (1980, 3d Dist) 83 Ill App 3d 417, 38 Ill Dec 712, 403 NE2d 1316.*

Lender's violation of Truth in Lending Act (*15 USCS §§ 1631* et seq.) in connection with its disclosure statement subjects it to counterclaim and setoff in excess of amount demanded in complaint, notwithstanding limitation period of *15 USCS § 1640(e). Carrier Employees' Federal Credit Union v McCullough (1977) 93 Misc 2d 353, 400 NYS2d 713.*

**25.--Permissive and compulsory counterclaims**

Counterclaim under Truth in Lending Act (*15 USCS §§ 1601* et seq.) is permissive rather than compulsory counterclaim to action on account despite fact that it arises from contract transaction since entirely separate questions of law and fact from those dealing with liability on accounts are involved; *15 USCS § 1640(e)* is not tolled by filing of complaint even if filing will toll statute for compulsory counterclaim. *Spartan Grain & Mill Co. v Ayers (1978, CA5 Ga) 581 F2d 419, 1978-2 CCH Trade Cases P 62280,* cert den *(1979) 444 US 831, 62 L Ed 2d 39, 100 S Ct 59.*

Action on underlying debt in default is compulsory counterclaim and must be asserted by creditor in response to suit by debtor under TILA action for failure to make disclosure since there is logical interrelationship between claim and counterclaim. *Plant v Blazer Financial Services, Inc. (1979, CA5 Ga) 598 F2d 1357, 27 FR Serv 2d 955, 51 ALR Fed 493,* reh den (1979, CA5 Ga) *605 F2d 555* and (criticized in *Cabrera v Courtesy Auto, Inc. (2002, DC Neb) 192 F Supp 2d 1012, 47 UCCRS2d 416).*

Creditor's permissive counterclaim for underlying debt in action by debtor alleging violation of TILA may be dismissed even though claim and counterclaim arise from same underlying business transaction where each raise issues of fact and law which are starkly different. *Valencia v Anderson Bros. Ford (1980, CA7 Ill) 617 F2d 1278, 29 FR Serv 2d 549,* revd on other grounds, remanded *(1981) 452 US 205, 68 L Ed 2d 783, 101 S Ct 2266.*

In borrower's action by which he seeks to represent class of all persons not given proper disclosure statements by creditor, counterclaims of creditor against borrower for all sums expended in connection with attempts to collect under original loan agreement and, in event class action is certified, against all class members who have defaulted for underlying debt, and for counsel fees are permissive and unless there is independent ground of federal jurisdiction, such counterclaims should be dismissed. *Agostine v Sidcon Corp. (1975, ED Pa) 69 FRD 437, 21 FR Serv 2d 329.*

Creditor's counterclaim in TILA action by debtor which has no independent ground of federal subject matter jurisdiction is so basically different from TILA action that it is permissive in nature and may be dismissed for lack of jurisdiction. *Ball v Connecticut Bank & Trust Co. (1975, DC Conn) 404 F Supp 1, 21 FR Serv 2d 1258.*

Creditor's counterclaim for underlying debt in suit by consumer credit debtor claiming disclosures were not properly made is permissive and subject to dismissal if there is no independent ground of federal jurisdiction and issues of fact and law are dissimilar such that substantially different kinds of evidence would be needed to prove claims. *Jones v Sonny Gerber Auto Sales, Inc. (1976, DC Neb) 71 FRD 695, 22 FR Serv 2d 28.*

Counterclaim based solely on state law and having no independent federal jurisdiction which would unduly complicate expeditious resolution of TILA litigation is not compulsory and may be dismissed. *Bantolina v Aloha Motors (1976, DC Hawaii) 419 F Supp 1116.*

Creditor's counterclaim for underlying debt in suit by borrower based on alleged violation of TILA is compulsory counterclaim over which court has jurisdiction since such claim arises from same transaction as borrower's claim. *Engle v Shapert Constr. Co. (1978, MD Pa) 443 F Supp 1383.*

Credit union's counterclaims against plaintiffs in class action under Truth in Lending Act (*15 USCS § 1640*) for payment of defaulted loan installments would be dismissed, as such counterclaims are permissive only and allowance thereof would unduly complicate resolution of Truth in Lending Act claims with their common questions of law and fact. *Jacklitch v Redstone Federal Credit Union (1979, ND Ala) 463 F Supp 1134.*

Counterclaim to recover balance due on loan asserted in connection with truth in lending action is permissive in nature; creditor's counterclaim to recover balance due on loan tends to raise substantial unrelated issues of state law thereby obstructing or unduly delaying achievement of goals of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Agliam v Ohio Sav. Asso. (1983, ND Ohio) 99 FRD 145,* affd without op (1985, CA6 Ohio) *779 F2d 49.*

Defendant creditor's motion in Truth-in-Lending action for stay pending resolution of 2 state suits arising out of same transaction is denied where claims of parties in federal and state courts are primarily different, and defendant fails to assert counterclaim of foreclosure in federal court, since foreclosure claim is not compulsory counterclaim to Truth-in-Lending action and failure to raise it will not bar defendant res judicata from asserting it in state court. *Trimmel v General Electric Credit Corp. (1983, DC Conn) 555 F Supp 264.*

Pursuant to *15 USCS § 1640*, Truth in Lending Act (TILA) claim was not compulsory to Florida mortgage foreclosure action; thus, bankruptcy debtor's subsequent TILA suit seeking to rescind mortgage based on creditor's failure to provide him with disclosures required under TILA and failure to comply with Home Ownership and Equity Protection Act, *15 USCS § 1639*, was not barred by principles of issue or claim preclusion. *Daniels v Funding USA, Inc. (In re Daniels) (2006, BC SD Fla) 350 BR 619, 20 FLW Fed B 3.*

**26. Miscellaneous**

Allegations that advertisements in retail store's catalogue failed to disclose that any finance charge would be imposed on items offered for sale and contained numerous pages of advertisements of products and prices without any reference to imposition of finance charges, relate to violations only of credit advertising part of Truth in Lending Act (*15 USCS §§ 1661* et seq.) and do not state cause of action under civil penalties section (*15 USCS § 1640*). *Jordan v Montgomery Ward & Co. (1971, CA8 Minn) 442 F2d 78, 11 ALR Fed 808,* cert den *(1971) 404 US 870, 30 L Ed 2d 114, 92 S Ct 78.*

*15 USCS § 1605*(f), which provides tolerances for accuracy in finance charge disclosures, does not impose independent pleading hurdle for TILA plaintiffs. *Inge v Rock Fin. Corp. (2002, CA6 Mich) 281 F3d 613, 52 FR Serv 3d 119.*

*15 USCS § 1640*(h) does not bar cross complaint by bank, as assignee of retail installment contract, against retailer for exoneration in event of judgment against it upon complaint filed against bank under Truth in Lending Act (*15 USCS §§ 1601* et seq.), since cross complaint arises out of same transaction which gave rise to Truth in Lending action. *Rounds v Community Nat'l Bank (1978, SD Ill) 454 F Supp 883.*

Pleadings do not fail, as matter of law, to state cause of action since provisions of Regulation Z apply to all persons who in ordinary course of business regularly extend, or offer to extend, or arrange, or offer to arrange, for extension of consumer credit, and since such protective provisions have been held to apply to automobile dealers in such circumstances. *Robinette v Griffith (1979, WD Va) 483 F Supp 28.*

Complaint of borrowers who executed note and deed of trust to secure mortgage loan made 16 years earlier, alleging violation of TILA due to invalidity of balloon payment, is dismissed, where borrowers were provided with annual loan and escrow statements that showed remaining balance due on loan for each year borrowers made loan payments, because borrowers' claim is barred by one-year statute of limitations in *15 USCS § 1640(e). Mulligan v Resolution Trust Corp. (1995, DC Dist Col) 903 F Supp 121.*

Where there were no allegations that either defendant credit card network ever extended any type of credit to cardholders, neither could be considered creditor obligated to provide disclosure to plaintiff cardholders under Truth in *Lending Act. In re Currency Conversion Fee Antitrust Litig. (2003, SD NY) 265 F Supp 2d 385, 2003-2 CCH Trade Cases P 74099.*

Conclusory statement that as direct result of auto dealer's several alleged violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and for which vehicle purchaser was entitled to statutory and actual damages, did not allege any facts that, if proven, would have constituted actual damages; because purchaser did not sufficiently allege actual damages, he failed to state claim. *Haun v Don Mealey Imps. (2003, MD Fla) 285 F Supp 2d 1297, 17 FLW Fed D 55.*

Plaintiff sufficiently alleged money damages where Complaint prayed for "judgment be entered in favor of plaintiffs and against defendants for amount of damages to each plaintiff caused by defendants' violation of their statutory and common law duties to plaintiffs." In light of liberal notice pleading requirements and factual allegations, court did not dismiss plaintiff's claims for failure to allege viable remedy. *Gray v First Century Bank (2008, ED Tenn) 547 F Supp 2d 815.*

**V.DEFENSES**

**A.In General 27. Generally**

Remedial purpose of TILA is best effectuated by construing *15 USCS § 1605(f),* which provides tolerances for accuracy in finance charge disclosures, as potential affirmative defense, rather than as essential element of finance charge disclosure claim. *Inge v Rock Fin. Corp. (2002, CA6 Mich) 281 F3d 613, 52 FR Serv 3d 119.*

Bank and corporation's motion for summary judgment on property owners' claim that they were entitled to statutory damages pursuant to *15 USCS § 1640(a)* was granted as to issue of statutory damages because bank and corporation, as assignees, could only be held liable for statutory damages when violation of Truth in Lending Act, *15 USCS § 1601* et seq., was apparent on face of documents, and property owners failed to create triable issue of material fact as to whether bank and corporation received completed copy of notice of right to rescind disclosures. *Briggs v Provident Bank (2004, ND Ill) 349 F Supp 2d 1124.*

Loan service could not be held liable for damages under *15 USCS § 1640(a)* where individual had made no allegation that servicer had ownership interest in individual's loan. *Adams v Nationscredit Fin. Servs. Corp. (2004, ND Ill) 351 F Supp 2d 829.*

In Chapter 13 bankruptcy case, in which debtor was entitled to rescission of mortgage loan by reason of truth in lending violation, debtor was entitled to statutory damages under *15 USCS § 1640(a)(2)(A)* for violation, to separate award under § 1640(a)(3) for failure to honor valid rescission demand, and to attorney fees and costs under § 1640(a)(3). *Bell v Parkway Mortg., Inc. (In re Bell) (2004, BC ED Pa) 309 BR 139,* mod and reh den (2004, BC ED Pa) *314 BR 54, 59 FR Serv 3d 763.*

**B.Correction of Errors 28. Generally**

Both *15 USCS §§ 1640(b)* and (c) permit creditor to escape liability for nondisclosure of credit terms only in cases of "clerical" error; creditor cannot escape liability by invoking § 1640(b) defense where creditor's failure in underlying agreement to disclose numerous informational aspects of agreement could not be considered "clerical" error and where creditor failed to take any precautions to avoid such errors thereby making 15-day [now 60-day] grace period under § 1640(c) inapplicable as section applies only to mathematical, not informational, errors. *Thomka v A. Z. Chevrolet, Inc. (1980, CA3 Pa) 619 F2d 246.*

Provision of *15 USCS § 1640(b)* to effect that creditor has no liability if, "prior to the institution of an action" under § 1640, creditor notifies person concerned of error and makes necessary adjustment, indicates by implication that although defendant can cure violation of Truth in Lending Act by following certain procedure, he can do so only prior to suit being filed; Act would be rendered meaningless if creditor were allowed to appear after institution of suit, disavow any intent to rely on contract term which gave rise to violation, and be relieved of liability. *Barrett v Vernie Jones Ford, Inc. (1975, ND Ga) 395 F Supp 904*, revd on other grounds (1976, CA5 Ga) *543 F2d 568.*

Although bank may have been able to avoid actual damages under *15 USCS § 1640* on basis of pro se attorney's bad faith, summary judgment was improper where there were issues of fact as to whether damages were linked to bank's violation of *15 USCS § 1666*; attorney was not, however, allowed to recover attorney's fees given pro se status. *Kurz v Chase Manhattan Bank (2003, SD NY) 260 F Supp 2d 638*, reprinted as amd (2003, SD NY) *273 F Supp 2d 474.*

**29. Particular cases**

Fact that parties to credit agreement abandoned transaction and creditor refunded borrower's money was insufficient to relieve creditor from liability under *15 USCS § 1640(b)* for failure to make required disclosures, where creditor, by abandoning transaction and refunding money, did not give borrower notice of error and make whatever adjustments were necessary in appropriate account. *Dryden v Lou Budke's Arrow Fin. Co. (1980, CA8 Mo) 630 F2d 641.*

Designation of collateral appraisal fee as "C. A." on promissory note, which did not clearly disclose nature of charge as required by *12 CFR § 226.6*, and failure to include appraisal charge and finance charge as required by *12 CFR § 226.4*, were 2 separate errors, and correction letter subsequently sent by creditor which defined designation "C.A." as collateral appraisal but which was silent as to whether charge should have been included in finance charge and which did not notify borrower that charge would not have to be paid could not be deemed sufficient, under *15 USCS § 1640(b)*, as rectification of all errors. *In re Weaver (1980, CA5 Ga) 632 F2d 461, 7 BCD 181, 24 CBC 194.*

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1)*, thus, plaintiff car buyer's Truth in Lending Act claims against defendant bank failed for lack of pleading or proving detrimental reliance; while § 1640(b)'s safe-harbor provision explicitly established formula for account adjustments creditors must make to avail themselves of safe-harbor protections, it did not turn actual damages into restitution remedy. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

Error in requiring borrower to make first payment on same day loan was made rendering disclosure inaccurate in that borrower would not have had use of entire amount financed for period specified was clerical error and where corrected within 15 [now 60] days did not violate *15 USCS § 1640(b)*. *Ballew v Associates Financial Services Co. (1976, DC Neb) 450 F Supp 253.*

Defendant's claim to be exempt from liability because it corrected its error of not giving copy of security agreement to customer by mailing copy of agreement within 15 [now 60] days after discovering error would be rejected; Regulation Z § 226.8 requires that disclosures be made before transaction is consummated, and to apply exception in *15 USCS § 1640(b)* to this requirement would effectively nullify regulation. *Jumbo v Nester Motors (1977, DC Ariz) 428 F Supp 1085.*

Creditor who violated Regulation Z (*12 CFR § 226.6*) by failing to disclose fact that more than one creditor was involved in transaction, may not raise *15 USCS § 1640*, precluding liability if errors are corrected within 15 [now 60] days, as defense where plaintiffs rescinded contract less than 15 [now 60] days after its execution; damages under *15 USCS § 1640* may be recovered regardless of whether contract has been rescinded. *Poirrier v Charlie's Chevrolet (1978, ED Mo) 442 F Supp 894.*

Even if first of 2 retail installment sales contracts were construed to violate Truth in Lending Act, subsequent financing of car sale at issue through second sales contract would have operated as correction of error within statutory safe harbor of *15 USCS § 1640(b). Hodges v Koons Buick Pontiac GMC, Inc. (2001, ED Va) 180 F Supp 2d 786.*

Where mortgagee, through mistake, failed to include charge for mortgage insurance premium in closing statement in connection with sale of home, and where mortgagor was notified of this mistake within 15 [now 60] days, and had not sent mortgagee any written notice of error or instituted any action, mortgagor was not entitled to any relief under Truth In Lending Act, *15 USCS § 1640. Ragar v Jack Collier East Co. (1974) 257 Ark 205, 515 SW2d 205.*

**C.Unintentional Violations Resulting From Bona Fide Errors 30. Reasonable procedures to avoid errors**

Section 130(c) of Truth-in-Lending Act (*15 USCS § 1640(c)*) will relieve creditor of liability for mistake only where error is unintentional, bona fide error and if creditor maintains procedures reasonably adapted to avoid any such error; to satisfy latter requirement creditor must adopt and consistently maintain procedures, such as rechecking computation of debt, designed to avoid and prevent errors which might slip through. *Mirabal v General Motors Acceptance Corp. (1976, CA7 Ill) 537 F2d 871* (ovrld in part by *Brown v Marquette Sav. & Loan Ass'n (1982, CA7 Wis) 686 F2d 608).*

Creditor claiming bona fide mistake in failure to provide information required on disclosure statement under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) has burden of proving both that mistake in question was not intentional and that it maintained procedure reasonably adapted to avoiding such errors. *Turner v Firestone Tire & Rubber Co. (1976, CA5 La) 537 F2d 1296.*

Defense of clerical error requires that creditor maintain procedure designed to avoid and prevent unintentional errors and establish reasonable rechecking procedure in regard to truth-in-lending disclosures; simple check of form by person totally unfamiliar with computations to see that all blocks are filled in on disclosure statement is not sufficient for defense of clerical error. *Reliable Finance Co. v Jenkins (1982, Mun Ct) 7 Ohio Misc 2d 24, 7 Ohio BR 172, 454 NE2d 993.*

To invoke bona fide defense error there must be proof that violation is not intentional and results from error notwithstanding maintenance of procedures reasonably adapted to avoid such error; in instant case there was no procedure set up to screen applications once completed to detect such errors. *Ray v Acme Finance Corp. (1979, Miss) 367 So 2d 186.*

**31.--Particular cases**

Where note and loan statement omitted several credit terms required to be disclosed by Truth in Lending Act, violations did not fall within statutory exemption, under *15 USCS § 1640(c)*, for violations which are not intentional and result from bona fide error notwithstanding maintenance or procedures reasonably adapted to avoid any such error, since defendants' omissions and mislabeling of terms were not result of clerical errors, which are only violations which § 1640(c) was designed to excuse; both loan statement and installment note were printed, standard form instruments, and omissions and misstatements were part of defendants' usual credit practice, and did not occur in spite of procedures designed to avoid unintentional violations of Act. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Creditor is not relieved of liability under *15 USCS § 1640(c)* where he calculated finance charge, annual percentage

rate, amount and number of monthly payments only once, did not recompute or review his figures, and had no preventive mechanism for catching errors. *Gallegos v Stokes (1979, CA10 NM) 593 F2d 372, 26 FR Serv 2d 1114, 54 ALR Fed 485.*

Although understatement of deferred payment price, even clerical error of 10-cents is violation of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.), where creditor uses system reasonably designed to avoid clerical errors he may avail himself of § 1640(c) defense for bona fide, unintentional clerical errors. *Hutchings v Beneficial Finance Co. (1981, CA9 Or) 646 F2d 389.*

Mortgagee violated its duties under *15 USCS § 1635(a)* when it provided to plaintiff, mortgagor, during closing of her new mortgage loan, copies of two different Federal Reserve Board model rescission forms, one of which was inappropriate to mortgagor's loan, since (1) simultaneous provision of both Fed. Res. B., Rescission Model Form H-8 and Fed. Res. B., Rescission Model Form H-9 to plaintiff was not simply minor, technical error, but constituted violation of § 1635(a) clear and conspicuous disclosure requirement, (2) mortgagee created confusion by providing both model forms and, in doing so, failed to provide plaintiff with clear notice of what her right to rescind entailed, and (3) mortgagee was not entitled to protection under safe harbor provision set out in *15 USCS § 1640(c)* because mortgagee did not present any evidence showing that it had procedures in place to ensure that borrowers received correct rescission form and to guard against making type of disclosure error that was committed in plaintiff's case. *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760.*

Use of form not complying with requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) by sole proprietor selling consumer goods on credit is failure to maintain procedures reasonably adapted to avoid unintentional error, and therefore, unintentional error defense in § 130(c) of Act (*15 USCS § 1640(c)*) is not available to sole proprietor. *Sambolin v Klein Sales Co. (1976, SD NY) 422 F Supp 625.*

Violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) occurs upon any non-compliance with Act's precise, technical requirements even if creditor acts in good faith, without any purpose to mislead, and in absence of detrimental reliance on part of consumer and defense of bona fide error under *15 USCS § 1640(c)* is available where creditor proves that error is unintentional and bona fide and that procedures reasonably adopted to avoid any such error are consistently maintained; mathematical error in calculating "deferred payment price," where applicable formula and proper components are provided, presents material issue of clerical error precluding summary judgment in light of statement by president of defendant corporation who prepared disclosure statement that he added all amounts and rechecked them by adding them a second time which, in light of realities of small business, could constitute procedure reasonably adapted to avoid error. *Detillo v J. R. Moore Farm Supply, Inc. (1978, WD Pa) 449 F Supp 559.*

Loan company's failure to obtain signature of wife along with that of husband's on Insurance Notice, pursuant to *15 USCS § 1605(b)*, amounted to unintentional, bona fide error that came about despite maintenance of procedures reasonably adapted to avoid it, and thus was not violation of Truth in Lending Act (*15 USCS § 1605(b)*) and Regulation Z (*12 CFR § 226.8(b)(3)*). *Bailey v Defenbaugh & Co. (1981, ND Miss) 513 F Supp 232.*

Although creditor violated Truth in Lending Act when it failed to disclose annual percentage rate it charged Chapter 13 debtor who bought furniture four months before he declared bankruptcy, creditor's failure to include annual percentage rate in parties' contract was bona fide error under *15 USCS § 1640(c)* that excused it from liability; the debtor's failure to make downpayment he was required to make under contract prevented or inhibited creditor from following procedures it normally followed to prevent error. *Gordon v Hendricks-Patton Co. (In re Gordon) (2008, BC ND Ala) 389 BR 243.*

**32. Clerical errors**

Both *15 USCS §§ 1640(b)* and (c) permit creditor to escape liability for nondisclosure of credit terms only in cases of "clerical" error. *Thomka v A. Z. Chevrolet, Inc. (1980, CA3 Pa) 619 F2d 246.*

Defense provided in § 130(c) of Truth in Lending Act (*15 USCS § 1640(c)*) for lenders who make bona fide errors notwithstanding maintenance of procedures reasonably adapted to avoid any such errors is limited to clerical errors, mistakes in arithmetic, and other errors of this sort. *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

**33.--Particular cases**

Where defendant credit union's failure to make required disclosures to plaintiff was not intentional and resulted from bona fide error, and where defendant presented no evidence of actual monetary damages, exception under *15 USCS § 1640(c)* prevented defendant from being liable for damages under *15 USCS § 1640(a). Chittester v LC--DC--F Employees of G. E. Fed. Credit Union (1974, WD Pa) 384 F Supp 473.*

"Clerical error" defense is unavailable to lender with respect to failure to print terms "finance charge" and "annual percentage rate" in print more conspicuous than that used for other disclosures and failure to state total amount of finance charge under term "finance charge"; such errors were legal errors arising from lender's failure to conscientiously comply with disclosure requirements of Truth in Lending Act. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Clerical error of creditor in leaving its identity off disclosure form is technical violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) entitling debtor to penalties provided by § 130(a) of Act (*15 USCS § 1640(a)*) notwithstanding fact that debtors actually know identity of creditor. *In re Wilson (1975, SD Ohio) 411 F Supp 751.*

Creditor's good faith in wording disclosure statement in consumer loan transaction is not in and of itself defense where language violates Truth in Lending Act (*15 USCS §§ 1601* et seq.) because error is intentional within meaning of Act if not clerical in nature. *Gillard v Aetna Fin. Co. (1976, ED La) 414 F Supp 737.*

Lender is not entitled to defense under *15 USCS § 1640(c)* of clerical error where evidence establishes that there were violations of Truth in Lending Act relating to hidden finance charges, inclusion of deferment charges greater than those provided for in contract or under state law, failure to disclose multiple default charges, failure to disclose amount of credit borrower would have actual use of, and assertion of security interest in after-acquired goods when such was plainly unenforceable. *Ballew v Associates Financial Services Co. (1976, DC Neb) 450 F Supp 253.*

Failure to furnish copy of agreement to customer is not kind of clerical error exempted from liability by *15 USCS § 1640(c). Jumbo v Nester Motors (1977, DC Ariz) 428 F Supp 1085.*

Buyers of house siding are entitled to rescission of contract, cancellation of finance charges, and voiding of security interest in their home, where siding company did not give buyers copy of deed of trust and buyers did not realize they signed deed of trust, company did not give buyers proper notice of right to rescind, and violations could not be termed clerical errors in view of company's attempts to conceal buyer's rights from them and company's total inaction when buyers attempted to rescind transaction. *Cole v Lovett (1987, SD Miss) 672 F Supp 947,* affd (1987, CA5 Miss) *833 F2d 1008.*

Trial court did not err in finding no violation by bank of disclosure requirements under Truth in Lending Act (*15 USCS §§ 1601* et seq.), where annual percentage rate on promissory note was expressed as 14:35 percent rather than 14.35 percent, since violation was unintentional and resulted from bona fide error and record indicates that annual percentage rate was explained to creditors before they executed note. *American Sec. Bank v Nishihara (1983, App) 3 Hawaii App 594, 656 P2d 1347.*

It is clerical error excused by *15 USCS § 1640(c)* where clerk employed by lender misread payment chart so as to charge borrower $ 1.00 more per month--resulting in understatement of annual percentage rate by about 0.75 percent. *Foundation Plan, Inc. v Breaux (1977, La App 4th Cir) 345 So 2d 955,* cert den (1977, La) *347 So 2d 256.*

Where purchaser under retail installment contract was asked to sign and date authorization for life insurance, but where purchaser forgot to date signature and seller failed to discover omission of date, such omission of date was nothing more than unintentional bona fide error, excusable under *15 USCS § 1640*, where other requirements of Truth in Lending Act were satisfied. *Washington Motor Sales v Ferreira (1974) 131 NJ Super 328, 329 A2d 599*, affd *(1976) 140 NJ Super 529, 357 A2d 17*, affd *(1977) 75 NJ 136, 380 A2d 703.*

Where employee of creditor, in changing term of payday loan to debtor, failed to correct APR of debtor's loan, in violation of Truth in Lending Act, *15 USCS § 1601* et seq., bankruptcy court's acceptance of creditor's bona fide error defense was clearly erroneous because (1) error resulted from creditor's failure to follow its own prescribed protocol, (2) after creditor discovered error, it did nothing to cure it, and (3) creditor made no showing that it had procedure reasonably adapted to prevent such error. *Yarnall v Four Aces Emporium, Inc. (In re Boganski) (2005, BAP9) 322 BR 422.*

Cases which have denied creditors protection of *15 USCS § 1640(c)* have generally done so for errors more substantive than obviously incorrect year, such as omitting rescission expiration date altogether; because error in date was obvious and not misleading, i.e., anyone reading document would know that cancellation deadline could not have passed year before document was even executed, it was error of type contemplated in § 1640(c)'s safe harbor. *Groat v Carlson (In re Groat) (2007, BAP8) 369 BR 413.*

**Unpublished Opinions**

Unpublished: Where imprecise verb tense was used in descriptive explanation contained in "total of payments" portion of installment contract, which seller purchased from another company, sparse factual record was not sufficient to carry seller's burden of proof on bona fide error defense of *15 USCS § 1640(c)*, at least as matter of law, on assumption that form violated Truth in Lending Act, *15 USCS § 1601* et seq. *Mize v Joe's Auto Sales, Inc. (2005, SD Ind) 2005 US Dist LEXIS 1648.*

**34. Good faith**

Defense of good faith is not available where evidence indicates there are no clerical errors, and no misunderstanding of requirements of Truth in Lending Act is shown. *Hinkle v Rock Springs Nat'l Bank (1976, CA10 Wyo) 538 F2d 295.*

Where lender's violations of Truth in Lending Act were result of acts which, although perhaps made in good faith, were nevertheless done intentionally and not by mistake, and there was no procedure adopted in any way to avoid violations, transaction was clearly outside ambit of *15 USCS § 1640(c)*. *Johnson v Associates Fin. (1974, SD Ill) 369 F Supp 1121.*

Failure of loan company to disclose chattel mortgage in disclosure statement cannot be excused as bona fide error; provisions of *15 USCS § 1640(c)* excuse only mere clerical errors which occur despite reasonable diligence in preparation of disclosure statement; "good faith" errors of law cannot be excused. *Wilson v Shreveport Loan Corp. (1975, WD La) 404 F Supp 375.*

Plaintiff is not entitled to judgment on pleadings in action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) where answer raises factual issues as to bona fide error and good faith. *Parker v De Kalb Chrysler Plymouth (1978, ND Ga) 459 F Supp 184*, affd (1982, CA11 Ga) *673 F2d 1178.*

Good faith defense requires some proof that violation was unintentional, resulting from bona fide clerical-type errors where procedures exist for correction of such errors. *Aldrich v Upstate Auto Wholesale, Inc. (1982, ND NY) 564 F Supp 390.*

Lender is entitled to summary judgment on one count of borrowers' Truth in Lending Act (*15 USCS §§ 1601* et

seq.) complaint, where borrowers allege that annual percentage rate is disclosed as "None" on loan form, because affidavit of assistant branch manager showed that misprint was result of slipped carbon in printing computer, and lender could rely on bona fide error defense of *15 USCS § 1640(c). Doubet v USA Financial Services, Inc. (1987, CD Ill) 714 F Supp 980.*

Where lender has made good faith effort to comply with Truth in Lending Act and borrower has been neither misled nor damaged, penalty provision of act will not be invoked; assessment of penalty was not erroneous where, inter alia (1) borrower received almost no information about transaction involving note, and (2) amount financed, amount which would be credited to borrower's account to discharge obligation, sum of amount financed and finance charge, and information about payments were missing from note. *Manley v Wichita Business College (1985) 237 Kan 427, 701 P2d 893.*

**35. Mistake of law**

*15 USCS § 1640*(c) offers shelter from liability from Truth-in-Lending Act violations only where such violations are clerical in nature, and not where violations are judgmental with respect to legal requirements of Act. *Haynes v Logan Furniture Mart, Inc. (1974, CA7 Ill) 503 F2d 1161, 19 FR Serv 2d 205, 27 ALR Fed 592* (superseded by statute as stated in *Marshall v Security State Bank (1990, BC CD Ill) 121 BR 814).*

Defense of unintentional violation under *15 USCS § 1640(c)* applies only to clerical errors occurring despite system for correcting them and defendant's violation of Regulation Z, even if unintentional and resulting from mistaken legal conclusions, did not preclude liability. *McGowan v King, Inc. (1978, CA5 Miss) 569 F2d 845.*

Defense of bona fide error, under *15 USCS § 1640(c)*, applies to clerical errors, but not to mistaken interpretation of Truth In Lending Act's disclosure requirements. *Doggett v Ritter Fin. Co. (1974, WD Va) 384 F Supp 150,* affd in part and revd in part on other grounds (1975, CA4 Va) *528 F2d 860.*

Bona fide error defense of *15 USCS § 1640(c)* is designed to provide defense to transactional errors, such as clerical mistakes, and not to mistakes in judgment after careful consideration of law. *In re Dickson (1977, WD NC) 432 F Supp 752.*

Since *15 USCS § 1640* provides defense only for clerical errors, defense that violation resulted from mistake or ignorance of law will be rejected. *Jacklitch v Redstone Federal Credit Union (1979, ND Ala) 463 F Supp 1134.*

Good faith defense under *15 USCS § 1640(c)* cannot be supported by evidence of ignorance or error of law. *Jefferson v Mitchell Select Furniture Co. (1975, Civ App) 56 Ala App 259, 321 So 2d 216, 18 UCCRS 431.*

**36.--Particular cases**

Lender's failure to comply with Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z promulgated thereunder through failure to print term "annual percentage rate" in disclosure statement more conspicuously than other required terminology, in that over 30 other terms and phrases appearing on disclosure statement were printed in same format as term "annual percentage rate", was not excusable under § 130(c) of Act (*15 USCS § 1640(c)*) even if in good faith where failure to comply was not clerical, mathematical, or due to printing or computer errors, though it was perhaps "error of legal judgment," that is, done in belief that it had complied with Act. *Herrera v First Northern Sav. & Loan Asso. (1986, CA10 NM) 805 F2d 896, 6 FR Serv 3d 878.*

Bona fide error provision of *15 USCS § 1640(c)* applies only to clerical errors and not to mistakes of law; failure to show nominal annual percentage rate on charge card statement is mistake of law regardless of fact that there was no finance charge at time of omission from statement and that there might never be one (plaintiff could avoid finance charge by paying whole balance within 25 days). *Ratner v Chemical Bank New York Trust Co. (1971, SD NY) 329 F Supp 270.*

Where loan company failed to disclose confession of judgment provision contained in notes assigned by borrowers, it need not be shown that such omission was intentional, since loan company's mistake of law did not make its action any less intentional; it could not escape liability under *15 USCS § 1640(c)*, which applies only to clerical errors. *Douglas v Beneficial Fin. Co. (1971, DC Alaska) 334 F Supp 1166.*

Lender who interpreted Regulation Z, *12 CFR § 226.8(b)(4)*, to mean that additional charges imposed under loan agreement in event of acceleration of repayment for breach need not be disclosed if state law forbids collection of such charges was not civilly liable to borrower where lender's mistake was reasonable in view of lack of clarity of regulation and dispute in case law available at time of loan. *Kessler v Associates Financial Services Co. (1975, DC Hawaii) 405 F Supp 122.*

Defendant credit union which fails to give effect to plaintiffs' notice of rescission under *15 USCS § 1635* cannot take advantage of "good faith error" defense in *15 USCS § 1640(c)* since such defense is applicable only to clerical errors and not errors of law. *French v Wilson (1978, DC RI) 446 F Supp 216* (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

**37. Miscellaneous**

Under *15 USCS § 1640(c)*, seller's reliance on advice of counsel did not exculpate it from liability for failure to comply with disclosure requirements under Truth in Lending Act, where defendant's error, whether in good faith or not, was judgmental with respect to legal requirements of Act and was not clerical in nature; term "intentional," within meaning of § 1640(c), describes voluntary, deliberate acts and omissions and is not to be equated with knowing and willful violation of law. *Haynes v Logan Furniture Mart, Inc. (1974, CA7 Ill) 503 F2d 1161, 19 FR Serv 2d 205, 27 ALR Fed 592* (superseded by statute as stated in *Marshall v Security State Bank (1990, BC CD Ill) 121 BR 814).*

Creditor's failure to comply with regulations implementing Truth in Lending Act, in that term "total balance due" was used rather than "total of payments" and term "amount to be financed" was used rather than "amount financed," was de minimis violation clearly contemplated by *15 USCS § 1640(c)*. Richardson v Time Premium Co. (1971, DC Fla) CCH CCG P 99272.

Where state law required promissory notes to be notarized and lending institutions charged $ 1 notary fee, disclosing it as a separate item on their small loan disclosure statements instead of including fee in "finance charge" and "annual percentage rate", there was intentional error rather than clerical error even if error was made in good faith; this constituted violation entitling plaintiffs to statutory penalties and attorneys' fees. *Buford v American Finance Co. (1971, ND Ga) 333 F Supp 1243, 15 FR Serv 2d 792.*

Reference to unintentional error in *15 USCS § 1640(c)* applies only to clerical error, so that it makes no difference, in civil damage action for a Truth-in-Lending Act violation involving failure to disclose attachment of statutory lien, that error was unintentional and without purpose to mislead. *Starks v Orleans Motors (1974, ED La) 372 F Supp 928,* affd without op (1974, CA5 La) *500 F2d 1182.*

Although plaintiff correctly contended that there were 25 monthly installments due, and that, therefore, defendant made improper disclosure by stating that there were 24 payments, defendant could avail himself of bona fide error defense of *15 USCS § 1640(c). Scott v Liberty Fin. Co. (1974, DC Neb) 380 F Supp 475.*

Lender's assertion of bona fide error defense under *15 USCS § 1640* is rejected where violations of Truth in Lending Act appear in every one of 374 retail installment contracts executed by defendant in 1974. *Smith v Chapman (1977, WD Tex) 436 F Supp 58,* affd (1980, CA5 Tex) *614 F2d 968.*

Exemption from liability contained in *15 USCS § 1640* protects creditor where credit insurance authorization on face of contract, although signed by defendant, was not dated as required by Regulation Z, *12 CFR § 226.4(a)(5)(ii)* since omission of date was unintentional and bona fide error. *Washington Motor Sales v Ferreira (1976) 140 NJ Super*

*529, 357 A2d 17,* affd *(1977) 75 NJ 136, 380 A2d 703.*

**D.Good Faith Compliance or Conformity 38. Generally**

Under *15 USCS § 1640(f),* unintentional and bona fide errors are not excused unless made in reliance on rule, regulation, or interpretation of Federal Reserve Board. *Pennino v Morris Kirschman & Co. (1976, CA5 La) 526 F2d 367.*

Good faith compliance defense is limited to those creditors who act in good faith reliance on "any rule, regulation or interpretation" formerly adopted by Federal Reserve Board, which thereafter is rescinded by Board or invalidated judicially; only rule or regulation involved is Regulation Z itself. *Kessler v Associates Financial Services Co. (1977, CA9 Hawaii) 573 F2d 577.*

Creditor is not entitled to rely on purported defense under *15 USCS § 1640(f)* where creditor relies upon no specific rules, regulations, or interpretations of Federal Reserve Board. *Barber v Kimbrell's, Inc. (1976, WD NC) 424 F Supp 42,* affd in part and revd in part on other grounds (1978, CA4 NC) *577 F2d 216, 25 FR Serv 2d 815,* cert den *(1978) 439 US 934, 58 L Ed 2d 330, 99 S Ct 329* and (criticized in *Strang v JHM Mortgage Sec. Ltd. Partnership (1995, ED Va) 890 F Supp 499)* and (superseded by statute as stated in *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841).*

*15 USCS § 1640*(f), as amended, applies prospectively only. *Jacklitch v Redstone Federal Credit Union (1979, ND Ala) 463 F Supp 1134.*

*15 USCS § 1640*(f) only protects lenders from good faith reliance on Federal Reserve Board rules, regulations and interpretations which are later changed or invalidated; it does not provide blanket protection for creditors' good faith mistakes, nor from reliance on erroneous judicial decisions. *Lopez v Orlor, Inc. (1997, DC Conn) 176 FRD 35* (criticized in *Turner v Beneficial Corp. (2001, CA11 Ala) 242 F3d 1023, RICO Bus Disp Guide (CCH) P 10026, 14 FLW Fed C 426).*

Good-faith immunity defense under *15 USCS § 1640(f)* does not protect creditor who fails to conform with regulation or interpretation through honest, good-faith mistake, and, thus, creditor's cognitive analysis or belief of its obligations under statute is not relevant to defense. *McPhillips v Gold Key Lease, Inc. (1999, MD Ala) 38 F Supp 2d 975.*

**39. Evidence**

Cap on recovery in § 1640(a)(2)(A)(ii) did apply to awards under § 1640(a)(2)(A)(i) because (1) word "subparagraph" is generally used to refer to subdivision preceded by capital letter, and word "clause" is generally used for subdivision preceded by lower case Roman numeral; therefore, "under this subparagraph" in § 1640(a)(2)(A)(ii) would apply to all of § 1640(a)(2)(A); (2) there was scant indication that Congress meant to alter meaning of clause (i) when it added clause (iii) to provide increased recovery for real property loan TILA violations; and (3) it would have been strange for Congress to cap recovery in connection with closed-end, real-property-secured loan at amount substantially lower than recovery available when violation occurred in context of personal-property-secured loan or open-end, real-property-secured loan. *Koons Buick Pontiac GMC, Inc. v Nigh (2004, US) 160 L Ed 2d 389, 125 S Ct 460, 18 FLW Fed S 13.*

Cap on recovery in *15 USCS § 1640(a)(2)(A)(ii)* did apply to awards under § 1640(a)(2)(A)(i) because (1) word "subparagraph" is generally used to refer to subdivision preceded by capital letter and word "clause" is generally used for subdivision preceded by lower case Roman numeral; therefore, "under this subparagraph" in § 1640(a)(2)(A)(ii) would apply to all of § 1640(a)(2)(A); (2) there was scant indication that Congress meant to alter meaning of clause (i) when it added clause (iii) to provide increased recovery for real property loan TILA violations; and (3) it would have been strange for Congress to cap recovery in connection with closed-end, real-property-secured loan at amount

substantially lower than recovery available when violation occurred in context of personal-property-secured loan or open-end, real-property-secured loan. *Koons Buick Pontiac GMC, Inc. v Nigh (2004, US) 160 L Ed 2d 389, 125 S Ct 460, 18 FLW Fed S 13.*

Creditor failed to sustain its burden of proof in claiming defense under § 130(f) of Truth in Lending Act (*15 USCS §§ 1640(f)*) where it did not direct court's attention to any rule, regulation or Board interpretation to which it had attempted to conform in drafting particular language in disclosure statement found to be misleading. *Gillard v Aetna Fin. Co. (1976, ED La) 414 F Supp 737.*

Creditor is not protected by good faith defense where it introduces no evidence that it relied on specific regulation approving omission of its address in disclosure statement. *Houston v Atlanta Federal Sav. & Loan Asso. (1976, ND Ga) 414 F Supp 851.*

Creditor may not rely on good faith defense pursuant to *15 USCS § 1640(f)* where creditor fails to submit any affidavit or other sworn statement to support claim. *Lewis v Walker-Thomas Furniture Co. (1976, DC Dist Col) 416 F Supp 514.*

Creditor's defense of good faith reliance on rule, regulation, or interpretation of Board pursuant to *15 USCS § 1640(f)* is unavailing where creditor fails by preponderance of evidence to prove such defense. *Owens v Magee Fin. Serv. (1979, ED La) 476 F Supp 758.*

Creditor has not met burden of showing its prepared statement is in conformity with rules, regulations, or interpretations of Federal Reserve Board since defense is limited to situations where disclosure statement is later determined to be invalid because rules or regulations relied upon are invalid or no longer in effect. *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

In actions under Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) in which seller seeks to recover for breach of conditional sales contract, and buyer counterclaims with seller's alleged violations of disclosure provisions of Act, and where seller contends that he should be excused from liability on basis that he relied upon Federal Reserve Board's model for retail installment contracts when he prepared contracts, such creditor, whose contract failed to include term "unpaid balance" as was required, may not avail himself of Truth-In-Lending defenses contained in § 1640 to avoid damages imposed under that section where creditor has failed to establish any defense by preponderance of evidence. *Ed Marling Stores, Inc. v Miracle (1981) 6 Kan App 2d 175, 627 P2d 352.*

**40. Staff opinion letters and interpretations**

Good faith defense under *15 USCS § 1640(f),* as amended is not available to creditor who relies on staff letters rather than "rule, regulations, or interpretation thereof by the Board." *Ives v W. T. Grant Co. (1975, CA2 Conn) 522 F2d 749.*

Failure of lender to disclose particular prepaid finance charge would not constitute violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) if, as lender claimed, its failure to disclose charge was based on reliance on Federal Reserve Board's interpretation of regulation promulgated under Act which interpretation stated that disclosure of particular charge was unnecessary notwithstanding fact that court subsequently determined Board's interpretation to be erroneous; lender's reliance on letters written by Federal Reserve Board staff members would not constitute defense to failure to disclose required information. *Jones v Community Loan Inv. Corp. (1976, CA5 Ga) 544 F2d 1228,* reh den (1977, CA5 Ga) *545 F2d 1298* and cert den *(1977) 431 US 934, 53 L Ed 2d 250, 97 S Ct 2642.*

Court would decline to give controlling weight to Staff Opinion letters from Federal Reserve Board, for purposes of good-faith-reliance defense under *15 USCS § 1640(f),* under circumstances where (1) letters were not contemporaneous with adoption of regulation involved but were procured after decision of trial court in this case, (2) views expressed in letters appeared to conflict with view of disclosure requirement manifested in prior opinion letter. *Pollock v General*

*Finance Corp. (1977, CA5 Ga) 552 F2d 1142, 21 UCCRS 1204,* cert den *(1977) 434 US 891, 54 L Ed 2d 176, 98 S Ct 265.*

Defendant creditor's use of disclosure sheet containing information on both sides was excused where defendant reasonably construed exception to such requirement contained in 12 CFR § 226.801 and Federal Reserve Board Staff Opinion Letter did not specify in any detail what was meant by mechanical processing and defendant was entitled to good-faith defense under *15 USCS § 1640(f). Charles v Krauss Co. (1978, CA5 La) 572 F2d 544, 50 ALR Fed 192,* reh den (1978, CA5 La) *575 F2d 881.*

Defendant creditors cannot rely upon unofficial staff opinions of Board of Governors of Federal Reserve System in order to support claim that failure to disclose state Uniform Commercial Code limitation on security interest was made in good-faith reliance upon Board interpretations of Truth in Lending Act since unofficial staff opinion letters are explicitly excepted from reliance under *12 CFR § 226.1*; although unofficial staff letters are important informative function of staff of Board which, although not binding on court, are entitled to deference and may prove helpful to decision in given case, where disclosure forms clearly give mistaken impression of extent of time security interest may be in effect and where disclosures required are not onerous and uniformity is enhanced by fact that Uniform Commercial Code has been adopted by 49 states, reliance on unofficial staff opinion would not preclude civil liability under *15 USCS § 1640(f). Basham v Finance America Corp. (1978, CA7 Ill) 583 F2d 918, 26 UCCRS 787,* cert den *(1979) 439 US 1128, 59 L Ed 2d 89, 99 S Ct 1046* and cert den *(1979) 444 US 825, 62 L Ed 2d 32, 100 S Ct 47.*

Creditor's mistaken interpretation of Regulation Z (29 CFR §§ 226.1 et seq.), even if honest and reasonable, and its possible conformity with unofficial FRB staff opinion letters, is insufficient to establish defense under *15 USCS § 1640(f),* where creditor failed to point to specific regulations or interpretations which supported its position and, in any event, unofficial opinion letter was issued after execution of contract at issue. *Valencia v Anderson Bros. Ford (1980, CA7 Ill) 617 F2d 1278, 29 FR Serv 2d 549,* revd on other grounds, remanded *(1981) 452 US 205, 68 L Ed 2d 783, 101 S Ct 2266.*

Good faith reliance on staff opinion letters of Federal Reserve Board is sufficient for good faith compliance defense pursuant to *15 USCS § 1640(f). St. Germain v Bank of Hawaii (1976, DC Hawaii) 413 F Supp 587,* revd on other grounds (1977, CA9 Hawaii) *573 F2d 572.*

Good faith compliance defense is available to creditor who relies on official Board staff interpretation of *12 CFR § 226.4(b)(4)* which is contrary to language of Truth in Lending Act (*15 USCS § 1640(f)*). *Smith v Lewis Ford, Inc. (1978, WD Tenn) 456 F Supp 1138.*

Automobile dealer does not violate disclosure provisions of Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z (12 CFR Part 226), where dealer's customer order form incorporates in good faith language of official staff interpretation of Federal Reserve Board, by which it attempts to defer irrevocable purchase contract until customers accept financing contract, which itself contains full disclosure of financing terms. *Boksa v Keystone Chevrolet Co. (1982, ND Ill) 553 F Supp 958.*

Exemption from liability found in *15 USCS § 1640(c)* was available upon clear showing that creditor prepared allegedly defective disclosure forms in reliance upon written staff opinions of Federal Reserve Board, since such opinions were necessary part of Board's performance of its responsibilities to administer and enforce Truth in Lending Act; but where creditor had made no effort to keep up with decisional law, there having been three decisions in creditor's federal court district contrary to Board's interpretation, creditor's failure to be familiar with such law and to comply therewith was not unintentional and bona fide error needed for exemption from liability under § 1640(c) [prior to enactment of *15 USCS § 1640(f)*]. Rolader v Georgia Power Co. (1974, FDC Ga) CCH CCG P 98684.

**41. Pamphlets and publications of Federal Reserve Board**

Good faith defense claiming reliance upon Federal Reserve Board pamphlet entitled "What You Ought to Know

About Federal Reserve Regulation Z and Exhibit E" is not available since such pamphlet is not "rule, regulation, or interpretation thereof by the Board." *Jacklitch v Redstone Federal Credit Union (1980, CA5 Ala) 615 F2d 679, 28 UCCRS 1494.*

Those disclosure elements of department store's credit coupon book plan which conformed to Federal Reserve Board publications and which reflected both Federal Reserve Board and Federal Trade Commission reviews, came squarely within bounds of *15 USCS § 1640(c)*, where it was found that defendant department store did not intend to violate provisions of Truth in Lending Act with regard to defective disclosure, and that violations resulted from good faith errors notwithstanding maintenance of reasonable procedures to avoid such errors. *Welmaker v W. T. Grant Co. (1972, ND Ga) 365 F Supp 531, 18 FR Serv 2d 280.*

Finance company was not relieved from liability for Truth in Lending Act violation [prior to enactment of *15 USCS § 1640(f)*] because deficient loan disclosure statement was patterned after model form appended to pamphlet published by Board of Governors of the Federal Reserve System entitled "What You Ought to Know About Truth in Lending"; such outside pamphlet material was not law, even though prepared by governmental body authorized to promulgate regulations having force of law; *15 USCS § 1640(c)* was not applicable, since acts of finance company, although they may have been in good faith, were nevertheless done intentionally and not by mistake. *Johnson v Associates Fin. (1974, SD Ill) 369 F Supp 1121.*

Creditor's contention that it is in good faith compliance with lending laws by patterning disclosure on Federal Reserve pamphlet is unavailing where even cursory comparison between forms indicates creditor's form is significantly less precise than Board pamphlet. *Sneed v Beneficial Finance Co. (1976, DC Hawaii) 410 F Supp 1135, 19 UCCRS 1223.*

"What You Ought To Know About Federal Reserve Regulation Z," published by Federal Reserve Board, is model disclosure statement published as demonstration of how creditor may comply with disclosure requirements; where it contained less information about attachment of security interest to after-acquired property than defendant's disclosure form, defendant would be covered on this issue under *15 USCS § 1640(f)*. *In re Dickson (1977, WD NC) 432 F Supp 752.*

Even though 1974 amendment to *15 USCS § 1640*, which added provision that no liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by Federal Reserve Board is of retroactive effect, defendant cannot rely on pamphlet issued by Federal Reserve Board, "What You Ought To Know About Federal Reserve Regulation Z," since pamphlet does not constitute rule, regulation, or interpretation thereof by Board; while 1976 amendment expands defense, latter amendment is not retroactive; in any event pamphlet is inappropriate for good faith defense because of its unofficial nature; defendant could also not rely on leaflet issued by Credit Union National Association, even though there was evidence that members of Federal Reserve Board staff participated in compilation of leaflet and that it was reviewed by Federal Reserve and praised highly, since informal approval by Board is inadequate and approval by staff is prohibited. *Jacklitch v Redstone Federal Credit Union (1979, ND Ala) 463 F Supp 1134.*

**42. Miscellaneous**

Good faith defense pursuant to *15 USCS § 1640(f)* is not available to creditor which fails to disclose to borrower that statutory nonrefundable fee is "prepaid finance charge," and where loans are executed prior to date Federal Reserve Board issued 12 CFR § 226.819, in which Board intended to exempt this type of prepaid loan fee from disclosure as "prepaid finance charge." *Jones v Community Loan Inv. Corp. (1976, CA5 Ga) 544 F2d 1228,* reh den (1977, CA5 Ga) *545 F2d 1298* and cert den *(1977) 431 US 934, 53 L Ed 2d 250, 97 S Ct 2642.*

Creditors would not be protected under § 130(f) of Truth in Lending Act (*15 USCS § 1640(f)*) by supposed reliance upon amendatory regulation issued by Federal Reserve Board where loan was made prior to date on which Board issued

regulation. *McGowan v Credit Center of North Jackson, Inc. (1977, CA5 Miss) 546 F2d 73.*

Good-faith compliance defense (*15 USCS § 1640(f)*) is available only to those creditors who act or fail to act in good-faith reliance upon any rule, regulation, or interpretation formally adopted by Federal Reserve Board which is thereafter rescinded by Board or invalidated judicially; District Court errs in determining to require creditors to disclose their right to accelerate retail installment contract prospectively since Board, with respect to disclosure of acceleration clauses, had not formally interpreted Regulation Z nor had any portion of Regulation Z been invalidated judicially. *Kessler v Associates Financial Services Co. (1977, CA9 Hawaii) 573 F2d 577.*

Creditor, in relying on literal terms of Federal Reserve Board interpretation, has good faith defense under Truth in Lending Act (*15 USCS § 1640(f)*), as amended, against subsequent judicial determination that exception's literal terms are invalid where read too broadly. *Charles v Krauss Co. (1978, CA5 La) 572 F2d 544, 50 ALR Fed 192,* reh den (1978, CA5 La) *575 F2d 881.*

No civil liability can be imposed on creditor according to *15 USCS § 1640(f)*, as amended, for failure to make disclosure required by *15 USCS § 1639(a)(1)* where creditor's disclosure followed requirements of Regulation Z. *Basham v Finance America Corp. (1978, CA7 Ill) 583 F2d 918, 26 UCCRS 787,* cert den *(1979) 439 US 1128, 59 L Ed 2d 89, 99 S Ct 1046* and cert den *(1979) 444 US 825, 62 L Ed 2d 32, 100 S Ct 47.*

Mortgage company determined to have failed to comply with provision of Regulation Z concerning disclosure required in connection with variable rate mortgages (*12 CFR § 226.18(f)*), was not insulated from liability under *15 USCS § 1640(f)* even though it claimed to have acted in good faith in accordance with Federal Reserve Board's official interpretation of regulation, since § 1640(f) does not protect creditor who fails to conform with regulation through honest, good faith mistake, so that company's belief that regulation did not require further disclosure based on its mistaken interpretation of regulation in reliance on inapplicable interpretation did not protect it from liability. *Hendley v Cameron-Brown Co. (1988, CA11 Ga) 840 F2d 831.*

Creditor which did not disclose difference between amount of rebate due to debtor upon acceleration as computed by actuarial method and amount as computed by "rule of 78's" as finance charge would be protected from liability under § 130 of Truth In Lending Act (*15 USCS § 1640*) where creditor relied upon interpretation of Federal Reserve Board, incorporated in regulations promulgated under Act, that such difference did not constitute penalty charge where issue arose in prepayment situation, and it was reasonable to assume that Board would take same position as to use of rule of 78's when payment was accelerated. *Williams v Bill Watson Ford, Inc. (1976, ED La) 423 F Supp 345.*

Plaintiff's contention that creditor failed to properly disclose number of monthly installments to contract for sale of water heater was without merit where language used in contract was almost exactly same as that used in model form promulgated by Board of Governors of Federal Reserve Board since *15 USCS § 1640(f)* shields creditors from liability for good faith actions done pursuant to Board's interpretations of Truth in Lending Act. *Brown v Providence Gas Co. (1976, DC RI) 445 F Supp 459, 24 FR Serv 2d 1034.*

Because Federal Reserve Board official interpretation was issued after credit transaction took place, it could not be controlling in court action based upon that transaction, but court would deem it entitled to substantial weight. *In re Dickson (1977, WD NC) 432 F Supp 752.*

Assignee of retail installment sales contract could not rely on defense provided by *15 USCS § 1640(f)* for lender who has acted in good faith conformity with any rule, regulation, or interpretation thereof by Federal Reserve Board where contract was made 2 years prior to issuance of interpretations relied upon. *Tarplain v Baker Ford, Inc. (1979, DC RI) 466 F Supp 1340,* revd without op (1980, CA1 RI) *618 F2d 94* and revd without op (1980, CA1 RI) *618 F2d 94.*

Car dealer is granted summary judgment on issue of whether it inaccurately disclosed "license fee" to buyers by failing to indicate fact of or amount of upcharge, even though federal court disagrees with dealer's interpretation and holds that it must disclose either fact that there is upcharge or amount of upcharge, where dealer's reasonable

interpretation of commentary was in agreement with that made by many other courts, because *15 USCS § 1640(f)* "good-faith" defense applies. *Brown v Coleman Invs. (1998, MD La) 993 F Supp 439.*

Customer's Truth in Lending Act (*15 USCS §§ 1601* et seq.) claim against used car dealer is denied summarily, even though it is unclear whether dealer's nondisclosure that it kept portion of $ 110 license fee for itself in retail installment contract was violation of *15 USCS § 1638(a)(2)(B)(iii)* and *12 CFR § 226.18(c)(1)(iii)*, because dealer's "good-faith conformity" defense set forth in *15 USCS § 1640(f)* is applicable under facts of this case. *Turner v II Diamond Motors (1998, MD La) 995 F Supp 644.*

Although consumer and her lawyers may have been unwilling to litigate case due to fact that it may not have provided them with enough financial incentive to justify their efforts, in light of fact that arbitration clause did not limit consumer's right to recover costs and attorneys fees under *15 USCS § 1640*, court could not conclude that either consumer or her attorneys were so lacking in economic incentive to warrant finding that class action prohibition in arbitration provision was unconscionable. *Billups v Bankfirst (2003, MD Ala) 294 F Supp 2d 1265.*

*15 USCS § 1640* makes it clear that right to recover attorney's fees and costs is contingent upon court's finding that plaintiffs are entitled to rescission. *Egipciaco Ruiz v R&G Fin. Corp. (2004, DC Puerto Rico) 313 F Supp 2d 48.*

Consumer who takes judicial action to establish right to rescind can recover attorneys' fees from assignee; to find otherwise would thwart policy aims of Truth in Lending Act, *15 USCS § 1601* et seq. *Briggs v Provident Bank (2004, ND Ill) 349 F Supp 2d 1124.*

While *15 USCS § 1640(f)* provided that good-faith compliance with Commentary to *12 CFR § 226.23* protected lender from civil liability under Truth in Lending Act, and *15 USCS § 1604(b)* provided that lender was also shielded from liability if it provided its disclosures using one of model forms prescribed by Federal Reserve Board, defendant loan originator rendered annual percentage rate disclosure to plaintiff borrowers unclear by defining annual percentage rate as "the cost of your credit as yearly rate" but also used same term to define initial interest rate on payment-option adjustable rate mortgage, and compliance with Regulation Z, 12 CFR pt. 226, was not dispositive where another disclosure rendered particular term ambiguous. *Jordan v Paul Fin., LLC (2009, ND Cal) 644 F Supp 2d 1156.*

Debtors who prevailed on truth-in-lending claims and received award of statutory damages pursuant to *15 USCS § 1640(2)(A)(iii)* in adversary proceeding in Chapter 13 bankruptcy case were entitled to attorney fees under § 1640(a)(3), although they did not obtain rescission; fee award is mandatory when plaintiff brings successful action under *15 USCS § 1635*. *Mourer v Equicredit Corp. of Am. (In re Mourer) (2004, BC WD Mich) 313 BR 701.*

Mortgage borrower's claim of violations of Usury Statute, *D.C. Code § 28-3301* et seq., disclosure requirements was time-barred since Truth in Lending Act's (TILA) statute of limitations applied, and borrower did not bring action for civil liability, for TILA disclosure violations, within one year from date of respective closing of her mortgage loans. *Johnson v Long Beach Mortg. Loan Trust 2001-4 (2006, DC Dist Col) 451 F Supp 2d 16.*

**VI.STATUTE OF LIMITATIONS 43. Generally**

One-year limitations period provided in *15 USCS § 1640(e)* is not jurisdictional. *Burney v Citicorp Homeowners, Inc. (1983, SD Ala) 36 FR Serv 2d 295.*

Language of *15 USCS § 1640(e)* specifically provides that borrower may assert violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., as matter of defense by recoupment or set-off even after one-year statute of limitations has expired; thus, § 1640(e) recognizes fundamental difference between borrower's initiation of lawsuit by filing of claim, which must occur within one year, and defensive assertion of TILA violation in action brought by TILA creditor, which borrower may make at any time in response to creditor seeking payment of debt. *Roach v Option One Mortg. Corp. (2009, ED Va) 598 F Supp 2d 741,* injunction den (2009, ED Va) *2009 US Dist LEXIS 11262.*

Primary purpose of *15 USCS § 1640* is enforcement of Truth in Lending Act, not compensation for injuries suffered by debtor and limitation period of *15 USCS § 1640(e)* requiring debtor to bring civil action within 1 year from date of occurrence of violation precludes attempts to enforce Act by way of defense where he has failed to attempt to do so within 1 year by affirmative action. *Shannon v Carter (1978) 282 Or 449, 579 P2d 1288,* cert den *(1979) 439 US 1090, 59 L Ed 2d 57, 99 S Ct 873.*

**44. Relationship with state laws**

As matter of comity, Georgia state statute precluding adjudication of Truth-In-Lending claims that are not asserted in precedent Georgia state court suits on underlying debt operates in Fifth Circuit cases, but only on prospective basis. *Chapman v Aetna Finance Co. (1980, CA5 Ga) 615 F2d 361.*

Recovery by putative class of purchasers for alleged violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and for alleged violations of Florida Retail Installment Sales Act (FRISA), Fla. Stat. ch. 520.34, were limited in scope by one year limitations period for TILA claims and four year limitations period for FRISA claims; thus, court created two separate classes of plaintiffs depending upon when their violation occurred. *Brown v SCI Funeral Servs. of Fla., Inc. (2003, SD Fla) 212 FRD 602.*

Although federal claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was time-barred pursuant to *15 USCS § 1640(e)*, state claims were derived from common nucleus of operative fact--mortgage loan transaction--so that exercise of supplemental jurisdiction was proper pursuant to *28 USCS § 1367(c). Darling v Western Thrift & Loan (2009, DC Me) 600 F Supp 2d 189.*

In state court action seeking to recover judgment for deficiency allegedly due after repossession and resale of defendant's automobile purchased under retail installment sales contract, defendant's counterclaim seeking damages under Truth in Lending Act for failure to make certain disclosures was timely although such counterclaim was filed more than 1 year after date of occurrence of alleged violations; 1-year limitation contained in [predecessor to] *15 USCS § 1640(e)* was not such integral part of Truth in Lending Act as to outweigh combined purposes of such Act and state statute of limitations pertaining to counterclaims. *Wood Acceptance Co. v King (1974, 1st Dist) 18 Ill App 3d 149, 309 NE2d 403.*

In action by creditor against borrower in detinue, borrower's counterclaim under Truth in Lending Act is timely although asserted more than one year from date of occurrence of alleged violation where state procedural rule permits relation back of counterclaim to time original plaintiff's claim arose. *Hagler v Ford Motor Credit Co. (1978, Ala Civ App) 367 So 2d 468,* cert den (1979, Ala) *367 So 2d 470.*

In absence of indication as to intent of Congress, limitation sections of Truth-in-Lending Act (*15 USCS §§ 1631* et seq.) are construed according to state law; where under state practice, limitations do not bar "mere defenses" arising out of transaction connected with plaintiff's claim, plaintiff lender, seeking recovery of unpaid principal more than 1 year after loan is made, has claim which is subject to borrower's assertion of violation of Truth-in-Lending Act and penalty as defense in nature of recoupment, even though such borrower is barred from raising issue in affirmative action. *Empire Finance Co. v Ewing (1977, Ky App) 558 SW2d 619.*

When lender who is subject to Truth in Lending Act brings timely action on note alleging that debtor has defaulted, debtor is not barred, under Oklahoma law, by one-year limitation of *15 USCS § 1640(e)* from asserting as counterclaim, setoff, or recoupment, violations of credit disclosure provisions of Act. *Stephens v Household Finance Corp. (1977, Okla) 566 P2d 1163.*

**Unpublished Opinions**

Unpublished: While the limitations period of *15 USCS § 1640(e)* expired for seeking damages for violation of the Truth in Lending Act, *15 USCS §§ 1601* et seq., a bankruptcy debtor's claim for damages was equitably deemed an

affirmative defense of recoupment to a mortgage lender's proof of claim in the bankruptcy case, which was permitted by state law, and the defense was excepted from the limitations period pursuant to § 1640(e). *Orr v Ameriquest Mortg. Co. (In re Hollis) (2009, BC DC NJ) 2009 Bankr LEXIS 3020.*

**45. Accrual of statute of limitations**

One year limitation period commenced when credit was extended, at consummation of transaction without proper disclosure, not when loan matured, barring action filed more than one year after consummation of loan transaction. *Dau v Federal Land Bank (1985, ND Iowa) 627 F Supp 346, CCH Fed Secur L Rep P 92832.*

Claim brought more than one year after settlement of loan for which required disclosures were not made was time-barred because Truth in Lending Act's one year statute of limitations runs from date of occurrence of violation. *Lawson v Nationwide Mortg. Corp. (1986, DC Dist Col) 628 F Supp 804.*

"Occurrence of violation" in *15 USCS § 1640(e)* means date borrower enters into loan agreement or, in alternative, when lender performs by transmitting loan funds to borrower. *Boursiquot v Citibank F.S.B. (2004, DC Conn) 323 F Supp 2d 350.*

Mortgage company's motion for summary judgment as to homeowners' claim for statutory damages under Truth In Lending Act was granted because homeowners brought their claim more than one year after mortgage transaction at issue; thus, claim was barred by applicable one year statute of limitations found in *15 USCS § 1640(e). Tucker v Beneficial Mortg. Co. (2006, ED Va) 437 F Supp 2d 584.*

Applicable statute of limitations is one year from date of occurrence of violation, and date transaction is entered into is date of violation. *Patterson v DAC Corp. of North Carolina (1984) 66 NC App 110, 310 SE2d 783.*

Cause of action for alleged violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) accrues at time parties contract. *Household Consumer Discount Co. v Vespaziani (1978) 255 Pa Super 367, 387 A2d 93,* revd on other grounds *(1980) 490 Pa 209, 415 A2d 689.*

**46.--Particular cases**

Credit transaction which requires disclosures under Truth in Lending Act is completed when lender and borrower contract for extension of credit, and disclosures must be made sometime before this event occurs; if disclosures are not made, violation of Act occurs, at latest, when parties perform their contract, and statute of limitations begins to run from date of performance. *Wachtel v West (1973, CA6 Tenn) 476 F2d 1062,* cert den *(1973) 414 US 874, 38 L Ed 2d 114, 94 S Ct 161.*

Purchaser who had executed, more than one year before filing complaint, purchase agreement which contained no credit terms and did not identify prospective creditor, was not barred by statute of limitations under *15 USCS § 1640(e),* where purchaser did not sign note and security agreement until less than one year prior to filing of complaint. *Stevens v Rock Springs Nat'l Bank (1974, CA10 Wyo) 497 F2d 307.*

In case involving incomplete, inaccurate or misleading disclosure of terms of open end credit plan, statute of limitations under Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) does not begin to run until imposition of finance charge after first transaction, since prior to this time debtor would not have had opportunity to realize inadequacy of disclosure. *Goldman v First Nat'l Bank (1976, CA7 Ill) 532 F2d 10, 21 FR Serv 2d 710, 36 ALR Fed 638,* cert den *(1976) 429 US 870, 50 L Ed 2d 150, 97 S Ct 183.*

One year limitation on actions provided under *15 USCS § 1640(e)* commences for purposes of action alleging failure to make disclosures regarding closed-end sales, in violation of *15 USCS § 1638,* at time installment purchase contracts were entered into. *Bartholomew v Northampton Nat'l Bank (1978, CA3 Pa) 584 F2d 1288, 49 ALR Fed 767.*

One-year limitations period under *15 USCS § 1640(e)* commences when credit transaction is completed and debtors' action for damages under Truth-in-Lending Act is time barred under where promissory note was signed more than one year before debtors filed complaint under Act. *Rudisell v Fifth Third Bank (1980, CA6 Ohio) 622 F2d 243* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Claim accrues under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) with respect to closed-end transactions when credit is extended through consummation of transaction between creditor and customer without required disclosures being made, regardless of provision in credit agreement that agreement dates back to some earlier time. *Dryden v Lou Budke's Arrow Fin. Co. (1980, CA8 Mo) 630 F2d 641.*

Mortgagors' action under Truth In Lending Act (*15 USCS §§ 1601* et seq.), based on mortgagee's failure to comply with disclosure requirements in connection with interest rate increase pursuant to variable rate provision of mortgage agreement, was timely filed where brought within one year from date increase took effect, although more than one year after receipt of notice of intended increase, since violation was consummation of new credit transaction without making required disclosures, rather than issuance of notice of rate increase, so that limitations period did not begin to run until new rate took effect. *Nash v First Financial Sav. & Loan Asso. (1983, CA7 Wis) 703 F2d 233.*

One-year period of limitation had run on borrowers' Truth in Lending Act claim against mortgage company; failure to make required disclosures occurred, if at all, at time borrowers signed loan documents, and borrowers produced no evidence of undisclosed credit terms, or of fraudulent concealment or other action on part of mortgage company that prevented borrowers from discovering their claim. *Meyer v Ameriquest Mortg. Co. (2003, CA9 Cal) 331 F3d 1028, 2003 CDOS 4855, 2003* Daily Journal DAR 6142, amd on other grounds, reh den, reh, en banc, den (2003, CA9) *342 F3d 899* and reprinted as amd (2003, CA9 Cal) *342 F3d 899.*

Where electric utility installed underground connections in housing development and assessed surcharges alleged to be in violation of Truth in Lending Act, statute of limitations under *15 USCS § 1640(e)* started to run at time contract was formed between utility and homeowners, which time was either when homeowners first used underground service in 1969, or when they were individually notified of surcharge in January, 1973; in either case, action filed April 10, 1974, was barred. *Munson v Orrin E. Thompson Homes, Inc. (1974, DC Minn) 395 F Supp 152.*

Although public policy of promoting informed consumer credit shopping under Truth in Lending Act (*15 USCS §§ 1601* et seq.) can be fully effectuated only if there is relief for violations occurring after consummation of retail credit transaction, where borrower's claim was based on initial retail installment contract which was entered into more than one year prior to institution of action, any violation of duty to make disclosures required in initial contract would be barred under *15 USCS § 1640* and borrower could prosecute action only as to violations occurring within one year time period. *Partida v Warren Buick, Inc. (1978, ND Ill) 454 F Supp 1366.*

Since when there is simple deferral or extension of credit, no disclosures are required (*12 CFR § 226.8*), claim under Truth in Lending Act (*15 USCS § 1640*) must be dismissed where original loan transaction occurred 22 months prior to filing of suit, even though loan was extended within 1 year statute of limitations under § 1640. *Jacklitch v Redstone Federal Credit Union (1979, ND Ala) 463 F Supp 1134.*

Action under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.), alleging company did not correctly disclose to consumers method by which finance charges were computed under open end credit plan, is time-barred where filed more than one year after date when finance charge was imposed that put plaintiff on notice that violation may have occurred. *Baskin v G. Fox & Co. (1982, DC Conn) 550 F Supp 64.*

Claim was not timely filed under *15 USCS § 1640(e)* where (1) borrowers took out construction loan, part of which was used to finance acquisition of land and balance of which was placed into building fund account, (2) suit was not brought within one year of signing of promissory note, and (3) borrowers assert no reason for equitable tolling of limitations period, because limitations period started to run when promissory note was signed, notwithstanding

borrowers' contention that limitations period began to run when all of funds had been utilized and suit was filed within one year of funds running out. *Steib v St. James Bank & Trust Co. (1986, ED La) 642 F Supp 910.*

Borrower's Truth In Lending Act (*15 USCS §§ 1601* et seq.) (TILA) claims against lender are barred by one-year statute of limitations, where notice of last contested interest rate change occurred on May 1, 1991 and case was not brought until July 1, 1992, since notice provided borrower with reasonable opportunity to discover violations. *Hubbard v Fidelity Fed. Bank (1993, CD Cal) 824 F Supp 909, 93* Daily Journal DAR 8534, affd, in part, revd, in part, remanded (1996, CA9 Cal) *91 F3d 75, 96 CDOS 5478, 96* Daily Journal DAR 8958, amd on other grounds, reh den (1996, CA9) 96 Daily Journal DAR 12075.

Where borrower's Alzheimer's disease and dementia prevented her from knowing about and acting on her legal rights, her estate's claims under various federal and state statutes, including Lending Act and Home Ownership and Equity Protection Act, were timely because they did not accrue until after borrower died and estate administrator learned of borrower's home-equity loan. *Estate of Henderson v Meritage Mortg. Corp. (2003, ND Ill) 293 F Supp 2d 830.*

Purchasers' complaint under Truth in Lending Act was dismissed with prejudice where it was apparent from face of complaint that statute of limitations under *15 USCS § 1640(e)* barred claim against seller and it was beyond doubt that purchasers could prove no basis for equitable tolling. *Hart v V.B. Invs., Inc. (2005, MD Fla) 18 FLW Fed D 841.*

Loan that borrowers took out two years after their acquisition of property in order to complete construction of home was residential mortgage transaction under *15 USCS § 1602(w)*, part of Truth in Lending Act (TILA), and loan was therefore nonrescindable under *15 USCS § 1635(e)(1)*; as result, borrowers' TILA claims were time-barred under *15 USCS § 1640(e)* because they were brought more than one year after loan transaction. *Perkins v Cent. Mortg. Co. (2006, ED Pa) 422 F Supp 2d 487.*

Where plaintiff consumer began challenging his credit card statements in January 2002 and his attorney began corresponding with defendant bank in June 2002, consumer's Fair Debt Collection Practices Act and Truth-in-Lending Act claims should have been filed no later than June 2003, one year after attorney contacted bank, and thus suit filed in July 2003 was time barred by *15 USCS § 1692k(d)* and *15 USCS § 1640(e)*. *Deaville v Capital One Bank (2006, WD La) 425 F Supp 2d 744.*

Credit card holder failed to state claim against bank under *15 USCS § 1601* for alleged violations of Truth in Lending Act because there was no evidence that bank failed to make proper initial disclosures and any claims under Act were barred by one year limitations period of *15 USCS § 1640(e)* as computed under *Fed. R. Civ. P. 6(a)*. *Gengo v Target Nat'l Bank (2007, SD Tex) 513 F Supp 2d 842.*

Borrowers' claims for damages under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., pursuant to *15 USCS § 1640(a)*, was time-barred pursuant to § 1640(e) as they filed their complaint more than two years after mortgage transaction in issue was consummated; time of violation was date of consummation, and borrowers would have had to file their complaint within one year, assuming that they could establish violation to *TILA. De Jesus-Serrano v Sana Inv. Mortg. Bankers, Inc. (2007, DC Puerto Rico) 552 F Supp 2d 191*, summary judgment gr, claim dismissed, judgment entered (2007, DC Puerto Rico) *552 F Supp 2d 196.*

Consumers' action was timely as it was filed within one-year of their request for rescission; statute of limitations, *15 USCS § 1640(e)*, would have begun to run at time bank failed to honor their rescission request based on prior alleged notice violation. *Buick v World Sav. Bank (2008, ED Cal) 2008 US Dist LEXIS 48801*, motion den, motion to strike den (2008, ED Cal) *565 F Supp 2d 1152.*

Credit card company was granted summary judgment on consumer's claim brought under Truth in Lending Act, *15 USCS § 1643*, arising out of alleged unauthorized use of his credit card, because (1) consumer did not file action until more than one year after he discovered unauthorized uses, as defined by *15 USCS § 1602(o)*, so claim was time-barred

under *15 USCS § 1640(e)*; (2) consumer's argument that no contractual obligation existed between consumer and company because underlying charges were fraudulent, and thus, statute of limitations did not begin to run at time of alleged unauthorized uses, was inconsistent with language of *15 USCS § 1643*, which presupposed some type of contractual relationship between cardholder and card issuer, and record, which contained allegations of existence of contractual relationship and breach of cardholder agreement; and (3) statute of limitations was not tolled in light of *15 USCS § 1666* and its enacting regulation because § 1666 set forth different cause of action, complaint was devoid of allegations that would state claim under § 1666, and even if properly pled, there was no evidence in record that contradicted company's claim that consumer failed to comply with notice requirements of § 1666. *Asher v Bank One (2008, ND Ill) 538 F Supp 2d 1037.*

Plaintiff alleged that loan agreements at issue were either forged by representative of bank or, in alternative, that bank representative deceived her into signing blank documents; if documents were forged, Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., disclosures would have been inapplicable, whereas if plaintiff signed blank documents, she would have discovered lack of disclosures at time she signed blank bank documents, more than year prior to filing of original complaint in this case; thus, she could not prevail on her TILA claims. *Gray v First Century Bank (2008, ED Tenn) 547 F Supp 2d 815.*

Plaintiffs were seeking damages against bank based on its loan transaction and failure of bank to provide certain disclosures, not based on valid request for rescission, so their damages claims were subject to one-year limitations period following date of transaction with bank. *Blue v Fremont Inv. & Loan (2008, DC Dist Col) 562 F Supp 2d 33.*

Mortgage company was entitled to dismissal of lawsuit filed by borrowers who alleged violation of disclosure requirements of Truth in Lending Act, *15 USCS §§ 1601* et seq.; suit was barred by applicable statute of limitations under *15 USCS § 1640(e)*, which expired one-year after borrowers executed adjustable rate note and deed of trust. *Lynch v RKS Mortg., Inc. (2008, ED Cal) 588 F Supp 2d 1254.*

Homeowners' claim under Home Ownership Equity Protection Act against loan servicer could not be amended to state claim because claim was time-barred under one-year statute of limitations under *15 USCS § 1640(e)*. *Biggins v Wells Fargo & Co. (2009, ND Cal) 266 FRD 399, 74 FR Serv 3d 25.*

Plaintiff became aware of difference between what she alleged was fixed nature of payment schedule as allegedly represented by agent and variable nature of payment schedule as described in disclosure documents when lender notified her in January 2007 that her monthly payment would increase more than she had anticipated, that future variations in payment amounts may occur, and that her interest rate could rise as high as 12.75 percent under certain circumstances; at that point, she was on clear notice that any representation by alleged agent to contrary was untrue and unreliable and one-year statute of limitations period commenced to run. *Roach v Option One Mortg. Corp. (2009, ED Va) 598 F Supp 2d 741*, injunction den (2009, ED Va) *2009 US Dist LEXIS 11262.*

Borrowers admitted that they consummated loans in 2005, however, they did not file their complaint until October 8, 2008; as such, Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claims were time barred because they were filed more than one year after borrowers entered into relevant agreements. *Ayala v World Sav. Bank, FSB (2009, CD Cal) 616 F Supp 2d 1007.*

In case in which (1) loan transaction occurred on or about April 25, 2005; (2) case was filed on May 28, 2009; and (3) homeowner, in attempt to prevent foreclosure, sought preliminary injunction and temporary restraining order, alleging that lender and real estate had violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., homeowner failed to show likelihood of success on his TILA claim since it appeared to be time-barred under *15 USCS § 1640(e)*. *Winstead v EMC Mortg. Corp. (2009, DC Dist Col) 621 F Supp 2d 1.*

Mortgagors' claim for damages against loan servicer was time-barred under *15 USCS § 1640(e)* where they filed lawsuit more than two years after they entered loan transaction, and there was no allegation in complaint suggesting that

any violation under Truth in Lending Act. *15, USCS §§ 1610* et seq., would have accrued on later date. *Nool v Homeq Servicing (2009, ED Cal) 653 F Supp 2d 1047.*

Husband's and wife's claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., against two banks were time-barred pursuant to *15 USCS § 1640(e)* where limitations period started on date husband wife signed their loan documents, they filed their complaint nearly three years later, and thus, claims were filed outside limitations period. *Vega v JP Morgan Chase Bank, N.A. (2009, ED Cal) 654 F Supp 2d 1104, 74 FR Serv 3d 837.*

The one year provision contained in *15 USCS § 1640(e)* commences on date that loan is executed. *Barkho v Homecomings Fin., LLC (2009, ED Mich) 657 F Supp 2d 857.*

Borrower's TILA claim for damages against lender failed because claim was barred by one-year limitations period of *15 USCS § 1640(e)*; TILA rescission claim failed because payment schedule including legal obligation of minimum payment could not be basis for violation of Regulation Z and TILA and there were insufficient facts to support violations of claim based on APR disclosure under *15 USCS §§ 1605* and *1606. Conder v Home Sav. of Am. (2010, CD Cal) 680 F Supp 2d 1168.*

Borrower's claim that lenders failed to comply with disclosure requirements of Truth in Lending Act, *15 USCS §§ 1601-1667*, was time barred because suit was not filed within one year of settlement of loans, as required by *15 USCS § 1640(e). Pena v A. Anderson Scott Mortg. Group, Inc. (2010, DC Dist Col) 692 F Supp 2d 102.*

Debtor was not entitled to civil penalties under *15 USCS § 1640* in truth in lending action against creditor where claim for statutory damages was barred by statute of limitations. *Webster v Centex Home Equity Corp. (In re Webster) (2003, BC WD Okla) 300 BR 787* (criticized in *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602).*

For purposes of affirmative monetary recovery resulting from failure to disclose, claim filed on November 5, 2003, more than one year after violation at issue, which occurred November 5, 2003 when loan was closed (i.e., transaction was consummated), was dismissed. *Escher v Decision One Mortg. Co., LLC (In re Escher) (2007, BC ED Pa) 369 BR 862.*

Debtor's claim for violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., was time barred because debtor did not bring action within one year of alleged violation. *Vincent v Ameriquest Mortg. Co. (In re Vincent) (2008, BC DC Mass) 381 BR 564.*

Chapter 13 debtors' damage claim under *15 USCS § 1640* was time barred because they did not allege violation of Truth-In-Lending Act until over two years after final Truth-In-Lending disclosure statement was provided to them. *Figard v PHH Mortg. Corp. (In re Figard) (2008, BC WD Pa) 382 BR 695.*

Chapter 7 trustee's claim seeking damages under Truth in Lending Act, *15 USCS §§ 1601-1693*, from lender who allegedly failed to provide Chapter 7 debtor with Notice of Right to Cancel when it loaned debtor money before she declared bankruptcy was barred by one-year statute of limitations contained in *15 USCS § 1640(e)* because violation occurred in October 2005 and trustee did not file her adversary proceeding until January 2008; however, facts alleged gave debtor right to rescind transaction, and that right was not barred because it was subject to three-year statute of limitations contained in *15 USCS § 1635(f). Helbling v Fox (In re Fox) (2008, BC ND Ohio) 391 BR 772.*

Adversary proceeding Chapter 13 debtor filed against mortgage company, claiming that mortgage company violated Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS § 1639*, was not time-barred under one-year statute of limitations imposed by *15 USCS § 1640(e)* because mortgage company had filed secured claim against debtor's bankruptcy estate and debtor's claim was in nature of recoupment against mortgage company's claim; state law on recoupment also allowed debtor to seek payment of attorney fees and costs she incurred in suing mortgage company, but only to extent any recovery was limited to reducing company's

allowed claim. *Wentz v Saxon Mortg. (In re Wentz) (2008, BC SD Ohio) 393 BR 545.*

In action by bank against debtor on Bankamericard account, debtor's counterclaim under Truth in Lending Act (*15 USCS §§ 1601* et seq.) is barred by statute of limitations as provided in *15 USCS § 1640(e)* where last credit transaction occurred more than 1 year prior to debtor's counterclaim. *Shaw v First Nat'l Bank (1977) 143 Ga App 416, 238 SE2d 719.*

In lawsuit filed on March 30, 2005, borrower claimed that her mortgage lender failed to make any Truth in Lending Act (TILA) disclosures with respect to her mortgage loan; however, because loan closed on April 2, 2001, borrower's TILA claim for alleged violation expired one year later on April 2, 2002; because borrower did not file her claim against lender within one-year statutory period set forth in *15 USCS § 1649(e)*, her claim against lender was time barred. *Johnson v Long Beach Mortg. Loan Trust 2001-4 (2006, DC Dist Col) 451 F Supp 2d 16.*

Borrower's claim against finance company for alleged violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., was barred by one-year statute of limitations under *15 USCS § 1640(e)* because borrower signed mortgage loan documents more than two and one-half years before borrower first filed action against finance company; furthermore, factual allegations in borrower's complaint did not show that, despite exercise of due diligence, borrower could not have discovered facts forming basis of his claim within statutory limitation period. *Schmidt v Household Fin. Corp., II (2008, Va) 661 SE2d 834.*

**Unpublished Opinions**

Unpublished: Violation of *15 USCS § 1643* was deemed to have occurred, and limitations period under *15 USCS § 1640(e)* began to run, when defendant bank notified plaintiff credit cardholder that it deemed him liable for charges that were fraudulently made by cardholder's personal secretary; because cardholder's suit against bank was filed within year of when that occurred, suit was not time-barred. *Asher v Chase Bank United States, N.A. (2009, CA7 Ill) 2009 US App LEXIS 3733.*

Unpublished: Conclusion that *15 USCS § 1643* is violated when sale transaction is "consummated" is inconsistent with statutory scheme under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., Federal Reserve Board's interpretation of its Regulation Z, and text of § 1643; violation of *15 USCS § 1643* occurs when card issuer notifies cardholder that despite cardholder's claim of fraud, card issuer will not reimburse cardholder for disputed amount. *Asher v Chase Bank United States, N.A. (2009, CA7 Ill) 2009 US App LEXIS 3733.*

Unpublished: Consumer's action against banks alleging violations of Truth In Lending Act (TILA) was properly dismissed because (1) action was untimely under *15 USCS § 1640(e)* as it was filed more than one year after consumer closed on mortgage and signed TILA disclosure statements; (2) even if *15 USCS § 1635(f)* applied, complaint was filed after three-year period expired; and (3) consumer failed to show that equitable tolling applied. *Taggart v Chase Bank USA (2009, CA3 Pa) 2009 US App LEXIS 25904.*

Unpublished: Because alleged violation in plaintiffs' complaint (defendant mortgage company's failure to provide two copies to each plaintiff at closing) occurred more than one year prior to filing of their action, district court properly concluded that defendant was entitled to judgment in its favor on that claim. *Jobe v Argent Mortg. Co., LLC (2010, CA3 Pa) 2010 US App LEXIS 6961.*

Unpublished: Mortgage borrower's Truth in Lending Act claim against lender and loan servicer was time-barred even if discovery rule applied; borrower claimed to have been misled about adjustable nature of interest rate on loan, but borrower did not bring suit until four years after learning about adjustable rate. *Harris v Homecomings Fin. Servs. (2010, CA3 Pa) 2010 US App LEXIS 8595.*

**47. Continuing violations**

While provisions with respect to right of rescission (under *15 USCS § 1635*) seem to contemplate continuing violation when disclosures are not made, such is not case when damages are sought; credit transaction which requires disclosures under Truth in Lending Act is completed when lender and borrower contract for extension of credit and, under *15 USCS § 1639(b)*, disclosures must be made some time before this event occurs; if disclosures are not made, such violation of Act occurs, at latest, when parties perform their contract, and limitations on action for damages begin to run from date of performance. *Wachtel v West (1973, CA6 Tenn) 476 F2d 1062*, cert den *(1973) 414 US 874, 38 L Ed 2d 114, 94 S Ct 161*.

Where defendant made commitment to make mortgage loan on September 26, 1972, but mortgage contract was not executed until November 8, 1972, suit, predicated upon disclosure violations, which was filed on November 6, 1973, was not barred by statute of limitations contained in *15 USCS § 1640(e)*, since violation, which consisted of defendant's failure to disclose requirement of owner mortgage insurance, was of continuing nature from time of mortgage commitment until credit was actually extended on November 8, 1972. *Postow v Oriental Bldg. Ass'n (1975, DC Dist Col) 390 F Supp 1130.*

Notices of payment due sent by bank to borrowers did not constitute new "credit transactions" and did not have effect of bringing forward original credit transaction to date of notice so as to create continuing violation of Truth in Lending Act; thus, where original transaction occurred more than 1 year before action was brought, it was barred by *15 USCS § 1640(e)*. *Fenton v Citizens Sav. Asso. (1975, WD Mo) 400 F Supp 874.*

Lender's continued failure to comply with requirements of Truth in Lending Act [*15 USCS § 1635(b)*] and Regulation Z (*12 CFR § 226.9*) did not operate to toll limitation period for statutory penalty under *15 USCS § 1640(e)* since violation occurred at time credit was extended and action brought nearly 3 years after transactions was consummated was time-barred. *Harvey v Housing Development Corp. & Information Center (1978, WD Mo) 451 F Supp 1198.*

Credit card customer's action is timely where he alleges failure to disclose information in periodic statements as required by Truth in Lending Act (*15 USCS §§ 1601* et seq.), even though he filed suit more than 1 year after he first received one improper statement, because creditors have continuing statutory duty to provide information required by Act and Act should be liberally construed to foster its remedial purpose, and thus each failure to furnish required information is "fresh violation of the Act." *Schmidt v Citibank (South Dakota), N.A. (CBSD) (1986, DC Conn) 645 F Supp 214.*

Credit card holder's Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) claim is not time-barred, even though evidence showed plaintiff may have known of alleged nondisclosures as early as spring of 1984 but did not file complaint until late in 1985, because nondisclosure continues with each periodic statement and *15 USCS § 1640(e)* allows consumer to commence action within 1 year from any violation but restricts damages that may be awarded solely to those which occurred within year prior to bringing of suit. *Schmidt v Citibank (South Dakota) N.A. (CBSD) (1987, DC Conn) 677 F Supp 687.*

**48. Bankruptcy extension**

Bankruptcy trustee's action under Truth in Lending Act was not barred by limitations of *15 USCS § 1640(e)*, even though action was commenced after statute had run, because *11 USCS § 29(e)* gives trustee 2 years after adjudication of bankruptcy to bring any action not barred at time bankruptcy petition was filed, and action was not barred at time bankrupts filed their petition. *In re Dickson (1977, WD NC) 432 F Supp 752.*

*11 USCS § 108*, like predecessor, former *11 USCS § 29*, extends time for filing suit for trustee, but not for debtor; Bankruptcy Court does not have power to give debtors benefit of trustee's right to sue under *11 USCS § 108*, and, where trustee has abandoned Truth-in-Lending Act claim, and debtors' case has been dismissed, their only remedy is to seek to have bankruptcy case reinstated. *In re Craig (1980, BC ED Tenn) 7 BR 864, 7 BCD 22.*

**49. Tolling of statute of limitations**

Limitations period runs from date of consummation of transaction but doctrine of equitable tolling may, in appropriate circumstances, suspend limitations period until borrower discovers or has reasonable opportunity to discover fraud or nondisclosures that form basis of Truth in Lending Act Action, in order to prevent unjust results and maintain integrity of statute. *King v California (1986, CA9 Cal) 784 F2d 910,* cert den and app dismd *(1987) 484 US 802, 98 L Ed 2d 11, 108 S Ct 47,* reh den *(1987) 484 US 971, 98 L Ed 2d 412, 108 S Ct 474* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Payton v New Century Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366).*

Equitable principles can apply to toll limitations period contained in *15 USCS § 1640(e)*, since limitations period is not jurisdictional, but is merely ordinary statute of limitations engrafted upon separate jurisdictional grant. *Ramadan v Chase Manhattan Corp. (1998, CA3 NJ) 156 F3d 499.*

Statute of limitations provided in TILA is subject to equitable tolling. *Ellis v GMAC (1998, CA11 Ala) 160 F3d 703.*

Where plaintiff brought class action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) against number of lending institutions charging that they had provided inaccurate disclosure statements, statute of limitations was tolled for all members of asserted class even though plaintiff bringing suit may have had no cause of action against certain of defendants. *Chevalier v Baird Sav. Asso. (1976, ED Pa) 72 FRD 140, 1976-2 CCH Trade Cases P 61126, 24 FR Serv 2d 1094* (criticized in *In re Linerboard Antitrust Litig. (2001, ED Pa) 203 FRD 197, 7 CCH Trade Cases P 73426).*

Although Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., is subject to equitable tolling, doctrine was not applicable where plaintiff purchaser's allegations, that defendant car dealer backdated retail installment sales contract to conceal true annual percentage rate, did not constitute fraudulent concealment; delay in filing TILA claim was due to purchaser's ignorance, not to any affirmative act of dealer, and equitable tolling was not available and claim was time-barred. *Barnes v West, Inc. (2003, ED Va) 243 F Supp 2d 559.*

Mere nondisclosure provides insufficient grounds for tolling statute of limitations under *15 USCS § 1640(e)*, regardless of when borrower should have discovered nondisclosure; nondisclosure is not continuing violation for purposes of statute of limitations and required disclosures under Truth in Lending Act, *15 USCS § 1601* et seq., are to be made as of time that credit is extended, at which time adequacy and accuracy of disclosures are to be measured. *Boursiquot v Citibank F.S.B. (2004, DC Conn) 323 F Supp 2d 350.*

Action by borrowers against mortgage lender under Truth in Lending Act, *15 USCS § 1601* et seq., was time barred because it was not brought within one year of when borrowers entered into loan agreement; statute of limitations was not tolled even though borrowers could not have discovered alleged nondisclosures when they closed on loan. *Boursiquot v Citibank F.S.B. (2004, DC Conn) 323 F Supp 2d 350.*

Claims by cardholder that credit card issuers imposed erroneous finance charges, in violation of Fair Credit Billing Act, were not barred by one-year statute of limitations in *15 USCS § 1640(e)* because no violations occurred and, therefore, statute of limitations was never tolled. *Langenfeld v Chase Bank United States, N.A. (2008, ND Okla) 537 F Supp 2d 1181.*

*15 USCS § 1640*(e)'s one-year, jurisdictional, statute of limitations precluded plaintiff consumer's Federal Truth in Lending Act, *15 USCS §§ 1601* et seq., and Home Ownership and Equity Protection Act, *15 USCS §§ 1602(aa), 1639*, claims against defendants, alleged predatory lender and its principal; thus, sua sponte dismissal of those claims was required. *Griffith v Barnes (2008, DC Dist Col) 560 F Supp 2d 29.*

Mortgagors' claims for damages was not dismissed under *15 USCS § 1640(e)* where complaint did not foreclose possibility that equitable tolling could apply. *Plascencia v Lending 1st Mortg. (2008, ND Cal) 583 F Supp 2d 1090.*

Equitable tolling of *15 USCS § 1640(e)*'s one-year limitations period for claims for monetary damages was unwarranted because lender did not conceal any of challenged finance charges at any time and disclosure discrepancies identified by borrower were found on face of documents that were signed by borrower on or before closing date of mortgage transaction at issue. *Morilus v Countrywide Home Loans, Inc. (2008, ED Pa) 651 F Supp 2d 292.*

Consumers' claims that their lender violated Truth in Lending Act, *15 USCS § 1601*, et seq., were not brought within limitations periods of *15 USCS § 1640(e)* and *15 USCS § 1635(f)*, where relief was not requested from original creditor; their claim alleging secret fees stated claim for relief under *12 USCS § 2607(a)* of Real Estate Settlement Procedures Act, *12 USCS §§ 2601* et seq. *Brewer v Indymac Bank (2009, ED Cal) 609 F Supp 2d 1104.*

Mortgagors' claims that mortgagee violated Truth in lending Act, *15 USCS §§ 1601* et seq., and *15 USCS § 1639* were time-barred under *15 USCS § 1640(e)* where mortgagors had not filed action within one year of date they obtained loan, and they not explained why facts of case should have received benefit of equitable tolling. *Thielen v GMAC Mortg. Corp. (2009, ED Mich) 671 F Supp 2d 947.*

Borrower's claim for rescission failed to state claim because borrower did not indicate ability to tender as required under *Fed. R. Civ. P. 11* and Truth in Lending Act (TILA), *15 USCS § 1635*, and her claim for damages under TILA and Regulation Z failed to state claim because claim was time barred under *15 USCS § 1640* and borrower showed no basis for tolling for fraud or extraordinary circumstances. *Garcia v Wachovia Mortg. Corp. (2009, CD Cal) 676 F Supp 2d 895* (criticized in *Valdez v America's Wholesale Lender (2009, ND Cal) 2009 US Dist LEXIS 118241).*

Borrower's damages claim against lenders and its nominee was time-barred under *15 USCS § 1640(e)* where complained of violations occurred at time of closing, which was more than three years prior to complaint being filed, and borrower failed to explain why he was prevented from discovering alleged violations within one-year statutory period. *Lingad v IndyMac Fed. Bank (2010, ED Cal) 682 F Supp 2d 1142.*

Borrower's claim for damages under Truth In Lending Act, *15 USCS §§ 1601* et seq., brought against lender, lender's nominee, and bank was dismissed pursuant to *15 USCS § 1640(e)* where it was filed more than one year after loan transaction was consummated, and borrower had not alleged sufficient facts to invoke equitable tolling. *Sipe v Countrywide Bank (2010, ED Cal) 690 F Supp 2d 1141.*

In case arising from foreclosure proceedings in which mortgage company and others argued that owner's claims under Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) were time-barred and court construed owner's arguments as argument for equitable tolling of applicable statutes of limitations, neither statutes of limitations were subject to equitable tolling; statutes of limitations contained in both TILA and RESPA were jurisdictional and, therefore, not subject to equitable tolling. *Winstead v EMC Mortg. Corp. (2010, DC Dist Col) 697 F Supp 2d 1.*

**Unpublished Opinions**

Unpublished: In borrower's action against mortgage company for alleged violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., dismissal of action under *Fed. R. Civ. P. 12(b)(6)* was inappropriate notwithstanding fact that one-year time limit of *15 USCS § 1640(e)* had expired; allegations in complaint raised questions about reasonableness of borrower's ignorance of her TILA claims until after expiration of limitations period. *Amparan v Plaza Home Mortg. (2008, ND Cal) 2008 US Dist LEXIS 109148.*

**50.--Fraudulent concealment**

*15 USCS § 1640*(e) is subject to equitable tolling; for application of doctrine of fraudulent concealment, one year period begins to run when borrower discovers or has reasonable opportunity to discover fraud involving complained of Truth in Lending Act (*15 USCS §§ 1601* et seq.) violation. *Jones v TransOhio Sav. Asso. (1984, CA6 Ohio) 747 F2d 1037.*

For purposes of requirement, under *15 USCS § 1640(e)*, that Truth in Lending Act action be brought within one year from date of occurrence of violation, date of violation is deemed to be date on which transaction was consummated, and failure to comply with statutory duty of disclosure does not automatically constitute fraudulent concealment so as to toll statute of limitations. *Chevalier v Baird Sav. Ass'n (1974, ED Pa) 371 F Supp 1282, 1974-1 CCH Trade Cases P 75123, 18 FR Serv 2d 444.*

Although, under *15 USCS § 1640(e)*, date of violation is deemed to be date transaction was consummated, nevertheless, even though plaintiffs had consummated their mortgages more than one year before filing complaint challenging practice whereby savings and loan associations had charged monthly interest at beginning of each monthly period, thereby effectively raising plaintiffs' interest rates, finance charges, and annual percentage rates, running of statute of limitations might be barred under fraudulent concealment rule, since plaintiffs alleged that defendants concealed increases by use of false and misleading disclosure statements; although fraudulent concealment doctrine operates only where there has been no negligence or laches by plaintiffs in coming to knowledge of fraud, and although plaintiffs could have discovered their cause of action at time they received disclosure statements, averments that plaintiffs were not possessed of necessary expertise to permit them to make complex and sophisticated calculations involved might permit application of doctrine. *Chevalier v Baird Sav. Asso. (1975, ED Pa) 66 FRD 105, 19 FR Serv 2d 1293.*

Equitable doctrine of fraudulent concealment, whereby statute of limitations is tolled, is applicable to *15 USCS § 1640*, but fraudulent concealment does not exist for miscitation of state statute on loan form and debtor has notice of allegedly improper division of loan into two payment books and of alleged failure to accurately set forth method of computing late charges. *Davis v Edgemere Finance Co. (1981, DC Md) 523 F Supp 1121.*

Automobile purchaser failed to establish that dealership from which she had purchased automobile had engaged in course of conduct to conceal evidence of its alleged violations of Truth in Lending Act, or that she had exercised due diligence in seeking to discover facts underlying claim, as would allow limitations period of *15 USCS § 1640(e)* to be equitably tolled based on fraudulent concealment. *Evans v Rudy-Luther Toyota, Inc. (1999, DC Minn) 39 F Supp 2d 1177.*

In order for doctrine of equitable tolling to be applied in TILA action, plaintiff must show that his creditor fraudulently concealed violation. *Kelley v Galveston Autoplex (2000, SD Tex) 196 FRD 471.*

Mortgagors alleged that loan originators engaged in fraudulent, misleading, and deceptive efforts to conceal their alleged charges of fees in violation of Truth in Lending Act, so allegations were sufficient to allege equitable tolling of limitations period under *15 USCS § 1640(e)*. *McAnaney v Astoria Fin. Corp. (2005, ED NY) 357 F Supp 2d 578.*

Court denied defendants' *Fed. R. Civ. P. 12(b)(6)* dismissal motion because it could not conclude, on face of pleadings, that two consumers' Truth in Lending Act and Home Ownership and Equity Protection Act of 1994 claims were time-barred; although claims appeared to be untimely under one-year statute of limitations set out in *15 USCS § 1640(e)*, doctrine of equitable tolling might apply because, inter alia, consumers had alleged that defendants had conspired to exploit their financial needs and lack of sophistication and that they had intentionally defrauded them with regard to terms of mortgage loan that consumers received. *Wise v Mortgage Lenders Network USA, Inc. (2006, ED Pa) 420 F Supp 2d 389.*

Where borrower's claim that lenders failed to comply with disclosure requirements of Truth in Lending Act (TILA), *15 USCS §§ 1601-1667*, was time barred because suit was not filed within one year of settlement of loans, as required by *15 USCS § 1640(e)*, borrower failed to show that limitations period was tolled due to fraudulent concealment because borrower did not allege any affirmative acts of concealment by lenders other than TILA violations, which could not serve as both basis of TILA claim and fraudulent concealment for statute of limitations purposes. *Pena v A. Anderson Scott Mortg. Group, Inc. (2010, DC Dist Col) 692 F Supp 2d 102.*

**Unpublished Opinions**

Unpublished: In case in which home owners brought their claims for damages under Truth in Lending Act, *15 USCS §§ 1601* et seq., beyond one-year limitations period provided for in *15 USCS § 1640(e)* and they were on notice that alleged mortgage fraud had occurred at time they signed their loan documents or soon thereafter, claims were untimely; home owners had argued unsuccessfully that their claims were subject to equitable tolling on basis that lenders concealed violations and that they were diligent in seeking district court relief. *Velardo v Fremont Inv. & Loan (2008, CA11 Fla) 2008 US App LEXIS 22711.*

**51. Rescission cases**

One-year period of limitations contained in *15 USCS § 1640(e)* applies only to actions to enforce § 1640 rights; action for rescission under *15 USCS § 1635* is not subject to such one-year period of limitations. *Littlefield v Walt Flanagan & Co. (1974, CA10 Colo) 498 F2d 1133.*

Borrowers' claim seeking rescission of loan secured by their residence was time-barred where borrowers did not seek rescission until 15 months after signing loan documents. *Meyer v Ameriquest Mortg. Co. (2003, CA9 Cal) 342 F3d 899.*

Statute begins to run from moment of defendant's failure to terminate its security interest and withdraw its claim for any finance charge after claimant's rescission, rather than from moment that claimant's right to rescind agreement arose, and action filed 5 months after claimant's rescission is thereby timely. *Reid v Liberty Consumer Discount Co. (1980, ED Pa) 484 F Supp 435, 28 FR Serv 2d 1318.*

Where plaintiff, in action alleging violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.), has grounded her prayer for damages and attorney's fees squarely on lender's failure to answer notice of rescission which she sent via counsel and alleged that in failing to comply with plaintiff's request, lender has violated plaintiff's rescission rights pursuant to *15 USCS § 1635* and Regulation Z (*12 CFR § 226.9*), 10 days after date of notice of rescission is earliest pertinent date for determining when violation occurred for bar of statute of limitations to apply. *Sherwood v Serubo Cadillac Co. (1981, ED Pa) 514 F Supp 167.*

Action seeking damages under *15 USCS § 1640* for lender's failure to respond to plaintiff's letter notifying lender of plaintiff's desire to rescind transaction pursuant to § 1635 was timely where complaint was filed within one year from twenty-first day after lender received plaintiff's letter, since violation occurred upon failure of lender to respond to notice of rescission within 20 days, as required by § 1635, and limitations period began to run upon expiration of that time. *Bookhart v Mid-Penn Consumer Discount Co. (1983, ED Pa) 559 F Supp 208.*

Consumers' Truth in Lending Act (TILA) claims based on bank's refusal to rescind contract are not time-barred but their claim for damages for alleged violation of TILA is time-barred, where consumers filed *15 USCS § 1640* claim more than one year after home financing transaction was executed but where consumers allege that they attempted to rescind contract by letter and by filing lawsuit on August 21, 1992, less than 3 years after transaction was consummated and bank refused to rescind agreement, because TILA has 2 applicable statutes of limitations, one for damage claims brought under § 1640 which must be brought within one year of violation with which consumer failed to comply, and one under § 1635 which allows consumer up to 3 years after transaction consummation date and which allows claims for statutory and actual damages if lender fails to rescind. *Mount v LaSalle Bank Lake View (1995, ND Ill) 886 F Supp 650.*

Borrower's Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) claims are time-barred, where neither fraudulent concealment nor any other grounds for equitable tolling are applicable, because right to rescind under TILA, if there was one on facts, expired when borrower failed to raise and resolve it before sale of residence at foreclosure or at latest October 23, 1995--3 years from date of loan. *Jones v Saxon Mortg. (1997, ED Va) 980 F Supp 842*, affd without op (1998, CA4 Va) *161 F3d 2*, reported in full (1998, CA4 Va) *1998 US App LEXIS 22101.*

Homeowner's claim for statutory damages was not time-barred under *15 USCS § 1640(e)* where claim was based on mortgage company's failure to rescind loan transaction as required under *15 USCS § 1635*, that rescission could not have occurred until after homeowner made election to rescind loan transaction, and election to rescind had occurred only one month prior to homeowner filing claim. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Truth in Lending Act was construed to require bankruptcy court to impose equitable terms for benefit of mortgagee upon debtors who elected to rescind mortgage agreement upon filing their bankruptcy petition, and bankruptcy court was to determine effect of one-year statute of limitations under *15 USCS § 1640(e). Quenzer v Advanta Mortg. Corp. USA (2003, DC Kan) 288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364).*

Mortgage lender, its assignee, and loan servicer were entitled to summary judgment on borrower's claims for statutory damages for alleged violations of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., as amended by Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 USCS §§ 1602(aa), 1639*, because damage claims for violations of TILA and HOEPA were barred by TILA's one-year statute of limitations as was set forth in *15 USCS § 1640(e)*; borrower's argument that if she was entitled to three-year right to rescind loan because of violations under *15 USCS § 1635*, then she would also be allowed, in seeking rescission, to preserve her damage claims even though they would be time-barred if they stood alone lacked merit because both language and legislative history of § 1635(g) supported notion that § 1635(g) was not intended to alter one-year statute of limitations for TILA damage claims. *Brown v Nationscredit Fin. Servs. Corp. (2005, ND Ill) 349 F Supp 2d 1134.*

Truth in Lending Act claim was barred by one-year statute of limitations of *15 USCS § 1640(e)* because limitations period was triggered when 20 days elapsed and defendant lender failed to respond to plaintiff borrower's recission notice and each unsuccessful contact regarding his ignored recission notice id not renew limitations period. *Percival v Am. Home Mortg. Corp. (2007, ND Tex) 469 F Supp 2d 409.*

Court was not persuaded by plaintiff borrower's argument that Congress, by specifically limiting, in *15 USCS § 1640(g)*, recovery available for multiple violations of disclosure requirements of Truth in Lending Act, but not limiting recovery available for multiple violations of right of rescission, recognized that there could be multiple violations (and multiple recoveries) because defendant lender ignored repeated requests for rescission; borrower's claim was barred by statute of limitations. *Percival v Am. Home Mortg. Corp. (2007, ND Tex) 469 F Supp 2d 409.*

Although borrower's claim against mortgage refinancing lender for damages under Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 USCS §§ 1639* et seq., was untimely, fact issues precluded summary judgment in lender's favor on borrower's rescission claim under *15 USCS § 1640*; there were questions as to which fees charged by lender were properly included in HOEPA calculation of amount financed, so it could not be determined whether HOEPA applied to loan. *Jefferies v Ameriquest Mortg. Co. (2008, ED Pa) 543 F Supp 2d 368.*

In case arising under Truth in Lending Act, *15 USCS §§ 1601* et seq., in which borrowers' exercise of their rescission rights was untimely, their claims for damages arising from mortgage company's failure to honor that rescission were likewise untimely. *McMillian v AMC Mortg. Servs. (2008, SD Ala) 560 F Supp 2d 1210.*

Owner's claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., which sought rescission, was barred by three year limitations period set forth in *15 USCS § 1640(e). Pouth Phrasavang v Deutsche Bank (2009, DC Dist Col) 656 F Supp 2d 196* (criticized in *Minter v Wells Fargo Bank, N.A. (2009, DC Md) 2009 US Dist LEXIS 120930).*

Bankruptcy court refused to dismiss Chapter 7 trustee's claim seeking order requiring home loan company and bank to rescind two loans Chapter 7 debtor obtained on his principal residence on September 24, 2004, over three years before he declared bankruptcy on October 19, 2007; debtor claimed that he did not receive requisite notice when he

obtained loans, and if that was true, he had three years to rescind loans under *15 USCS § 1635(f)*, and letter he sent home loan company and bank on September 10, 2007, was timely; once debtor provided timely notice of recission, he had one year under *15 USCS § 1640(e)* to file suit, and trustee filed his adversary proceeding less than one year after debtor sent his letter. *Herzog v Countrywide Home Loans (In re Hunter) (2009, BC ND Ill) 400 BR 651.*

**Unpublished Opinions**

Unpublished: District court did not evaluate whether defendants' failure to timely rescind mortgage transaction amounted to separate violation of *15 USCS § 1635(b)*, which was actionable under *15 USCS § 1640(a)*; because borrower filed her Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., action within one year of date she exercised her statutory right to rescind, her claim was not time barred. *Frazile v EMC Mortg. Corp. (2010, CA11 Fla) 2010 US App LEXIS 11931.*

Unpublished: Damage claim under *15 USCS § 1640(e)* was barred by statute's one-year statute of limitations; while certain exceptions were available, such as for purposes of arguing set-off or recoupment defense, or to extent that equitable tolling applied, none of those exceptions applied where lender had not pursued action against borrower and no facts to support equitable tolling were provided by borrower. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

**52. Miscellaneous**

Purchasers who had executed purchase agreement, promissory note, and security agreement more than one year prior to commencing action under Truth in Lending Act were barred under limitation provisions of *15 USCS § 1640(e)*, but purchaser who had executed, more than 1 year before filing complaint, purchase agreement which contained no credit terms and did not identify prospective creditor, and who did not sign note and security agreement until less than 1 year prior to filing complaint, was not barred by statute of limitations under *15 USCS § 1640(e). Stevens v Rock Springs Nat'l Bank (1974, CA10 Wyo) 497 F2d 307.*

Borrowers' claim seeking damages under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., was time-barred under *15 USCS § 1640(e)* where borrowers were in full possession of all information relevant to discovery of TILA violation and § 1640(a) damages claim on day loan papers were signed, and claim was brought more than one year after loan papers were signed. *Meyer v Ameriquest Mortg. Co. (2003, CA9 Cal) 342 F3d 899.*

Because alleged date of execution of mortgage transaction was October 16, 1998, and lawsuit was not filed until June 29, 2004, borrower's Truth in Lending Act, *15 USCS § 1601* et seq., claims were barred by one-year statute of limitations in *15 USCS § 1649(e)*; lender's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss was granted. *Kamara v Michael Funding, LLC (2005, DC Del) 379 F Supp 2d 631.*

Summary judgment was granted in favor of car dealer because statute of limitations had expired on consumer's Truth in *Lending Act claim. Scaffidi v United Nissan (2005, DC Nev) 425 F Supp 2d 1172.*

In action arising out of predatory lending scheme allegedly perpetrated by banks and from which lender allegedly profited, claims for damages were not viable because no named class representative, no member of class, no objector, and no individual who had opted out had timely claim for damages as of date of relevant complaint. *In re Cmty. Bank of N. Va. (2006, WD Pa) 467 F Supp 2d 466.*

Where mortgagor did not bring suit for statutory damages against lender within one year of lender's alleged failure to provide notice of right to rescind as required under Truth in Lending Act, *15 USCS § 1601* et seq., damages claim was time-barred under *15 USCS § 1640(e). Bills v BNC Mortg., Inc. (2007, ND Ill) 502 F Supp 2d 773.*

In case in which pro se homeowner alleged that three mortgage lenders failed to (1) inquire about his income, as required by *12 C.F.R. § 226.34(a)(4)*; (2) disclose total sale price, as required by *12 C.F.R. § 226.18(j)*; and (3) give him

notice of acceleration of promissory note, as required by *12 C.F.R. § 226.7(j)*, lenders' motion for summary judgment on homeowner's claims for actual damages, statutory damages, and litigation costs, pursuant to *15 USCS § 1640(a)(1)*, (a)(2), and (a)(3) was granted; homeowner's claim was barred by one-year limitations period in *15 USCS § 1640(e)* since violation in case occurred in September 1995 when loan transaction was consummated and homeowner did not sue until 11 years later. *Williams v Countrywide Home Loans, Inc. (2007, SD Tex) 504 F Supp 2d 176.*

Homeowner's claim that mortgage broker and loan officer failed to make disclosures to her in connection with rental property refinance as required by Truth in Lending Act (TILA), *15 USCS § 1631* failed as matter of law where undisputed evidence before court demonstrated that homeowner was not only informed about pay down of second mortgage, but that she made informed decision to make such payment for purpose of restructuring her debt; moreover, court did not have jurisdiction over homeowner's claim because pursuant to *15 USCS § 1640(e)*, where there was civil liability for violation of TILA, action had to be brought within one year from date of occurrence of violation, and homeowner filed her complaint over 18 months after alleged violation of TILA occurred. *Sanborn v Am. Lending Network (2007, DC Utah) 506 F Supp 2d 917.*

Because plaintiffs brought their action more than one year from "consummation" of loan they could not recover damages under Truth in Lending Act, *15 USCS § 1640. Monaco v Bear Stearns Residential Mortg. Corp. (2008, CD Cal) 554 F Supp 2d 1034.*

Claims for monetary damages under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601* et seq., are each subject to one-year statute of limitations period. *Blue v Fremont Inv. & Loan (2008, DC Dist Col) 562 F Supp 2d 33.*

Borrowers' claims against lender for violations of Truth in Lending Act and *12 USCS § 2607(b)* were time-barred under *15 USCS § 1640(e)* and *12 USCS § 2614* because borrowers' action against lender was commenced more than two years after they executed loan at issue and borrowers did not allege any facts that would support equitable tolling. *Garczynski v Countrywide Home Loans, Inc. (2009, ED Pa) 656 F Supp 2d 505.*

Plaintiff's claims under Truth in Lending Act were time-barred under one-year limitations period contained in *15 USCS § 1640(e)*; plaintiff's suit against defendant mortgage lender was filed well over two years after loan was executed, and one year provision contained in § 1640(e) commenced on date that loan was executed. *Barkho v Homecomings Fin., LLC (2009, ED Mich) 657 F Supp 2d 857.*

Although homeowner made good faith allegation that Truth in Lending Act and Home Ownership and Equity Protection Act were applicable to loan servicer and trust deed beneficiary, his claim for damages under those acts were barred by one-year limitations period of *15 USCS § 1640* but his rescission claim was governed by three-year limitations period under *15 USCS § 1635(f)* and was not barred. *Allen v United Fin. Mortg. Corp. (2009, ND Cal) 660 F Supp 2d 1089.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded; one-year statute of limitations under *15 USCS § 1640(e)* barred borrower's damages claim based on alleged disclosure violations under *15 USCS §§ 1632* and *1638. Saldate v Wilshire Credit Corp. (2010, ED Cal) 2010 US Dist LEXIS 21034*, complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220*, complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051.*

Debtor was not barred from seeking recoupment under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., by one-year statute of limitations set forth in *15 USCS § 1640(a)(1)* after mortgage lender obtained foreclosure judgment in state court because statute did not affect her right to assert TILA violations defensively, i.e., by recoupment. *Faust v Deutsche Bank Nat'l Trust Co. (In re Faust) (2006, BC ED Pa) 353 BR 94.*

Where Chapter 13 debtor brought claims for damages, setoff, and recoupment under Truth in Lending Act, *15*

*USCS §§ 1601* et seq., although limitations period had expired for affirmative damages recovery, statute of limitations did not apply to claims for setoff and recoupment. *Randall v Bank One Nat'l Ass'n (In re Randall) (2006, BC ED Pa) 358 BR 145.*

When debtor's truth in lending adversary proceeding against creditor was not asserted as defense to or as denial of creditor's claim, action was dismissed as having been brought affirmatively after one-year statute of limitations in *15 USCS § 1640(e). Sallings v GMAC (In re Sallings) (2007, BC ND Ala) 357 BR 646.*

Defendant borrower is not precluded from raising violation of Truth in Lending Act as defense to plaintiff's action to recover under retail installment contract brought more than 3 years after execution of contract by 1-year limitation of *15 USCS § 1640(e)*; purposes of Truth in Lending Act would be frustrated if unscrupulous lender were permitted to wait 1 year to institute action in order to avoid defense of violation of Act. *Lincoln First Bank v Rupert (1977, 4th Dept) 60 App Div 2d 193, 400 NYS2d 618.*

Because mortgage borrower's action was not action to collect debt from borrower, and borrower's claim for damages was not matter of defense, borrower's affirmative claims of civil liability under Truth in Lending Act were time barred notwithstanding *15 USCS § 1640(e). Johnson v Long Beach Mortg. Loan Trust 2001-4 (2006, DC Dist Col) 451 F Supp 2d 16.*

**Unpublished Opinions**

Unpublished: Damage claim under Truth in Lending Act (TILA), *15 USCS § 1640(e)*, was barred by statute's one-year statute of limitations; while certain exceptions were available, such as for purposes of arguing set-off or recoupment defense, or to extent that equitable tolling applied, none of those exceptions applied where lender had not pursued action against borrower and no facts to support equitable tolling were provided by borrower. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

**VII.ATTORNEY'S FEES AND COSTS**

**A.In General 53. Generally**

Entitlement to attorney's fees under *15 USCS § 1640(a)(3)* belongs to plaintiff, not to his lawyer. *Zeisler v Neese (1994, CA7 Ill) 24 F3d 1000, 140 ALR Fed 791.*

Plaintiff in TILA case need not prove that he or she suffered actual monetary damages in order to recover attorney's fees. *Purtle v Eldridge Auto Sales (1996, CA6 Tenn) 91 F3d 797, 1996 FED App 247P,* cert den *(1997) 520 US 1252, 138 L Ed 2d 177, 117 S Ct 2411.*

Successful action in which attorneys' fees may be awarded means nothing more than being awarded judgment on merits and court's independent input and analysis into final decision in no way affected success of action. *Postow v Oriental Bldg. Ass'n (1978, DC Dist Col) 455 F Supp 781, 25 FR Serv 2d 1113,* affd in part and revd in part on other grounds (1980, App DC) *201 US App DC 384, 627 F2d 1370, 29 FR Serv 2d 1042.*

**54. Purpose**

Purpose of *15 USCS § 1640* which directs that successful party in Truth-In-Lending action be awarded cost of action together with reasonable attorney's fee is to promote goals of Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.) by encouraging legitimate suits. *In re Dunne (1976, DC RI) 407 F Supp 308.*

Award of attorneys' fees pursuant to *15 USCS § 1640(a)(3)* is not unconstitutional on grounds of being discriminatory in that successful plaintiffs may recover attorneys' fees but successful defendants may not, where Congress had rational justification for such discriminatory award of attorneys' fees: to provide for supplementary

enforcement of Truth in Lending Act (*15 USCS §§ 1601* et seq.) by encouraging suits brought by injured consumers. *Postow v Oriental Bldg. Ass'n (1978, DC Dist Col) 455 F Supp 781, 25 FR Serv 2d 1113,* affd in part and revd in part on other grounds (1980, App DC) *201 US App DC 384, 627 F2d 1370, 29 FR Serv 2d 1042.*

Court found that it served interests of justice and purposes of mandatory attorney's fees provision in Truth-in-Lending Act (TILA) to deny car dealership's request for assessment of costs for appellate proceedings against consumer against whom it had been found liable for violations of both *Virginia Consumer Protection Act and TILA. Nigh v Koons Buick Pontiac GMC, Inc. (2005, ED Va) 384 F Supp 2d 915.*

Plaintiffs were entitled to recover reasonable attorneys' fees where undisputed facts indicated that finance company had violated Truth in Lending Act (*15 USCS §§ 1601* et seq.) notwithstanding fact that debtors had suffered no actual damage since attorneys' fee provision in § 130(a)(3) of Act (*15 USCS § 1640(a)(3)*) is meant to encourage public to enforce Act. *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

**55. Mandatory nature of award of fees**

In cases involving Truth in Lending Act, whose attorney's fee provision is phrased in mandatory, rather than discretionary terms, fees may be denied successful plaintiff only in most unusual of circumstances. *de Jesus v Banco Popular de Puerto Rico (1990, CA1 Puerto Rico) 918 F2d 232* (criticized in *Crabill v Trans Union, L.L.C. (2001, CA7 Ill) 259 F3d 662).*

Award of attorney's fees is mandatory under *TILA. Purtle v Eldridge Auto Sales (1996, CA6 Tenn) 91 F3d 797, 1996 FED App 247P,* cert den *(1997) 520 US 1252, 138 L Ed 2d 177, 117 S Ct 2411.*

**56. Prevailing defendants**

In unsuccessful action by borrower to recover civil penalty plus costs and attorneys' fees, from lender for allegedly failing to comply with Truth in Lending Act, attorneys' fees would not be awarded to prevailing lenders pursuant to provision of notes stating that if action were instituted on notes lender promised to pay such sum as court may fix as attorneys' fees, since action had not been brought on notes, which in fact, had been paid by borrower, and contract between parties did not contemplate award of attorneys' fees in present type of action. *Hefferman v Bitton (1989, CA9 Cal) 882 F2d 379* (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9) 342 F3d 899)* and (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9 Cal) 342 F3d 899).*

Award of attorneys' fees pursuant to *15 USCS § 1640(a)(3)* is not unconstitutional on grounds of being discriminatory in that successful plaintiffs may recover attorneys' fees but successful defendants may not, where Congress had rational justification for such discriminatory award of attorneys' fees: to provide for supplementary enforcement of Truth in Lending Act (*15 USCS §§ 1601* et seq.) by encouraging suits brought by injured consumers. *Postow v Oriental Bldg. Ass'n (1978, DC Dist Col) 455 F Supp 781, 25 FR Serv 2d 1113,* affd in part and revd in part on other grounds (1980, App DC) *201 US App DC 384, 627 F2d 1370, 29 FR Serv 2d 1042.*

Successful defendant in action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) is not entitled to award of attorney's fees, since Act allows fees and costs only to successful plaintiffs. *Boksa v Keystone Chevrolet Co. (1982, ND Ill) 553 F Supp 958.*

**57. Pro se litigants**

Law school graduate, not yet licensed to practice law, who successfully sued creditor under Truth in Lending Act (*15 USCS §§ 1631* et seq.) could not recover attorney's fees since there was no financial expenditure for attorney's services, and if Congress had wished to compensate non-attorneys for "services" rendered on their own behalf in pressing their individual claims, it could have done so. *Hannon v Security Nat'l Bank (1976, CA9 Cal) 537 F2d 327.*

Goals of Truth in Lending Act (*15 USCS §§ 1601* et seq.) are not served by self-representation, and those claimants representing themselves are not entitled to attorney fees and expenses. *White v Arlen Realty & Dev. Corp. (1980, CA4 Md) 614 F2d 387,* cert den *(1980) 447 US 923, 65 L Ed 2d 1116, 100 S Ct 3016.*

**58. Legal services organizations and legal aid societies**

Under Truth In Lending Act, plaintiffs should not be denied attorney's fees because their attorney was employed by legal aid society; award of attorney's fees, directed by *15 USCS § 1640(a),* is not contingent upon obligation to pay attorney and is not precluded by fact that no fee has been charged. *Sellers v Wollman (1975, CA5 La) 510 F2d 119, 29 ALR Fed 899.*

Consumer represented by legal services organization in action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) is entitled to award of attorney's fees under *15 USCS § 1640(a)(3). Kessler v Associates Financial Services Co. (1981, CA9 Hawaii) 639 F2d 498.*

Municipal legal aid society which had successfully represented group of plaintiffs in consolidated Truth-in-Lending Act cases was not permitted to accept fee award. *Buford v American Finance Co. (1971, ND Ga) 333 F Supp 1243, 15 FR Serv 2d 792.*

Debtors in consumers loan transaction who established that creditor had violated Truth in Lending Act by providing misleading disclosure statement could recover attorney's fees notwithstanding fact that their attorney had been paid by legal aid society. *Gillard v Aetna Fin. Co. (1976, ED La) 414 F Supp 737.*

Plaintiff in suit under Truth in Lending Act (*15 USCS §§ 1601* et seq.) could recover attorneys fees notwithstanding fact that plaintiff was represented by legal aid society which was not permitted to accept fee. *Ecenrode v Household Finance Corp. (1976, DC Del) 422 F Supp 1327.*

Consumer is entitled to award of costs and reasonable attorneys' fees in any successful action brought to enforce Regulation Z and Truth in Lending Act (*15 USCS §§ 1601* et seq.) and legal aid agencies are entitled to such award. *Jones v Allied Loans, Inc. (1977, DC SC) 447 F Supp 1121.*

Award for attorneys' fees would not have served to make plaintiff whole for expenses incurred in enforcing Truth in Lending Act (*15 USCS §§ 1601* et seq.) and would only have unjustifiably further penalized defendant where plaintiffs were represented by Central Susquehanna Valley Legal Services and incurred no attorneys' fees. *Engle v Shapert Constr. Co. (1978, MD Pa) 443 F Supp 1383.*

In action for attorneys' fees under Truth In Lending Act (*15 USCS § 1640(a)(3)*), hourly rates requested by plaintiff's attorneys constituted reasonable fees and time expended was required by circumstances of litigation and were not disproportionate to true value of verdict despite fact that plaintiff's counsel was from community legal services organization. *Johnson v 2nd Nat'l Fund Corp. (1981, ED Pa) 515 F Supp 1380.*

Award of attorney fees should not be denied merely because attorney is employed by legal aid society; award of attorney fees is not contingent upon plaintiff's obligation to pay attorney or fact that no fee is charged. *Frazier v Franklin Inv. Co. (1983, Dist Col App) 468 A2d 1338.*

Award of attorney's fees to legal assistance foundation for representation of successful Truth-in-Lending Act consumer was not abuse of discretion simply because consumer was represented by law student or because foundation did not charge fee; award of attorney's fee under *15 USCS § 1640(a)(3)* is not contingent either on consumer's obligation to pay fee or consumer's representation by licensed attorney. *Merchandise Nat'l Bank v Scanlon (1980, 1st Dist) 86 Ill App 3d 719, 41 Ill Dec 826, 408 NE2d 248, 29 UCCRS 1100.*

Attorneys fees could be awarded where violation of Truth in Lending Act (*15 USCS §§ 1631* et seq.) was

established despite fact that plaintiff was represented by legal services project if plaintiff was required to pay attorneys fees to project if successful in suit. *Walker v Security Trust Co. (1976) 85 Misc 2d 614, 379 NYS2d 308.*

**59. Untimely actions**

Attorney's fees under *15 USCS § 1640(a)(3)* are not recoverable where debtor's claim for damages is untimely under § 1640(e). *AFL-CIO v Marshall (1979, App DC) 199 US App DC 54, 617 F2d 636,* vacated, in part *(1980) 449 US 809, 66 L Ed 2d 12, 101 S Ct 56* and affd in part and vacated in part on other grounds *(1981) 452 US 490, 69 L Ed 2d 185, 101 S Ct 2478, 11 ELR 20736.*

*15 USCS § 1640*(a) permitting award of attorney's fees for violation of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) is separable from one-year limitation in *15 USCS § 1640(e),* and award of attorney's fees is thus permissible despite fact that period of limitations for action to recover statutory penalty under Act has run. *Burley v Bastrop Loan Co. (1975, WD La) 407 F Supp 773,* revd on other grounds (1979, CA5 La) *590 F2d 160.*

Debtors' claim for rescission was untimely and they had asserted no basis for damages in nature of recoupment; as result, there was no claim stated on which relief could be granted regarding attorneys fees and costs. *West v America's Servicing Co. (In re West) (2009, BC WD Pa) 420 BR 284.*

**60. State action**

Successful plaintiff in action under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) is not entitled to attorney's fees under *15 USCS § 1640(a)(3)* for attorney's time spent defending against a state law debt compulsory counterclaim. *Lacy v General Finance Corp. (1981, CA5 Ga) 651 F2d 1026, 35 UCCRS 733,* reh den (1981, CA5 Ga) *665 F2d 349.*

Debtor is not entitled to award of attorney's fees in federal court action under *15 USCS § 1640,* based on rescission claim under *15 USCS § 1635,* where claim for attorney's fees was previously litigated in state court action and in state court appeal, as state court judgment denying attorney's fees was final and had res judicata affect. *Rollins v Dwyer (1982, CA5 La) 666 F2d 141.*

**61. Appellate work performed by attorney**

Where purchaser was successful in action seeking rescission under *15 USCS § 1635,* it was proper to award attorneys' fees, both for trial and for appeal. *Sosa v Fite (1974, CA5 Tex) 498 F2d 114.*

Trial court was directed to predicate attorney's fee award under *15 USCS § 1640(a)* on counsel's work in original proceeding, on appeal, and on remand. *Ljepava v M. L. S. C. Properties (1975, CA9 Cal) 511 F2d 935.*

Attorneys' fees are available only to plaintiff who has recovered statutory damages under *15 USCS § 1640(a)* after having proved his case of nondisclosure on the merits; claimant who prevailed on appeal of district court's dismissal of his claim for failure to state claim upon which relief could be granted was not entitled to attorneys' fees at that stage of proceedings. *Williams v United Credit Plan, Inc. (1976, CA5 La) 526 F2d 713, 21 FR Serv 2d 320.*

In suit under § 130 of Truth in Lending Act (*15 USCS § 1640*) in which debtor won suit at trial level and prevailed on appeal, additional award of attorneys' fees should be awarded to compensate attorney for services on appeal. *McGowan v Credit Center of North Jackson, Inc. (1977, CA5 Miss) 546 F2d 73.*

Amount of attorney's fees recoverable for violation of Truth and Lending Act (*15 USCS §§ 1601* et seq.) includes reasonable amount for services rendered on appeal and fact that Court of Appeals addressed only one of plaintiff's contentions in reversing District Court decision in favor of lender should play no role in determination of fee. *McGowan v King, Inc. (1978, CA5 Miss) 569 F2d 845.*

In interest of judicial economy and desire to avoid second remand and possible third appeal of matter, award of

attorney's fees would be modified to include additional fees for appeal and remand of case, where examination of record leads to conclusion that number of hours claimed for work done on first appeal and remand were not only excessive, but inadequately and improperly documented. *Martinez v Idaho First Nat'l Bank (1985, CA9 Idaho) 755 F2d 1376.*

Generally, TILA allows plaintiff prevailing on TILA claim on appeal to be compensated for appellate work. *Purtle v Eldridge Auto Sales (1996, CA6 Tenn) 91 F3d 797, 1996 FED App 247P,* cert den *(1997) 520 US 1252, 138 L Ed 2d 177, 117 S Ct 2411.*

Credit card members' argument in opposition to arbitration of their dispute with credit card company, that if they were required to go to arbitration, provisions in their arbitration agreements barring class arbitration would prevent them from vindicating their rights under Truth in Lending Act (TILA) and Fair Credit Billing Act (FCBA), failed because contractual provision to arbitrate TILA claims was enforceable even if it, as here, precluded plaintiff from utilizing class action procedures in vindicating statutory rights under *TILA. Lawrence v Household Bank, N.A. (2004, MD Ala) 343 F Supp 2d 1101.*

Car buyer was entitled to attorney fees for trial and appeals phase because he was prevailing party in case where car dealership was found to have violated Truth-in-Lending Act and Virginia Consumer Protection Act, both of which gave court authority to award attorney fees. *Nigh v Koons Buick Pontiac GMC, Inc. (2005, ED Va) 384 F Supp 2d 915.*

Where debtor did not offer any reason why reconsideration of Home Ownership Equity Protection Act (HOPEA) analysis was necessary to prevent "manifest injustice," court denied debtor's motion for reconsideration on issue of whether loan was subject to HOEPA; court had already determined that debtor validly rescinded loan and was entitled to receive statutory damages for failure to receive proper disclosure of debtor's right to rescind loan transaction. *Bell v Parkway Mort., Inc. (In re Bell) (2004, BC ED Pa) 314 BR 54.*

Attorney fee award may include award for time spent preparing appellate reply brief, arguing appeal before appellate court, and preparation of memorandum seeking reasonable fees for legal work involved in prosecution of case. *Frazier v Franklin Inv. Co. (1983, Dist Col App) 468 A2d 1338.*

In successful action to enforce civil penalties under Truth in Lending Act (*15 USCS § 1640*) prevailing party may recover as part of his attorney's fees reasonable amount for services rendered on appeal. *Long v Storms (1981) 52 Or App 685, 629 P2d 827.*

**62. Settlements**

Plaintiff in action under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) is entitled to recover attorney's fees under § 1640(a)(3) upon meaningful settlement, unless fees are waived by plaintiff in settlement agreement or unless settlement is nuisance settlement, since § 1640(a)(3) is to be construed liberally in view of purpose of statute to encourage private litigation to assert important rights. *Gram v Bank of Louisiana (1982, CA5 La) 691 F2d 728.*

Under Truth in Lending Act (*15 USCS §§ 1601,* et seq.), attorney has no cause of action for fees separate from and independent of underlying crime of client, and therefore where attorney fees were waived in settlement, attorney had no separate right of action for his fees. *Freeman v B & B Associates (1986, App DC) 252 US App DC 323, 790 F2d 145, 5 FR Serv 3d 181.*

Relying on reasoning that, under *15 USCS § 1640(a)(3),* creditor was liable for attorneys' fees to person to whom creditor failed to make required disclosures under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., i.e., to borrower, no TILA basis was found to require settling defendants to compensate debtor's counsel for his services beyond settlement with trustee; debtor's counsel did not have right, separate and apart from plaintiffs, to seek payment of his counsel fees directly from settling defendants. *Anderson v Am. Int'l Mortg. Bankers, Inc. (In re Anderson) (2007, BC ED NY) 362 BR 575.*

**63. Miscellaneous**

Plaintiff does not waive statutory entitlement to seek attorney's fees under Truth in Lending Act, which makes attorney's fees item to be awarded separate from costs, by accepting offer of judgment under *FRCP 68* for stated amount together with costs accrued to date of offer. *Nusom v Comh Woodburn, Inc. (1997, CA9 Or) 122 F3d 830, 97 CDOS 6849, RICO Bus Disp Guide (CCH) P 9419, 38 FR Serv 3d 394* (criticized in *Nordby v Anchor Hocking Packaging Co. (1999, CA7 Ill) 199 F3d 390, 45 FR Serv 3d 125)* and (criticized in *Warren Power & Mach., Inc. v Bemis Constr., Inc. (In re Bemis Constr.) (2005, BC DC Kan) 2005 Bankr LEXIS 961).*

Action, as it is used in *15 USCS § 1640(a)(3)*, begins with filing of complaint, ends when no party may any longer obtain review of final disposition of case, and encompasses all steps necessary in between; defining action in this way means it is possible for plaintiff to obtain attorneys' fees for stage of litigation at which she does not prevail. *Nigh v Koons Buick Pontiac GMC, Inc. (2007, CA4 Va) 478 F3d 183.*

Cost for expert witness to prove net worth of defendant in order to determine maximum statutory damages under *15 USCS § 1640(a)(2)* could not be reimbursed, even though defendant would not stipulate as to its net worth, where plaintiffs failed to employ less expensive ways to obtain same information such as requests for admissions and service of interrogatories and where prior court approval was not sought. *Postow v Oriental Bldg. Ass'n (1978, DC Dist Col) 455 F Supp 781, 25 FR Serv 2d 1113,* affd in part and revd in part on other grounds (1980, App DC) *201 US App DC 384, 627 F2d 1370, 29 FR Serv 2d 1042.*

Award of attorneys fee is appropriate despite argument that counsel should have sought summary judgment and not proceeded to trial; absent egregious difference in time, court is not to question tactical decision involved in trying case rather than filing motion for summary judgment. *In re Chapman (1979, DC RI) 1 BR 501.*

Where plaintiff has made certain home improvements after Truth in Lending disclosure violations by seller, plaintiff may rescind contract by tendering reasonable value of improvements to defendant assignee, who must then return all monies paid by plaintiff to defendant pursuant to contract; plaintiff is also entitled to reasonable attorney's fees and cost, and maximum statutory penalty of $ 1,000 for disclosure violations. *Cox v First Nat'l Bank (1986, SD Ohio) 633 F Supp 236.*

Even though plaintiffs in Truth in Lending Act class action could not collect statutory damages from auto dealership after being awarded summary judgment because of dealership's negative net worth, that did not affect right of named plaintiff to be awarded costs and reasonable attorney's fees under *15 USCS § 1640(a)(3)* since action had been successful. *Daenzer v Wayland Ford, Inc. (2002, WD Mich) 210 FRD 202.*

Prevailing party in action pursuant to *15 USCS § 1643* that was business entity using credit account for business purpose was not entitled to attorneys' fees and costs under *15 USCS § 1640(a)(3)*, as plain language of Truth in Lending Act (TILA) excluded that party from obtaining attorneys' fees and costs pursuant to § 1640(a)(3); with few clearly delineated exceptions, most sections of TILA did not apply to businesses, and § 1640 was not included in list of exceptions to business credit transaction exemption clearly delineated in *15 USCS § 1645*; therefore, on its face, business exemption of TILA provided by *15 USCS § 1603(1)* did apply to *15 USCS § 1640* such that party was not entitled to attorneys' fees or costs. *DBI Architects, P.C. v Am. Express Travel Related Servs. Co. (2006, DC Dist Col) 462 F Supp 2d 1.*

Borrowers who were found to have right to rescind mortgage loan because lender violated Truth in Lending Act (TILA), were entitled to recover their attorneys' fees pursuant to *15 USCS § 1640*. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 240 FRD 612.*

Payment of attorney's fees under Equal Access to Justice Act, *28 USCS § 2412(d)(1)(A)*, for social security disability claimants, who were prevailing parties in their suits against Commissioner of Social Security, directly to claimants' attorneys, rather than to claimants themselves, comported with interpretation of similar language in other

federal fee shifting statutes, in particular, with Truth in Lending Act, *15 USCS § 1640(a). Stephens v Astrue (2008, DC Md) 539 F Supp 2d 802.*

Debtor was entitled to costs and attorney's fees in truth in lending action, pursuant to *15 USCS § 1640(a)(3)* where court determined that debtor had right of rescission under *15 USCS § 1635. Webster v Centex Home Equity Corp. (In re Webster) (2003, BC WD Okla) 300 BR 787* (criticized in *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602).*

Trial court has discretion to award costs for paralegal services; award in amount of $ 650 based on 82 hours of paralegal work is reasonable. *Frazier v Franklin Inv. Co. (1983, Dist Col App) 468 A2d 1338.*

Where employee of creditor, in changing term of payday loan to debtor, failed to correct APR of debtor's loan, in violation of Truth in Lending Act, *15 USCS § 1601* et seq., trustee for debtor was entitled to reasonable attorney's fees and costs under § 1640(a)(3). *Yarnall v Four Aces Emporium, Inc. (In re Boganski) (2005, BAP9) 322 BR 422.*

In bank's suit against debtor to collect on defaulted loan, because loan was primarily for business purposes, and transaction was thus exempt from Truth in Lending Act's disclosure requirements under *15 USCS § 1603*, debtor did not have right of recission and no award of attorney fees was justified under *15 USCS § 1640(a)(3). Cashmere Valley Bank v Brender (2006, Wash) 146 P3d 928.*

**B.Reasonableness and Amount 64. Generally**

It is inappropriate to base attorney fee award on percentage of judgment in action commenced under *15 USCS § 1640*; practice of determining attorney fee by percentage of award is inconsistent with policy of encouraging private enforcement. *Hayer v National Bank (1983, Alaska) 663 P2d 547.*

Award of attorney fees under *15 USCS § 1640* is available in any successful action; determination of reasonableness of award is within sound discretion of trial court; award of attorney fees will be modified only upon proof of abuse of discretion; failure to articulate reasons for particular fee award renders trial court determination effectively unreviewable and may constitute abuse of discretion warranting reversal. *Frazier v Franklin Inv. Co. (1983, Dist Col App) 468 A2d 1338.*

Use of court clerk's fee schedule applicable to judgments by confession cannot form basis for award of reasonable attorney's fees under *15 USCS § 1640. Mt. Vernon Memorial Estates, Inc. v Wood (1980, 1st Dist) 88 Ill App 3d 666, 43 Ill Dec 862, 410 NE2d 995.*

In order for there to be award of attorneys' fees under *15 USCS § 1640* there must be some evidence of what constitutes reasonable attorneys' fees, either through hearings, stipulations or agreements by parties; even though violation of Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) is established award of attorneys' fees cannot stand where there is no evidence as to any amount of money which would constitute reasonable fee. *Martin v Body (1976, Tex Civ App Corpus Christi) 533 SW2d 461.*

**65. Factors considered**

Failure of judge to address novelty and difficulty of questions, skill requisite to perform legal services properly, and experience, reputation and ability of attorney in awarding attorney's fees requires remanding of decision for further clarification. *McGowan v King, Inc. (1980, CA5 Miss) 616 F2d 745.*

Awards for attorney fees must take into account the following factors: (1) time and labor required, (2) skill requisite to properly perform legal services, (3) preclusion of other employment by attorney due to acceptance of case, (4) novelty and difficulty of questions presented, (5) customary fee, (6) whether fee is fixed or contingent, (7) time limitations imposed by client, (8) amount involved and results obtained, (9) experience, reputation, and ability of

attorneys, (10) undesirability of case, (11) nature and length of professional relationship with client, and (12) awards in similar cases; party seeking attorney fees shoulders burden of proof with respect to each relevant factor, and trial court must render explicit findings on factors litigated, but is not obliged to address factors that lack evidentiary support. *Varner v Century Finance Co. (1984, CA11 Ga) 738 F2d 1143, 39 UCCRS 1047.*

Court did not abuse its discretion in awarding attorney fees to plaintiffs under Truth In Lending Act (*15 USCS § 1601* et seq.), where plaintiffs ultimately succeeded in proving existence of only single violation of more than de minimis proportions, amount of time expended on trial was not great, it could not be said that issues presented were unusually difficult, there was nothing in record to demonstrate that attorneys had, needed, or used extraordinary skills to achieve results or that lawyers were precluded from taking on other cases in interim, and amount involved was small. *Martinez v Idaho First Nat'l Bank (1985, CA9 Idaho) 755 F2d 1376.*

In considering attorneys' fees awards in Truth in Lending cases, Court of Appeals considers same factors and concerns that it considers in other attorneys' fees cases. *Henson v Columbus Bank & Trust Co. (1985, CA11 Ga) 770 F2d 1566.*

Court considers fact that few lenders are likely in future to employ plaintiff's counsel because of his success in matter as factor in setting fee. *Redic v Gary H. Watts Realty Co. (1984, WD NC) 586 F Supp 699,* affd in part and revd in part on other grounds, remanded (1985, CA4 NC) *762 F2d 1181,* cert den *(1985) 474 US 920, 88 L Ed 2d 257, 106 S Ct 249.*

In determining award of attorney's fees for car buyer who prevailed in Truth-in-Lending suit against car dealership, court considered lodestar factors, noted that case had resulted in landmark decision on issue of consummation of unfunded contracts, and concluded that attorney's fees of $ 85,083.60, which included work done in trial phase and appeals phase, was reasonable. *Nigh v Koons Buick Pontiac GMC, Inc. (2005, ED Va) 384 F Supp 2d 915.*

In determining reasonableness of award of attorney fees under *15 USCS § 1640,* court should consider novelty and difficulty of case, experience and ability for participating attorneys, customary fee, and time and labor involved. *Frazier v Franklin Inv. Co. (1983, Dist Col App) 468 A2d 1338.*

**Unpublished Opinions**

Unpublished: District court did not abuse its discretion when it awarded prevailing legal guardian only $ 3,000 of over $ 103,000 that he sought as attorney fee award under *15 USCS § 1640(a)(3),* because (1) fees could be awarded under § 1640(a)(3) only with regard to guardian's Truth in Lending Act (TILA), claims; (2) district court concluded that most of attorney time reflected in guardian's fee request pertained to time that was spent on other issues in his suit and were not related to his TILA claims; and (3) while guardian's attorney represented him in vigorous and conscientious manner and obtained significant equitable relief on portion of guardian's claims, guardian obtained only limited relief on his TILA claims, and those claims were not particularly legally complex. *Stutzka v McCarville (2007, CA8 Neb) 2007 US App LEXIS 16953.*

Unpublished: District court properly awarded debtor his attorneys' fees and costs under *15 USCS § 1640(a)(3)* as prevailing party on his claim against creditor pursuant to *15 USCS § 1666a(b)* because (1) debtor was considered prevailing party under parties' settlement agreement; (2) district court properly applied "lodestar" method to evaluate debtor's fees claim, by multiplying number of hours reasonably expended on litigation by reasonable hourly rate, and then addressing parties' arguments about whether that figure should be adjusted further, and in doing so, district court properly explained its analysis; (3) with regard to debtor's degree of success, district court properly considered $ 1000 award debtor received in settlement as more than de minimis or nominal award and did not abuse its discretion in concluding that award was maximum available under *15 USCS § 1640(a);* (4) even if award had been de minimis, it was not error to award fees because district court also considered non-monetary relief that debtor received, described by expert as according "substantial" public and private benefit; and (5) comparison between damages requested and

received did not indicate that district court abused its discretion in determining fee award. *Moore v Bank of Am. N.A. (USA) (2007, CA9 Cal) 2007 US App LEXIS 19597.*

**66. Adjustment for unsuccessful claims**

Award of attorneys' fees in suit under § 130 of Truth in Lending Act (*15 USCS § 1640*) should not have been reduced solely because plaintiff was successful on only one of several charges since this would be inconsistent with congressional policy of implementing enforcement of Act; amount of attorneys' fee award under Act should be set in accordance with same principles that would govern assessment of fees in general. *McGowan v Credit Center of North Jackson, Inc. (1977, CA5 Miss) 546 F2d 73.*

Plaintiff who prevails on common law claims in consumer protection action, but does not reach fee-generating claims under Truth in Lending Act (*15 USCS §§ 1601* et seq.), is entitled to recovery of attorney's fees where fee generating claims arose from same set of operative facts as non-fee claims, concerned same issues, and were substantial. *Greene v Gibralter Mortg. Inv. Corp. (1981, DC Dist Col) 529 F Supp 186.*

Request of attorney fee award may be adjusted downward for substantial number of hours spent on nonmeritorious claims, simple nature of claim, and generally poor quality of representation. *Kramer v Marine Midland Bank (1984, SD NY) 577 F Supp 999.*

Litigants in good faith may raise alternative legal grounds for desired outcome, and court's rejection of or failure to reach certain grounds is not sufficient reason for reducing fee; court's rejection on several grounds is not reason for reducing fee where plaintiff prevailed by obtaining complete financial and equitable relief sought. *Redic v Gary H. Watts Realty Co. (1984, WD NC) 586 F Supp 699,* affd in part and revd in part on other grounds, remanded (1985, CA4 NC) *762 F2d 1181,* cert den *(1985) 474 US 920, 88 L Ed 2d 257, 106 S Ct 249.*

Attorney fees were not reduced even though plaintiffs did not prevail on each claim for relief, because work generally was not susceptible to breakdown by claims, and all claims, whether successful or unsuccessful, arose from common core of facts and legal theories. *City Consumer Servs. v Horne (1986, DC Utah) 631 F Supp 1050.*

Plaintiff prevailing in Truth in Lending Act *(15 USCS §§ 1600* et seq.) case against car financier is awarded $ 28,528.50 for attorney's fees and costs under § 1640(a)(2)(B), with only slight reduction of 3.9 hours spent on unsuccessful claim against one defendant, even though fees requested may be shocking to untrained observer and to many experienced practitioners as well, because requested fees and costs, although not fair, are considered by law to be reasonable. *Haak v Hults Ford-Mercury, Inc. (1999, WD Wis) 79 F Supp 2d 1020.*

Despite plaintiff's asserted reductions in time spent to account for unsuccessful claims, plaintiff's attorney fee petition likely understated necessary reductions and further percentage deduction was thus warranted in absence of sufficient documentary detail to permit more accurate calculation of time spent on unsuccessful claims. *Rucker v Sheehy Alexandria, Inc. (2003, ED Va) 255 F Supp 2d 562.*

**67. Disproportionality in comparison to amount of recovery**

*15 USCS § 1640*(a)(3) recognizes no artificial ceiling on award of attorneys' fees, either in cases of only technical violations of Truth-in-Lending Act or as control on abuses by lawyers who improperly solicit business; while award greatly in excess of client's recovery requires strong support from particular circumstances of case, ceiling on recovery should not operate as impenetrable barrier to reasonable compensation. *Reneau v Mossy Motors (1980, CA5 La) 622 F2d 192.*

Attorney's fees under TILA are not limited by amount of plaintiff's recovery. *Purtle v Eldridge Auto Sales (1996, CA6 Tenn) 91 F3d 797, 1996 FED App 247P,* cert den *(1997) 520 US 1252, 138 L Ed 2d 177, 117 S Ct 2411.*

**68.--Particular cases**

In order to grant attorney's fees greatly in excess of client's recovery, there must be strong support from circumstances of particular case; in action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) involving loan of less than $ 2,500 for car costing less than $ 5,000 in which plaintiffs ultimately prevailed to extent of $ 2,000 after getting in excess of $ 8,000 at original trial, District Court did not abuse discretion in awarding plaintiff's attorney fee of $ 2,000, despite fact that defendant's attorneys were paid more than $ 30,000. *Mirabal v General Motors Acceptance Corp. (1978, CA7 Ill) 576 F2d 729,* cert den *(1978) 439 US 1039, 58 L Ed 2d 699, 99 S Ct 642.*

Attorney fee award of $ 2500 under *15 USCS § 1640(a)(3)* is not unreasonable despite fact that only $ 1000 was actually at stake in litigation, since claim was minimum despite prevailing efforts in Bankruptcy Court, District Court and Court of Appeals, and since Congress, in entitling prevailing plaintiffs in Truth in Lending cases to get reasonable attorney's fee, did not intend to limit those awards rigidly to amount of damages obtained. *In re Pine (1983, CA7 Ill) 705 F2d 936.*

In action where $ 200 damages were awarded to plaintiff in connection with two loans, court, pursuant to *15 USCS § 1640(a),* would grant attorney's fee award of $ 1,750. *Grubb v Oliver Enters. (1972, ND Ga) 358 F Supp 970.*

In action against department store awarding both injunctive relief and damages for Truth-in-Lending Act violations, where damage awards to individual claimants were $ 257.28 and $ 123, court awarded plaintiffs' attorneys $ 17,500 as reasonable attorneys' fee, pursuant to *15 USCS § 1640(a)*; although such fee was disproportionate to damage awards, amount reflected consideration of significant and far-reaching effects for future consumers of injunctive relief gained by attorneys in their efforts on behalf of plaintiffs. *Welmaker v W. T. Grant Co. (1972, ND Ga) 365 F Supp 531, 18 FR Serv 2d 280.*

In action upholding right of rescission in granting $ 1,000 statutory maximum civil damage award, where $ 5,500 was sought as reasonable attorney's fee pursuant to *15 USCS § 1640(a),* court fixed fee at $ 4,400 based upon its review of time summaries presented by plaintiff's counsel. *Palmer v Wilson (1973, ND Cal) 359 F Supp 1099,* vacated on other grounds (1974, CA9 Cal) *502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Attorney's fee of $ 2,000 to plaintiff's successful counsel in Truth-in-Lending Act case resulting in recovery of $ 644.56 was reasonable under *15 USCS § 1640(a),* considering time spent and such various other factors as novelty and difficulty of questions involved, fee customarily charged in locality for similar legal services ($ 35 per hour), and fact that fee was contingent. *Starks v Orleans Motors (1974, ED La) 372 F Supp 928,* affd without op (1974, CA5 La) *500 F2d 1182.*

Successful Truth-in-Lending Act plaintiff was entitled, in addition to maximum civil liability damage award, to recover sum of $ 3,000 as reasonable attorney's fee under *15 USCS § 1640(a),* court taking into account such factors as time and labor required, novelty and difficulty of questions, preclusion of other employment by attorney, customary fee, "undesirability" of case, and fact that much of time and effort expended by plaintiff's counsel was occasioned by defendants' strenuous and able defense. *Meyers v Clearview Dodge Sales, Inc. (1974, ED La) 384 F Supp 722,* affd in part and revd in part on other grounds (1976, CA5 La) *539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Where lender failed to provide required disclosures but lender did not intend to take advantage of debtor by failing to inform debtor of disclosures and debtor knew transaction constituted mortgage, circumstances did not support award of attorney's fees which greatly exceeded amount of damages. *Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

Used car buyer who was found to be entitled to rescission and $ 100 damage award in Truth-in-Lending Act case was entitled, pursuant to *15 USCS § 1640(a),* to $ 750 attorney's fee award. *Hank's Auto Sales, Inc. v Fisher (1973,*

*Cuyahoga Co) 38 Ohio App 2d 1, 67 Ohio Ops 2d 62, 310 NE2d 259.*

**69. Miscellaneous**

Under provisions for award of attorneys' fees in Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n, 1681o*), and Fair Debt Collection Practices Act (*15 USCS § 1692k(a)*), trial courts are justified in denying compensation for costs and expenses in addition to attorneys' hourly rate where affidavits and time records and fee submission fail to differentiate adequately between costs attributable to billable and nonbillable items, but properly segregated amounts should be allowed. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

It was not abuse of discretion for District Court, in awarding attorneys' fees and costs under § 130(a)(3) of Truth in Lending Act (*15 USCS § 1640(a)(3)* to plaintiffs who had sued successfully under Act, to refuse to include in award state gross receipts tax on attorneys' fees notwithstanding that attorneys were allowed to pass such tax on to their clients under state law and clients had in fact agreed to reimburse their attorney for amount of this tax. *Herrera v First Northern Sav. & Loan Asso. (1986, CA10 NM) 805 F2d 896, 6 FR Serv 3d 878.*

Upon failure of defendant creditor's contention that award of damages under § 130(a) of Truth in Lending Act (*15 USCS § 1640(a)*) was excessive for creditor's admitted violations of Act, creditor's claim that attorneys' fees awarded should be reduced because most of fees awarded were for work on damages issues must also fail. *In re Scaife (1987, CA11 Ga) 825 F2d 357, CCH Bankr L Rptr P 71943.*

In action in which jury found defendant liable, *15 USCS § 1640(a)(3)* required defendant to pay costs and reasonable attorneys' fees to plaintiff because plaintiff's action was successful; even though appellate court agreed with defendant that plaintiff's damages were capped at $ 1,000, award for attorneys' fees incurred on appeal was not intrinsically unreasonable because defendant should have known that it risked losing more in fees than it stood to gain in refunded damages. *Nigh v Koons Buick Pontiac GMC, Inc. (2007, CA4 Va) 478 F3d 183.*

In consolidated Truth-in-Lending Act cases in which 9 awards of $ 100 each and 4 awards of $ 97.50 each were made, court, pursuant to *15 USCS § 1640(a)*, would award sum of $ 360 to plaintiffs as group. *Buford v American Finance Co. (1971, ND Ga) 333 F Supp 1243, 15 FR Serv 2d 792.*

Where counsel obtained, for each of two purchasers of home improvement services, maximum statutory civil damage award of $ 1,000 under *15 USCS § 1640(a)*, reasonable attorney's fee of $ 500 in each case, or total of $ 1,000, would be granted. *Doggett v County Sav. & Loan Co. (1973, ED Tenn) 373 F Supp 774.*

Successful debtor, who recovered twice finance charge of $ 216.78, that is, $ 433.56, was entitled to attorneys' fees of $ 250. *Wilson v Shreveport Loan Corp. (1975, WD La) 404 F Supp 375.*

Attorneys' fees for work of law clerks may not be recovered in absence of any indication of whether law clerks performed services that would have otherwise been performed by attorneys or whether they performed administrative tasks or general research, either of which would be more properly included in attorneys' hourly rates as part of general overhead costs. *Postow v Oriental Bldg. Ass'n (1978, DC Dist Col) 455 F Supp 781, 25 FR Serv 2d 1113,* affd in part and revd in part on other grounds (1980, App DC) *201 US App DC 384, 627 F2d 1370, 29 FR Serv 2d 1042.*

Attorneys' fees may not include sum representing employment which attorneys had to turn down as result of involvement in successful action in light of possibility that publicity surrounding case may well generate offers of employment compensating for unspecified lost opportunities. *Postow v Oriental Bldg. Ass'n (1978, DC Dist Col) 455 F Supp 781, 25 FR Serv 2d 1113,* affd in part and revd in part on other grounds (1980, App DC) *201 US App DC 384, 627 F2d 1370, 29 FR Serv 2d 1042.*

Successful plaintiffs under Truth in Lending Act were entitled to award of attorneys' fees at rate of $ 40 per hour in

addition to civil liability damage award. *Mitchell v Security Inv. Corp. (1979, SD Fla) 464 F Supp 650.*

In calculating reasonable attorney fee, court must make initial estimate of reasonable fee by multiplying number of hours reasonably expended on litigation by reasonable hourly amount; reasonable hourly rate is generally deemed to be prevailing market rate for services rendered; burden is upon the applicant to produce evidence that requested rates are in line with those prevailing in community for similar services by lawyers of reasonably comparable skill, experience, and reputation; court may in its discretion consider experience and skills of attorney, quality of representation, novelty and complexity of issues, and results obtained in determining reasonable hourly rate. *Redic v Gary H. Watts Realty Co. (1984, WD NC) 586 F Supp 699,* affd in part and revd in part on other grounds, remanded (1985, CA4 NC) *762 F2d 1181,* cert den *(1985) 474 US 920, 88 L Ed 2d 257, 106 S Ct 249.*

No drastic reductions in attorney's fees awarded borrower who successfully sued lender under TILA (*15 USCS §§ 1601* et seq.) are warranted for time and labor expended, even though lender complains that borrower's lead counsel overstaffed case, because parties' dispositive motions and discovery disputes belie assertion that case was simple, and lender ignores its own commitment of nearly half dozen lawyers to dispute compared to borrower's four. *Bostic v American Gen. Fin., Inc. (2000, SD W Va) 87 F Supp 2d 611.*

Court reduced borrower's *15 USCS § 1640* attorney fee award because borrower had not offered sufficient justification for higher than market rates; appropriate market rate for principal partners for firm representing borrower was no greater than $ 450 per hour and appropriate rate for associates was no greater than $ 210 per hour. *Hamm v Ameriquest Mortg. Co. (2008, ND Ill) 549 F Supp 2d 1018.*

Successful Chapter 13 debtor in action for rescission under Truth in Lending Act, *15 USCS §§ 1601* et seq., and Homeowner's Equity Protection Act, *15 USCS § 1639*, was entitled to reasonable attorney's fees under *15 USCS § 1640(a)(3). Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

**VIII.RECOUPMENT AND SETOFF**

**A.Recoupment 70. Generally**

Debtor could not revive time-barred claim by characterizing suit as defense to an illegal claim under recoupment theory because recoupment claim is exempt from one-year statute of limitations only when debtor's claim is raised as defense or counterclaim to creditor's action to collect debt, where debtor brought creditor into court, since claim by debtor is affirmative rather than defensive and therefore subject to one-year limitations provision. *Moor v Travelers Ins. Co. (1986, CA5 Miss) 784 F2d 632.*

In case in which two home owners sued bank alleging violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., owners argued unsuccessfully that bank's initiation of non-judicial foreclosure proceedings paved path for their recoupment claim; not only were non-judicial foreclosures not actions as contemplated by TILA, neither Cal. Code Civ. Proc. § 726 nor Cal. Code Civ. Proc. § 22 addressed extra-judicial exercise of right of sale under deed of trust, which was governed by *Cal. Civ. Code § 2924*, et seq.; bank's choice of remedy under California law effectively denied owners opportunity to assert recoupment defense. *Ortiz v Accredited Home Lenders, Inc. (2009, SD Cal) 639 F Supp 2d 1159.*

Defense creditor's action for balance due on loan, based on violation of Truth-in-Lending Act, arises out of same transaction as creditor's action and is in nature of recoupment rather than setoff, so that one-year statute of limitations under *15 USCS § 1640(e)* does not apply to defense. *Pacific Concrete Fed. Credit Union v Kauanoe (1980) 62 Hawaii 334, 614 P2d 936.*

In action in assumpsit by lenders on loan, defendant borrower's claim of violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) arose out of same transaction as underlying debt and as such is recoupment and not affirmative setoff, and 1-year statute of limitation under *15 USCS § 1640(e)* may not bar its assertion. *Household Consumer*

*Discount Co. v Vespaziani (1980) 490 Pa 209, 415 A2d 689.*

One year limitation under *15 USCS § 1640(e)* is inapplicable to counterclaim where bank's action to foreclose on mortgage and mortgagor's counterclaim alleging violation of Federal Truth In Lending Disclosure Law arose from same loan transaction, mortgagor would have been entitled to recoupment or setoff in amount awarded to her upon counterclaim even if bank had prevailed upon its cause of action, and counterclaim is in nature of recoupment. *First State Bank v Phillips (1984) 13 Ark App 157, 681 SW2d 408.*

Since violation does not affect validity or enforceability of underlying contract, debtor may recover for claim by way of recoupment; in applying recoupment, it is appropriate to determine correct balance due and owing, and to subtract from that balance statutory damages. *Wise Furniture v Dehning (1984, Minn) 343 NW2d 26.*

Claims in recoupment are not barred by limitation period of predecessor to *15 USCS § 1640(e)* since if such claims were barred, lenders could easily wait 1 year to sue on borrower's default, thereby defeating purpose of Truth in Lending Act to assure meaningful disclosure of credit terms. *Household Finance Corp. v Hobbs (1978, Del Super Ct) 387 A2d 198.*

Doctrine denying recoupment defense upon running of statute of limitations is not invoked since creditor could easily circumvent consumer suit aspect of Truth in Lending Act (*15 USCS §§ 1601* et seq.) enforcement by intentionally delaying action on long transaction until year has expired from date agreement was executed. *Appeal of Signal Delivery Service, Inc. (1980, Minn) 288 NW2d 707.*

Because duty to disclose credit terms is integral part of loan agreement, Truth in Lending Act counterclaim arises out of same transaction as underlying debt and is considered recoupment not subject to limitations period. *Beneficial Finance Co. v Swaggerty (1981) 86 NJ 602, 432 A2d 512.*

To be recoupment under Truth in Lending Act (*15 USCS §§ 1601* et seq.), debtor's claim need nor be of same form nor controlled by same body of law as creditor's, and where debtor's defense arose out of same transaction as claim against her, and she claimed damages no larger than claim against her, her defense was in nature of recoupment rather than setoff, rendering predecessor to *15 USCS § 1640(e)* (placing one year limit on actions under Act) and (h) (regarding setoff) inapplicable to her claim. *Easy Living, Inc. v Whitehead (1979, Hamilton Co) 65 Ohio App 2d 206, 16 Ohio Ops 3d 155, 417 NE2d 591.*

Because duty to disclose credit terms is integral part of loan agreement, Truth in Lending Act counterclaim arises out of same transaction as underlying debt and is considered recoupment not subject to limitations period. *Beneficial Finance Co. v Swaggerty (1981) 86 NJ 602, 432 A2d 512.*

**71. Bankruptcy**

Bankruptcy debtor is not entitled to recover monetary damages for technical violation of Truth in Lending Act in connection with loan and home security interest, where action was brought more than one year from date of occurrence and is time-barred by *15 USCS § 1640(e)*, nor can debtor assert time-barred claim for monetary damages on recoupment theory, where debtor's demand is not in nature of defense and main action is not timely. *In re Smith (1984, CA11 Ga) 737 F2d 1549.*

Where bankruptcy court found that creditor violated Truth in Lending Act, *15 USCS § 1635*, by failing to respond to debtor's notice of rescission within 20 days, court did not err in deducting debtor's statutory damages from post-rescission balance due to creditor because creditor's post-rescission claim arose at same time and as part of same transaction as debtor's claim. *Merriman v Beneficial Mortg. (In re Merriman) (2005, DC Kan) 329 BR 710.*

Where plain language of *15 USCS § 1635(b)* and Regulation Z demonstrated that rescission was not automatic upon giving notice, but required affirmative acts by bankruptcy debtors; creditor's mortgage lien was not automatically

void upon giving of notice, but secured creditors loan, less damages for Truth in Lending Act violations under theory of recoupment. *Ramirez v Household Fin. Corp. III (In re Ramirez) (2005, DC Kan) 329 BR 727.*

Where lender obtained judgment in mortgage foreclosure action and filed secured proof of claim in that amount in bankruptcy proceeding, debtor's complaint objecting to secured claim, which alleges violation of Truth in Lending Act by lender, can be maintained even though complaint was filed more than one year after date of occurrence of alleged violation since debtor's claim, although raised in form of complaint objecting to lender's secured claim, is in nature of recoupment and, as such, is not subject to one year statute of limitations of *15 USCS § 1640(e). In re Hanna (1983, BC ED Pa) 31 BR 424, 8 CBC2d 1343.*

Chapter 11 debtor mortgagor's objection to mortgagee's proof of claim based on Truth in Lending Act violation for disclosure which overstated nature of security interest is in nature of claim for recoupment and is not barred by one-year statute of limitation in *15 USCS § 1640(e). In re Johnson-Allen (1986, BC ED Pa) 67 BR 968.*

Since creditor bank's violations consisted of failing to provide debtor with her own copies of Notice of Right to Cancel, Disclosure Statement and pre-closing Homeowner's Equity Protection Act, *15 USCS § 1639*, disclosures which were basic requirements of Truth in Lending Act, *15 USCS §§ 1601* et seq., bankruptcy court awarded full amount of statutory damages to which debtor was entitled, and since debtor's adversary action was commenced more than one year after date of violations, under *15 USCS § 1640(e)*, damages were awarded by way of recoupment which decreased balance on loan. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Chapter 11 debtor/borrower's defenses of recoupment and setoff under Truth in Lending Act, *15 USCS §§ 1601* et seq., were not before court because lender's request for relief from automatic stay did not trigger borrower's right to assert defenses since it was not part of borrower's process of seeking non-judicial foreclosure proceedings. *Chabot v Washington Mutual Bank (In re Chabot) (2007, BC DC Mont) 369 BR 1.*

**B.Setoff 72. Generally**

Lender is not allowed to satisfy adverse judgment under Truth In Lending Act (*15 USCS §§ 1601* et seq.) by reducing claims against debtor in other courts; allowing creditors to offset judgments against pending collection claims would discourage debtors from bringing TILA claims. *Dias v Bank of Hawaii (1984, CA9 Hawaii) 732 F2d 1401.*

Setoffs defense of *15 USCS § 1640* does not permit creditor to deduct from damages amounts previously awarded claimant, but rather precludes debtor from evading payment on note by deducting statutory penalty from his payment without judicial determination of liability of lender. *Reid v Liberty Consumer Discount Co. (1980, ED Pa) 484 F Supp 435, 28 FR Serv 2d 1318.*

Where homeowners' claim against mortgage company for its failure to make full disclosure in accordance with Truth in Lending Act, *15 USCS § 1601* et seq., was not made within one year time limit provided for in *15 USCS § 1640(2)*, court granted *Fed. R. Civ. P. 12(b)(6)* motion to dismiss claim. *Egipciaco Ruiz v R&G Fin. Corp. (2004, DC Puerto Rico) 313 F Supp 2d 48.*

Debtor being sued by creditor cannot raise as setoff failure of creditor to comply with disclosure requirements of Truth-In-Lending Act (*15 USCS §§ 1601* et seq.) where statute of limitations under Act has run since Act prohibits setting off amount potentially due from creditor to debtor under Act where amount of creditor's liability has not been determined by judgment of court; this is true even though state law permits defendant to raise claim as setoff even when he could not have initiated suit because state statute of limitations had run. *Ken-Lu Enterprises, Inc. v Neal (1976) 29 NC App 78, 223 SE2d 831,* cert den *(1976) 290 NC 308, 225 SE2d 829* and cert den *(1976) 429 US 1002, 50 L Ed 2d 614, 97 S Ct 533.*

Lender's violation of Truth in Lending Act (*15 USCS §§ 1631* et seq.) in connection with its disclosure statement subjects it to counterclaim and setoff in excess of amount demanded in complaint, notwithstanding limitation period of

*15 USCS § 1640(e). Carrier Employees' Federal Credit Union v McCullough (1977) 93 Misc 2d 353, 400 NYS2d 713.*

Prohibition of setoff under *15 USCS § 1640(h)* applies to efforts by debtor to deduct unilaterally from amount owed to lender in advance of determination of amount of civil penalty alleged to result from Truth in Lending Act violation, but does not apply to rights asserted in judicial proceedings. *Lincoln First Bank v Rupert (1977, 4th Dept) 60 App Div 2d 193, 400 NYS2d 618.*

**73. Bankruptcy**

Debt owed creditor and discharged in bankruptcy may not be set off against debtor's claim under *15 USCS § 1640* against creditor, where such claim is based on discharged debt. *Newton v Beneficial Finance Co. (1977, CA5 La) 558 F2d 731, 43 ALR Fed 409.*

Allowance of setoff is matter of court's discretion, and District Court did not abuse discretion in denying creditor's request for setoff of bankrupt debtors' recovery under *15 USCS § 1640* against balance of debt. *Riggs v Government Employees Fin. Corp. (1980, CA9 Cal) 623 F2d 68, 6 BCD 818.*

There can be no setoff of bankruptcy discharged debt against any recovery of statutory damages; setoff of bankruptcy discharged debts owed creditor would interfere with penal purpose of Truth in Lending Act (*15 USCS §§ 1601* et seq.); if creditor were allowed setoff, deterrent effect of civil penalty liability would be reduced; setoff would remove incentives for an obligor to sue under Truth in Lending Act; setoff would be anomalous since cause of action inures to debtor as private attorney general; bankruptcy losses are thus independent from Truth in Lending Act and creditor cannot rely on these losses for relief from Truth in Lending penalty provisions. *Griggs v Provident Consumer Discount Co. (1982, CA3 Pa) 680 F2d 927, 34 FR Serv 2d 219,* vacated on other grounds, remanded *(1982) 459 US 56, 74 L Ed 2d 225, 103 S Ct 400, 35 FR Serv 2d 365* (superseded by statute as stated in *Burt v Ware (1994, CA5 La) 14 F3d 256, 28 FR Serv 3d 204)* and (superseded by statute as stated in *Woodard v Hardenfelder (1994, ED NY) 845 F Supp 960)* and (superseded by statute as stated in *Leader Nat'l Ins. Co. v Industrial Indem. Ins. Co. (1994, CA9 Wash) 19 F3d 444, 94 CDOS 1866, 94 Daily Journal DAR 3435, 28 FR Serv 3d 488)* and (superseded by statute as stated in *Wallis v J.R. Simplot Co. (1994, CA9 Idaho) 28 FR Serv 3d 1464)* and (superseded by statute as stated in *Hatfield v Board of County Comm'rs (1995, CA10 Wyo) 52 F3d 858, 31 FR Serv 3d 1258)* and (superseded by statute as stated in *Schroeder v McDonald (1995, CA9 Hawaii) 55 F3d 454, 95 CDOS 3701, 32 FR Serv 3d 196).*

There can be no set off of bankruptcy discharged debt against any recovery by borrowers of statutory damages. *Griggs v Provident Consumer Discount Co. (1982, CA3 Pa) 680 F2d 927, 34 FR Serv 2d 219,* vacated on other grounds, remanded *(1982) 459 US 56, 74 L Ed 2d 225, 103 S Ct 400, 35 FR Serv 2d 365* (superseded by statute as stated in *Burt v Ware (1994, CA5 La) 14 F3d 256, 28 FR Serv 3d 204)* and (superseded by statute as stated in *Woodard v Hardenfelder (1994, ED NY) 845 F Supp 960)* and (superseded by statute as stated in *Leader Nat'l Ins. Co. v Industrial Indem. Ins. Co. (1994, CA9 Wash) 19 F3d 444, 94 CDOS 1866, 94 Daily Journal DAR 3435, 28 FR Serv 3d 488)* and (superseded by statute as stated in *Wallis v J.R. Simplot Co. (1994, CA9 Idaho) 28 FR Serv 3d 1464)* and (superseded by statute as stated in *Hatfield v Board of County Comm'rs (1995, CA10 Wyo) 52 F3d 858, 31 FR Serv 3d 1258)* and (superseded by statute as stated in *Schroeder v McDonald (1995, CA9 Hawaii) 55 F3d 454, 95 CDOS 3701, 32 FR Serv 3d 196).*

Creditor could set off that which had been discharged in bankruptcy against plaintiff's Truth in Lending claim. *Binnick v Avco Financial Services, Inc. (1977, DC Neb) 435 F Supp 359.*

Plaintiffs' claims under Truth in Lending Act were time barred; credit transaction at issue was completed when plaintiffs signed adjustable rate note and plaintiffs' action was not brought until nearly eight years later and well beyond one year limitations period that was specified by *15 USCS § 1640(e). Betancourt v Countrywide Home Loans, Inc. (2004, DC Colo) 344 F Supp 2d 1253.*

Where Chapter 13 debtor was successful in action for rescission, payments that debtor had made to creditor bank

that went to interest were to be deducted from balance owed. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

Bankruptcy court rejected Chapter 13 debtor's claim that home loan corporation that accepted assignment of note and mortgage debtor executed was liable for damages under *15 USCS § 1640(a)(1)* because mortgage company that assigned note and mortgage violated *15 USCS § 1638* when it prepared Truth and Lending Act (TILA) documents; there was no evidence mortgage company was aware of fact that two people who sold real property to debtor financed part of sale, and even if mortgage company was aware of that fact and violated TILA, there was no basis for holding home loan corporation liable, as assignee, for TILA violations mortgage company committed. *In re Miles (2008, BC ED Pa) 400 BR 441.*

**74. Attorney's fees**

In truth-in-lending action, award of attorneys' fees is not subject to setoff against debtor's outstanding debt to creditor; no discretion is available to trial court in this matter and attorney is entitled to fee that is awarded him regardless of any controversy regarding underlying debt. *Plant v Blazer Financial Services, Inc. (1979, CA5 Ga) 598 F2d 1357, 27 FR Serv 2d 955, 51 ALR Fed 493,* reh den (1979, CA5 Ga) *605 F2d 555* and (criticized in *Cabrera v Courtesy Auto, Inc. (2002, DC Neb) 192 F Supp 2d 1012, 47 UCCRS2d 416).*

Award of attorney's fees under *15 USCS § 1640*, is not subject to setoff against debtor's debt to creditor, as to allow setoff would effectively make Truth in Lending claims unavailable to insolvent debtors. *Graham v Bank of Damascus, Inc. (1981, WD Va) 528 F Supp 596.*

Fact that debtor successfully pursues setoff under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) against claim by creditor, and receives attorneys' fees under *15 USCS § 1640(a)(3)*, does not make debtor prevailing party in entire action, and does not preclude court from awarding offsetting attorneys' fees under state law to creditor on underlying claim. *Hayer v National Bank (1980, Alaska) 619 P2d 474.*

**75. Miscellaneous**

Defendant's argument that *15 USCS § 1640(h)* meant that if plaintiff has stopped paying on his debt to defendant because of desire to offset his potential Truth-in-Lending recovery against amount of debt owed, his right to Truth-in-Lending damages is lost, would be rejected, and court not only would not inquire into why plaintiffs stopped paying, it would not be concerned with whether they had stopped paying. *Grey v European Health Spas, Inc. (1977, DC Conn) 428 F Supp 841.*

Plaintiffs' recovery of $ 1,000 statutory penalty against aluminum siding contractor as result of multiple violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) was subject to set-off in its entirety where, although installation work was so defective as to have been of little value, contractor had installed approximately $ 1,000 worth of material and plaintiffs benefited from transaction by at least such amount. *Engle v Shapert Constr. Co. (1978, MD Pa) 443 F Supp 1383.*

Court rejected plaintiffs' argument that violations of Truth in Lending Act were ongoing; each of alleged violations occurred at time that transaction was consummated and continued failure to make disclosures over life of loan was not continuing violation of statute. *Betancourt v Countrywide Home Loans, Inc. (2004, DC Colo) 344 F Supp 2d 1253.*

State court is court of competent jurisdiction within meaning of § 130(h) of Truth in Lending Act (*15 USCS § 1640(h)*), and state court can entertain affirmative defense of setoff raised by debtor on basis of lender's alleged violation of disclosure requirements of Act, in suit by lender arising out of credit sale of stereo, notwithstanding fact that more than 1 year has elapsed since sale where state law permitted use of claim as setoff even after statute of limitations on claim has run. *Reliable Credit Service, Inc. v Bernard (1976, La App 4th Cir) 339 So 2d 952,* cert den (1977, La) *341 So 2d 1129* and cert den (1977, La) *342 So 2d 215.*

Defendant-debtor is entitled to setoff against claim by plaintiff-creditor two times amount of finance charge on loan where lender's violation of Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) was established. *Martin v Body (1976, Tex Civ App Corpus Christi) 533 SW2d 461.*

After setoff of defendant's assertion of violation of Truth in Lending Act (*15 USCS § 1640*) and penalty as defense to plaintiff lender's claim for unpaid principal, it is error for trial court to award plaintiff statutory interest from date of default, rather than at rate specified in note from date of default to date of judgment and at statutory rate thereafter. *Empire Finance Co. v Ewing (1977, Ky App) 558 SW2d 619.*

In action seeking to recover unpaid balance on contract and to foreclose mechanic's lien in which trial court determined that contract was void, but entered personal judgment in favor of plaintiff, there could be no recovery in recoupment and setoff for violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.). *Perez v Vowell Constr. Co. (1978, Tex Civ App El Paso) 567 SW2d 37.*

**IX.REMEDIES**

**A.In General 76. Election of remedies**

Remedy of rescission under *15 USCS § 1635* is not inconsistent with recovery under *15 USCS § 1640*, and it is unnecessary for litigant to make election of remedies so as to be limited to remedies under either § 1635 or § 1640; it is not abuse of equitable discretion to grant relief under both provisions where creditor failed to make required disclosures. *Eby v Reb Realty (1974, CA9 Ariz) 495 F2d 646, 28 ALR Fed 539.*

Although plaintiff may seek both damages under *15 USCS § 1640* and rescission under *15 USCS § 1635* and need not elect between such remedies, court which grants both remedies may condition granting of rescission on plaintiff's compliance with court's order to tender to lender principal of loan which plaintiff had received; where District Court was unaware of its equitable power to impose such condition, case would be remanded so that District Court could consider propriety of conditioning grant of rescission upon plaintiff's repayment. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Plaintiff's rescission of insurance coverage shortly after signing automobile financing contract does not constitute election of remedies so as to prevent her from suing for statutory damages for allegedly inadequate disclosures. *Philbeck v Timmers Chevrolet (1973, ND Ga) 361 F Supp 1255,* revd on other grounds (1974, CA5 Ga) *499 F2d 971,* reh den (1974, CA5 Ga) *502 F2d 1167.*

Primary purpose of Truth-In-Lending Act *15 USCS §§ 1601* et seq. is to give disclosures of essential credit information and not to regulate rates of interest; claimant is not required to elect between TILA and state usury statute since same transaction may violate state usury laws as well as disclosure provisions of TILA. *San Juan Pools, Inc. v Krohn (1979, Tex Civ App San Antonio) 594 SW2d 492.*

**77. Restitution**

Where bank unequivocally stipulated to restitution remedy if it violated Truth in Lending Act or Regulation Z in not disclosing composite annual percentage rate, bank is foreclosed from attacking appropriateness of restitution remedy on appeal. *Sentinel Fed. Sav. & Loan Ass'n v Office of Thrift Supervision (1991, CA8) 946 F2d 85.*

Although rescission under *15 USCS § 1635* does not preclude award of damages under *15 USCS § 1640* on theory that debtor who has rescinded is no longer aggrieved, court could refuse damages where debtor had been allowed to rescind contract, had been given restitution of all payments made on loan, and had benefit of home improvements made with loan, since court, in its discretion, felt that purpose of Truth in Lending Act (*15 USCS §§ 1601* et seq.) had been satisfied. *Gerasta v Hibernia Nat'l Bank (1975, ED La) 411 F Supp 176,* affd in part and revd in part on other grounds (1978, CA5 La) *575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla)*

*968 F2d 1137, 6 FLW Fed C 975).*

**78. Rescission**

Seventh Circuit held that rescission remedy under *15 USCS § 1635*, which was by its terms historically equitable, individualized, restorative remedy, as opposed to compensatory remedy of statutory damages under *15 USCS § 1640(a)(2)*, could not be pursued on behalf of putative class. *Andrews v Chevy Chase Bank (2008, CA7 Wis) 545 F3d 570.*

Where plaintiff has made certain home improvements after Truth in Lending disclosure violations by seller, plaintiff may rescind contract by tendering reasonable value of improvements to defendant assignee, who must then return all monies paid by plaintiff to defendant pursuant to contract. *Cox v First Nat'l Bank (1986, SD Ohio) 633 F Supp 236.*

Where purchaser of automobile pursuant to installment contract was sued by seller on cognovit note, where purchaser alleged that seller had violated *15 USCS § 1635* by failing to disclose purchaser's right to rescind contract, and where purchaser also counterclaimed for damages of $ 100 under *15 USCS § 1640*, contract was rescinded and purchaser was relieved of his duty to make monthly payments thereunder, because cognovit note had not contained required notice of purchaser's right to rescind contract. *Hank's Auto Sales, Inc. v Fisher (1973, Cuyahoga Co) 38 Ohio App 2d 1, 67 Ohio Ops 2d 62, 310 NE2d 259.*

**79.--Recoverability of damages**

Where notice provisions of Truth In Lending Act are violated, relief consisting of both rescission under *15 USCS § 1635* and monetary award under *15 USCS § 1640* is appropriate. *Sellers v Wollman (1975, CA5 La) 510 F2d 119, 29 ALR Fed 899.*

Remedies provided by *15 USCS §§ 1635, 1640* are not mutually exclusive and consumer may be entitled to both rescission pursuant to § 1635 and damages pursuant to § 1640. *Gerasta v Hibernia Nat'l Bank (1978, CA5 La) 575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Pursuant to *15 USCS § 1640*, court improperly dismissed debtors' action against creditor because debtors alleged that creditor failed to comply with rescission procedures found in Truth in Lending Act, *15 USCS § 1635(b)*, and applicable state law, which required creditor to return debtors' money and take steps to void security interest within 20 days of receiving notice of rescission; debtors had filed their action within one year of creditor's receipt of notice for rescission. *Belini v Wash. Mut. Bank, FA (2005, CA1 Mass) 412 F3d 17.*

Remedies available to borrower under *15 USCS §§ 1635, 1640*, remain available even if loan that is subject of rescission has been paid off; right to rescission under *15 USCS § 1635* encompasses right to return to status quo that existed before loan, which means unwinding transaction in its entirety and returning borrower to position that he or she occupied prior to loan agreement. *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760.*

Seventh Circuit rejected defendants' argument that, even if mortgagee had violated its disclosure obligations under *15 USCS § 1635(a)*, rescission of plaintiff's mortgage loan was inappropriate and/or impossible remedy because loan had already been paid in full, because (1) remedies provided for in *15 USCS §§ 1635, 1640*, remained available to plaintiff, even though loan had been paid off, (2) plaintiff's right to rescission under *15 USCS § 1635* encompassed right to return to status quo that existed before loan, which meant unwinding transaction in its entirety and returning plaintiff to position that she occupied before she accepted mortgage loan, and (3) not only did parties have to return everything they received from each other on mortgage closing date, but defendants also had to release whatever security interest they might have asserted in mortgagee's property, they had to reimburse plaintiff for interest that she paid while loan was outstanding, and defendants might also be liable for statutory damages and attorneys' fees pursuant to *15 USCS §*

*1640(a)(2)(A)(iii)*, (a)(3). *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760.*

Debtor who had exercised her right to rescind contract for purchase and installation of swimming pool under *15 USCS § 1635*, finance charges having exceeded statutory maximum of $ 1,000, could not obtain additional relief in form of $ 1,000 plus costs and attorney's fee; remedy of rescission, which is based on theory of affirmance of transaction, is inconsistent with remedy of damages. *Bostwick v Cohen (1970, ND Ohio) 319 F Supp 875.*

Although rescission under *15 USCS § 1635* does not preclude award of damages under *15 USCS § 1640* on theory that debtor who has rescinded is no longer aggrieved, court could refuse damages where debtor had been allowed to rescind contract, had been given restitution of all payments made on loan, and had benefit of home improvements made with loan, since court, in its discretion, felt that purpose of Truth in Lending Act (*15 USCS §§ 1601* et seq.) had been satisfied. *Gerasta v Hibernia Nat'l Bank (1975, ED La) 411 F Supp 176*, affd in part and revd in part on other grounds (1978, CA5 La) *575 F2d 580* (superseded by statute as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Although it is possible that defendant credit union by failing to comply with *15 USCS § 1635* and give effect to plaintiffs' notice of rescission of loan agreement may be liable for civil damages pursuant to *15 USCS § 1640* as well, such damages were not awarded where rescission-forfeiture remedy of *15 USCS § 1635* was sufficient to meet demands of legislative policy of full disclosure in view of remedial nature of Truth in Lending Act. *French v Wilson (1978, DC RI) 446 F Supp 216* (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Statutory penalty is applicable to violations of rescission requirements of *15 USCS § 1635*; statutory penalty may be assessed for lender's failure to respond to borrowers' rescission notice. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

Borrower is excused from further liability on promissory notes, and is awarded $ 3,000 plus her costs and attorney fees, where creditor refinanced borrower's small consumer loan 3 times in 2 years but failed to release record mortgages or disclose their retention in connection with each separate refinancing transaction, because borrower had right to rescind and receive statutory damages for creditor's violations of Truth in Lending Act (*15 USCS §§ 1635(b), 1640(a)(2)(A)(i),* and *1640(a)(3)*). *Gill v Mid-Penn Consumer Discount Co. (1987, ED Pa) 671 F Supp 1021*, affd without op (1988, CA3 Pa) *853 F2d 917* and (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Four borrowers were entitled to recover statutory damages under *15 USCS § 1640(a)* because credit company and bank trustee had not complied with their rescission demands, as required by *15 USCS § 1635(b)*, within 20 days after borrowers filed their suit; borrowers' complaint, which was timely filed under § 1635(f) within three years after borrowers' two loans closed, constituted timely notice to company and to trustee of borrowers' rescission demand. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

As part of legal action to judicially enforce consumer's right of rescission under Truth in Lending Act, court may determine amount of consumer's liability to creditor, as well as enter money judgment against creditor under *15 USCS § 1640*. *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541*.

Where court found that Rooker-Feldman doctrine barred it from providing rescissionary relief to Chapter 13 debtors under Truth in Lending Act, *15 USCS §§ 1601* et seq., because of pre-existing consent foreclosure judgment in state court, debtors could not recover damages because there was no enforceable right of rescission. *Dougal v Saxon Mortg. (In re Dougal) (2008, BC WD Pa) 395 BR 880.*

Language of *15 USCS § 1610*, stating that Truth-in-Lending Act does not annul, alter affect, or exempt any creditor from complying with state law relating to disclosure of information in connection with credit transactions, creates parallel remedies and permits debtor to recover damages under *15 USCS § 1640* as well as under state law. *Public Finance Corp. v Riddle (1980, 3d Dist) 83 Ill App 3d 417, 38 Ill Dec 712, 403 NE2d 1316.*

**80. Miscellaneous**

Mortgagors could not obtain statutory and actual damages because they filed their action against mortgage companies more than one year after they closed on their loan but they could seek equitable relief. *Polis v Am. Liberty Fin., Inc. (2002, SD W Va) 237 F Supp 2d 681.*

Court granted bank's motion to dismiss borrower's request for declaratory judgment pursuant to *28 USCS §§ 2201, 2202*, that bank's mass home equity lines of credit reductions, letter notices to borrower and class, and shifting of burden to obtains appraisals to borrower and class, violated Truth in Lending Act (TILA) and Regulation Z of TILA because TILA contained comprehensive damages scheme, including actual damages, statutory damages, and attorneys' fees and costs under *15 USCS § 1640(b)*, and borrower had not established in any of his three claims for declaratory relief that remedies contained in TILA would be ineffective or inappropriate. *Hickman v Wells Fargo Bank N.A. (2010, ND Ill) 683 F Supp 2d 779.*

**B.Damages**

**1.In General 81. Generally**

Purpose of statutory recovery of damages is to encourage lawsuits by individual consumers as means of enforcing creditor compliance with *TILA. Purtle v Eldridge Auto Sales (1996, CA6 Tenn) 91 F3d 797, 1996 FED App 247P*, cert den *(1997) 520 US 1252, 138 L Ed 2d 177, 117 S Ct 2411*.

Civil damages under *15 USCS § 1640* are appropriate when disclosure requirements of Truth in Lending Act have been violated. *Mitchell v Security Inv. Corp. (1979, SD Fla) 464 F Supp 650.*

Chapter 13 debtors could not recover damages under Truth in Lending Act, *15 USCS §§ 1601* et seq., against holder of mortgage on their residence for its failure to honor rescission notice because holder was assignee of mortgage, not original lender. *Dougal v Saxon Mortg. (In re Dougal) (2008, BC WD Pa) 395 BR 880.*

Consequences for failing to respond to notice of rescission, found at *15 USCS § 1640*, include damages, but not elimination of any defense whatsoever. *Groat v Carlson (In re Groat) (2007, BAP8) 369 BR 413.*

**82. Relationship with state laws**

Where borrowers brought claim under Truth in Lending Act (TILA), *15 USCS § 1601* et seq., relating to two refinancings of their home mortgage, claim was barred by statute of limitations; borrowers's claim did not meet equitable tolling standard because defendants notified borrowers of their right to cancel loan agreements and because defendants did not take any steps to affirmatively conceal borrowers's TILA cause of action. *Mills v Equicredit Corp. (2003, ED Mich) 294 F Supp 2d 903.*

Language of *15 USCS § 1610*, stating that Truth-in-Lending Act does not annul, alter affect, or exempt any creditor from complying with state law relating to disclosure of information in connection with credit transactions, creates parallel remedies and permits debtor to recover damages under *15 USCS § 1640* as well as under state law. *Public Finance Corp. v Riddle (1980, 3d Dist) 83 Ill App 3d 417, 38 Ill Dec 712, 403 NE2d 1316.*

Recovery under *15 USCS § 1640* for violation of Truth-in-Lending Act is not barred by recovery under state law since injury sustained under Act is different in nature from that sustained under state law. *Merchandise Nat'l Bank v Scanlon (1980, 1st Dist) 86 Ill App 3d 719, 41 Ill Dec 826, 408 NE2d 248, 29 UCCRS 1100.*

Under New York statute which is identical to federal Truth-in-Lending Act (*15 USCS §§ 1601* et seq.), despite fact that lender had failed to make disclosures required by statute, borrower did not have right to recover payments of principal and interest voluntarily made on loan otherwise valid except for defective disclosure. *Conrad v Home & Auto*

*Loan Co. (1976, 4th Dept) 53 App Div 2d 48, 385 NYS2d 979.*

**83. Prejudgment interest**

Prejudgment interest on award of statutory damages under Act is inappropriate where plaintiff has not suffered actual money damages by defendant's violation of Act. *In re Marshall (1992, CA7 Ill) 970 F2d 383.*

Bank which sued as creditor on underlying claim was not entitled to prejudgment interest on entire claim but only to interest reflecting bank's net recovery after debtor's Truth-in-Lending Act setoff was taken into account. *Hayer v National Bank (1980, Alaska) 619 P2d 474.*

**84. Miscellaneous**

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1)*, thus, plaintiff car buyer's Truth in Lending Act claims against defendant bank failed for lack of pleading or proving detrimental reliance; detrimental reliance requirement to recover actual damages did not conflict with *15 USCS § 1640(g)*, which provided additional recoveries for post-judgment violations. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

Plaintiffs were not entitled to punitive damages against aluminum siding contractor where, although plaintiff were victims of unjustifible commercial behavior and defendant unconscionably manipulated them in efforts to salvage profit from contract, most culpable party was sales person who was not party to action and where defendant had already paid considerably for misconduct in that he received no return for material and labor expenditure. *Engle v Shapert Constr. Co. (1978, MD Pa) 443 F Supp 1383.*

Financing agreement granting contractor security interest in home in connection with home improvement project, which stated that homeowner's right to rescind contract expired 4 days before parties executed it, rather than 3 days after execution, in violation of *15 USCS § 1635(a)*, gave rise to civil liability and subjected contractor to both actual damages and to statutory penalty of *15 USCS § 1640(a). Basnight v Diamond Developers, Inc. (2001, MD NC) 146 F Supp 2d 754.*

Based on undisputed facts, it was clear that borrower was provided with incomplete disclosure statement and that this constituted violation of Truth in Lending Act; thus, borrower was entitled to rescission of her mortgage under *15 USCS § 1635* and bank, even as assignee of mortgage, was liable for statutory damages as set out in *15 USCS § 1640. Lippner v Deutsche Bank Nat'l Trust Co. (2008, ND Ill) 544 F Supp 2d 695.*

Where lender has made good faith effort to comply with Truth in Lending Act and borrower has been neither misled nor damaged, penalty provision of act will not be invoked; assessment of penalty was not erroneous where, inter alia (1) borrower received almost no information about transaction involving note, and (2) amount financed, amount which would be credited to borrower's account to discharge obligation, sum of amount financed and finance charge, and information about payments were missing from note. *Manley v Wichita Business College (1985) 237 Kan 427, 701 P2d 893.*

**2.Number of Recoveries 85. Multiple violations**

Since any violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) is sufficient to activate civil remedies of *15 USCS § 1640*, it is clear that no matter how many violations are found in one loan transaction, only one recovery can be had and thus only one violation need be shown to trigger recovery. *Sneed v Beneficial Finance Co. (1976, DC Hawaii) 410 F Supp 1135, 19 UCCRS 1223.*

Any one violation is sufficient to activate civil remedies section of Truth in Lending Act, and no matter how many violations are found there can be only one recovery. *Cadmus v Commercial Credit Plan (1977, DC Del) 437 F Supp*

*1018.*

Debtor is entitled to only single recovery, even if creditor is found liable for multiple failures to disclose. *Brown v Termplan, Inc. (1978, ND Ga) 459 F Supp 160.*

Plain meaning of Truth in Lending Act of 1968 (TILA) is that single-recovery of statutory damages applies only to failures to disclose listed in *15 USCS § 1602(u)*, and not to other violations of *TILA. Belmont v Assocs. Nat'l Bank (Del.) (2002, ED NY) 219 F Supp 2d 340.*

Plaintiff is only entitled to single award for Truth in Lending Act violations by creditor and its assignee. *Kittrell v RRR, L.L.C. (2003, ED Va) 280 F Supp 2d 517.*

Where one violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.) had been established, it was unnecessary for court to consider other alleged violations because penalty would be same whether there were many infractions or only one growing out of one transaction. *Reliable Credit Service, Inc. v Bernard (1976, La App 4th Cir) 339 So 2d 952,* cert den (1977, La) *341 So 2d 1129* and cert den (1977, La) *342 So 2d 215.*

**86.--Particular cases**

Section 130(g) of Truth-In-Lending Act (*15 USCS § 1640(g)*) limits debtor to single recovery for creditor's failure to make required disclosures in transaction even though numerous periodic statements which also failed to include required disclosures were sent out in connection with that transaction. *Turner v Firestone Tire & Rubber Co. (1976, CA5 La) 537 F2d 1296.*

Creditor can only be liable for single recovery even though there are multiple truth-in-lending violations; where purchaser of automobile is entitled to recover on documentary fee issue, it is unnecessary to consider whether failure to furnish license tag constitutes truth-in-lending violation. *Jackson v Columbus Dodge, Inc. (1982, CA5 Ga) 676 F2d 120.*

Under former version of Regulation Z, each renewal of loan calling for single payment was separate transaction, so that damages could be awarded under § 130(a) of Truth in Lending Act (*15 USCS § 1640(a)*) for each renewal where each renewal concededly failed to comply with requirements of Act. *In re Scaife (1987, CA11 Ga) 825 F2d 357, CCH Bankr L Rptr P 71943.*

Where lender violated Truth in Lending Act in connection with two loans negotiated separately by borrower, each for $ 55.95, borrower was entitled to recover $ 100 minimum award for each loan [prior to enactment of *15 USCS § 1640(g)*]. *Grubb v Oliver Enters. (1972, ND Ga) 358 F Supp 970.*

Although lender violated Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z in two transactions, where they involved same principal sum of money except for additional extension of $ 8.86 in second transaction and second transaction was basically extension of time for repayment of amounts loaned in first transaction, transactions were viewed singly for purposes of assessing damages under Truth in Lending Act (*15 USCS § 1640*). *Ballew v Associates Financial Services Co. (1976, DC Neb) 450 F Supp 253.*

Although obligors are limited to one recovery for multiple disclosure violations, obligor is not limited to one recovery per transaction if there is later failure to acknowledge valid rescission. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

In debtor's suit against creditor for violations of Truth in Lending Act of 1968 (TILA), where five violations other than failure to disclose were established, *15 USCS § 1640(g)* only limited to single recovery multiple failure to disclose, and since creditor's violations were other types of TILA violations, single recovery limitation did not apply. *Belmont v Assocs. Nat'l Bank (Del.) (2002, ED NY) 219 F Supp 2d 340.*

In class action by car purchasers against car dealer alleging violations of federal Truth-In-Lending Act (TILA), *15 USCS § 1601* et seq., purchasers were entitled to single recovery under TILA where they demonstrated that dealer violated *15 USCS § 1638(a)* by: (1) failing to disclose documentary preparation fee that was assessed to purchasers financing purchase of automobile by credit, which was hidden finance charge under TILA, (2) failing to disclose finance charge as annual percentage rate, and (3) failing to fully and accurately disclose total of payments. *Hook v Baker (2004, SD Ohio) 352 F Supp 2d 839.*

Bank's failure to honor consumers' rescission request, which they tendered within three years of allegedly defective notice, constituted distinct and actionable violation; therefore, consumers' prayer for damages was sufficient to extent it was based on bank's alleged failure to provide proper number of notices, *15 USCS § 1640(g)*, or to honor consumers' request to rescind, *15 USCS § 1635(g). Buick v World Sav. Bank (2008, ED Cal) 2008 US Dist LEXIS 48801*, motion den, motion to strike den (2008, ED Cal) *565 F Supp 2d 1152.*

Because alleged violations of Truth in Lending Act (TILA) and Fair Credit Billing Act occurred in connection with single account, and plaintiff borrower had never been granted recovery under TILA, she was limited to single recovery for those violations. *Tweedy v RCAM Title Loans, LLC (2009, WD Va) 611 F Supp 2d 603.*

Where, under Truth in Lending Act of 1968, creditor failed to give Chapter 13 debtors proper notice of their right to rescind mortgage loan transaction secured by their home, and failed to return money to debtors within 20 days after receiving debtors' notice that they were rescinding transaction, bankruptcy court imposed civil penalty under *15 USCS § 1640* of $ 250 per violation, and found that only single penalty could be awarded for each violation, even though there were two obligors in transaction. *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899*, revd on other grounds, remanded (2003, DC Kan) *288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364).*

Although there is only one recovery for given credit transaction, regardless of number of violations, where two contracts fail to properly disclose finance charge and to describe type of security interest held by seller, separate damages may be awarded since second contract constitutes separate transaction. *Wise Furniture v Dehning (1984, Minn) 343 NW2d 26.*

**87. Multiple creditors**

Section 130 of Truth-In-Lending Act (*15 USCS § 1640*) provides only for single recovery for failure to disclose even where there are multiple creditors, and multiple creditors in such situation are jointly liable. *Hinkle v Rock Springs Nat'l Bank (1976, CA10 Wyo) 538 F2d 295.*

Consumer will not be awarded multiple recovery against automobile dealer and finance company to which dealer sold installment contract. *Meyers v Clearview Dodge Sales (1976, CA5 La) 539 F2d 511*, cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Although plaintiff borrower would have had direct cause of action against bank with which defendant automobile dealer had arranged credit for plaintiff, Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.) does not provide for cause of action in which one joint creditor may sue another for contribution or indemnity and defendant's third party complaint was dismissed for failure to state cause of action; since joint creditors are jointly and severally liable to consumers, bank was not indispensable party which could be impleaded under *USCS Rules of Civil Procedure, Rule 19* and plaintiff could be awarded judgment against defendant automobile dealer alone. *McCain v Clearview Dodge Sales, Inc. (1978, CA5 La) 574 F2d 848, 25 FR Serv 2d 935.*

Finance company and automobile dealer were both creditors liable for failure to make disclosures required by Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Regulation Z where relationship between seller and finance company was such that seller was acting as agent or conduit in arranging loan, closeness of parties being indicated by finance

company's floor plan financing of dealer's cars. *Price v Franklin Inv. Co. (1978, App DC) 187 US App DC 383, 574 F2d 594.*

Settlement of claim under Truth in Lending Act (*15 USCS §§ 1601* et seq.), where both lender and automobile dealer had violated Act, with lender does not operate to release automobile dealer from liability, but entire $ 1,000 maximum penalty provided by *15 USCS § 1640* may not be adjudged against automobile dealer and where state law provides that upon settlement with one of two solitary obligors, only one-half of that may be claimed from remaining obligor, automobile dealer is liable for statutory penalty in sum of $ 500. *Desselles v Mossy Motors, Inc. (1978, ED La) 442 F Supp 897.*

Automobile dealer and auto manufacturer's credit company are jointly and severally liable for $ 1000 plus costs of action and reasonable attorney's fees arising out of violation of Truth in Lending Act in which $ 22.50 "title" charge included in cash price of motor vehicle was not itemized or included in finance charge, where, due to prearrangement of credit transaction, it is clear automobile dealer was agent or "conduit" of manufacturer's credit company in arranging credit transaction. *In re Smith (1980, BC MD Ga) 7 BR 575,* revd on other grounds (1981, MD Ga) *10 BR 886.*

**88. Multiple obligors**

Although creditor may be required to produce only one disclosure document even when there are multiple debtors, this does not mean that lender can be sued for violation of Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) by only one debtor. *Allen v Beneficial Fin. Co. (1976, CA7 Ind) 531 F2d 797, 33 ALR Fed 736,* cert den *(1976) 429 US 885, 50 L Ed 2d 166, 97 S Ct 237* and (superseded by statute as stated in *Greisz v Household Bank (Ill.) (1998, ND Ill) 1998 US Dist LEXIS 12620).*

Husband and wife who were joint obligors in single credit transaction could collect only one penalty under § 130 of Truth in Lending Act (*15 USCS § 1640*) from creditor who had violated disclosure requirements of Act. *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Where finance company violated Truth in Lending Act (*15 USCS §§ 1601* et seq.) by including on disclosure statement inconsistent state law provisions, husband and wife who were co-obligors on loan were entitled to only one disclosure statement and could recover only one civil penalty for transaction. *Mason v General Fin. Corp. (1976, CA4) 542 F2d 1226, 37 ALR Fed 799.*

Plaintiffs, husband and wife, would be entitled to 2 statutory penalties under *15 USCS § 1640*, because both signed mortgage and promissory note and under state law each was jointly and severally liable for repayment of debt; there were two borrowers and hence there was failure to comply with Truth in Lending Act as to two persons. *Davis v United Cos. Mortgage & Inv. (1977, CA5 La) 551 F2d 971,* reh den (1977, CA5 La) *554 F2d 1065.*

Even though husband and wife are joint obligors, they are entitled to only one recovery when they entered into one credit transaction with automobile dealer and automobile credit company. *Milhollin v Ford Motor Credit Co. (1978, CA9 Or) 588 F2d 753,* revd on other grounds *(1980) 444 US 555, 63 L Ed 2d 22, 100 S Ct 790.*

*15 USCS § 1640*(a) makes any creditor who fails to comply with disclosure requirements under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) liable to "any person", not to joint obligors, collectively; therefore, creditor is separately liable to each joint obligor, each of whom may collect up to $ 1000 from any creditor who violates the disclosure requirements. *Andersen v Farmers Bank (1981, CA8 Neb) 640 F2d 1347.*

Amendment to *15 USCS § 1640* by Truth in Lending Simplification and Reform Act of 1980, specifically limiting multiple obligors in consumer credit transaction or consumer lease to single recovery of damages under § 1640(a) for violation of Truth in Lending Act, was intended as clarification of then existing multiple obligor recovery provisions in § 1640(a); thus, multiple obligors in transaction antedating amendment are entitled to only one recovery. *Brown v*

*Marquette Sav. & Loan Ass'n (1982, CA7 Wis) 686 F2d 608.*

Only one statutory penalty under § 130(a)(3) of Truth in Lending Act (*15 USCS § 1640(a)(3)*) is recoverable, pursuant to § 130(d) of Act (*15 USCS § 1640(d)*), where joint and several obligors on loan show failure by lender to print more conspicuously than other required terminology on disclosure statement term "annual percentage rate" as required by Regulation Z promulgated under Act. *Herrera v First Northern Sav. & Loan Asso. (1986, CA10 NM) 805 F2d 896, 6 FR Serv 3d 878.*

Provision of *15 USCS § 1631(b)* that if debtors are jointly liable, creditor need furnish only one disclosure statement to one debtor was persuasive that where husband and wife had financed purchase of mobile home and had received faulty disclosure statement as family unit rather than as two separate debtors, husband and wife were not entitled to recover two separate statutory penalties under *15 USCS § 1640(a). St. Marie v Southland Mobile Homes (1974, ED La) 376 F Supp 996.*

Where successful plaintiffs in action under *15 USCS § 1640(a)* were husband and wife who were jointly and severally liable for total amount financed, total damages awarded to plaintiffs would be total finance charge of $ 181.33 multiplied by 2, or $ 362.66, plus costs. *Doggett v Ritter Fin. Co. (1974, WD Va) 384 F Supp 150,* affd in part and revd in part on other grounds (1975, CA4 Va) *528 F2d 860.*

Although husband had received required disclosure statement and notice of right to rescind from lender in connection with loan to husband and wife, lender's failure to supply such statement and notice to wife constituted violation of Consumer Credit Protection Act, so that, after husband's death, wife was entitled, under *15 USCS § 1640,* to recover $ 1,000 in her own right against lender and $ 1,000 as administratrix of her husband's estate. *Simmons v American Budget Plan (1974, ED La) 386 F Supp 194.*

Debtors who were husband and wife and took loan as family unit could not each recover from creditor penalty provided by § 130(a) of Truth in Lending Act (*15 USCS § 1640(a)*) but were restricted to recovery of one penalty between them. *In re Wilson (1975, SD Ohio) 411 F Supp 751.*

In nonrescindable transaction involving jointly liable debtors, creditor need provide only one borrower with disclosures mandated by Truth in Lending Act (*15 USCS §§ 1601* et seq.) and cannot be held accountable to other debtors for its failure to provide disclosures correctly, and, in such instances, multiple penalties will not be awarded. *Gillard v Aetna Fin. Co. (1976, ED La) 414 F Supp 737.*

Since Truth in Lending Act (*15 USCS §§ 1601* et seq.) and regulations promulgated thereunder requires disclosures to be made to only one customer in multiple customer transactions, only one customer in such transaction should be allowed to recover under civil liability section of Act as person to whom disclosures were required to be made, and, therefore, creditor in multiple customer transaction who failed to make necessary disclosures would be liable for only one statutory penalty. *Vines v Hodges (1976, DC Dist Col) 422 F Supp 1292.*

Where there were two joint obligors (husband and wife) on loan transaction, each would be entitled to statutory maximum recovery of $ 1,000 from creditor who violated Truth in Lending Act; court would reject lender's argument that under *15 USCS § 1640(a),* Congress intended to limit remedy to $ 1,000 per loan transaction. *Cadmus v Commercial Credit Plan (1977, DC Del) 437 F Supp 1018.*

Creditor is not liable for statutory penalty under *15 USCS § 1640* to estate of second obligor, which was beneficiary of improvements to house made pursuant to credit extended by creditor, where first obligor requested rescission, but neither second obligor nor his estate requested rescission. *Pearson v Colonial Fin. Serv. (1981, MD Ala) 526 F Supp 470.*

Where, under Truth in Lending Act of 1968, creditor failed to give Chapter 13 debtors proper notice of their right to rescind mortgage loan transaction secured by their home, and failed to return money to debtors within 20 days after

receiving debtors' notice that they were rescinding transaction, bankruptcy court imposed civil penalty under *15 USCS § 1640* of $ 250 per violation, and found that only single penalty could be awarded for each violation, even though there were two obligors in transaction. *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899,* revd on other grounds, remanded (2003, DC Kan) *288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364).*

In action for damages where creditor failed to disclose certain required information mandated by Truth-In-Lending Act (*15 USCS §§ 1601* et seq.), there is but one recovery of damages for each consumer credit transaction under § 1640(a)(2) permitting recovery of "twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than $ 100 nor greater than $ s1,000," although there are multiple obligors. *Blair v Royal AMC Jeep, Inc. (1981, Fla App D5) 397 So 2d 744.*

Husband and wife would not each be entitled to recover $ 1,000 statutory penalty, where they entered into single credit transaction; husband and wife, when joint obligors, would be treated as one. *Conrad v Beneficial Finance Co. (1977, 4th Dept) 57 App Div 2d 91, 394 NYS2d 923.*

**3.Actual Damages 89. Generally**

Plaintiff must prove injury or loss to recover actual damages. *Peters v Jim Lupient Oldsmobile Co. (2000, CA8 Minn) 220 F3d 915* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299).*

Statutory damages provide at least partial remedy for all material TILA violations; however, actual damages ensure that consumers who have suffered actual harm due to lender's faulty disclosures can be fully compensated, even if total amount of their harm exceeds statutory ceiling on TILA damages. *Turner v Beneficial Corp. (2001, CA11 Ala) 242 F3d 1023, RICO Bus Disp Guide (CCH) P 10026, 14 FLW Fed C 426,* cert den *(2001) 534 US 820, 151 L Ed 2d 21, 122 S Ct 51.*

**90. Causal relationship between damages and injury or loss**

According to its plain meaning, statutory remedy of actual damages in *15 USCS § 1640(a)(1)* requires direct causal relationship between amount of damages and injury or harm; thus, actual damage is sustained as result of failure to disclose if consumer can show that, had he been properly informed, he would have engaged in different or less expensive transaction. *Perrone v GMAC (2000, CA5 La) 232 F3d 433* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299)* and cert den *(2001) 532 US 971, 149 L Ed 2d 468, 121 S Ct 1601.*

Individual's claims for damages were not recoverable under *15 USCS § 1640(a)(1)* where individual had never completed process of applying for credit from financial institutions and could not show that department store's negative report to credit bureau caused loss of business, alleged violations that could have led to exacerbation of individual's disease were time-barred, and individual failed to show extreme circumstances or considerable mental stress. *Burnstein v Saks Fifth Ave. & Co. (2002, ED Mich) 208 F Supp 2d 765,* affd (2003, CA6 Mich) *85 Fed Appx 430.*

**91.--Proximate cause**

In order to establish actual damages, plaintiff must show that TILA violation was proximate cause of any actual damages; to show causation, plaintiff must show that he read TILA disclosure statement, that he understood charges being disclosed, that he would have sought lower price if disclosure statement had been accurate, and that he would have obtained lower price. *Peters v Jim Lupient Oldsmobile Co. (2000, CA8 Minn) 220 F3d 915* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299).*

"Guarantor" of retail installment contract (RIC) for used Mercedes cannot recover actual damages under *15 USCS § 1640*, even if per se violation of statute occurred when it was not revealed that portion of payment for extended service contract (ESC) was retained as profit, because guarantor's own acts and omissions--intending to pay ESC price before reviewing RIC terms, failing to assert forgery defense, and later ratifying RIC without seeing copy of it--appear to have more proximately caused her damages than dealership's alleged misrepresentations. *Anderson v Rizza Chevrolet, Inc. (1998, ND Ill) 9 F Supp 2d 908.*

Since customer read none of documents presented to her in either April 3 or April 13 agreements, she could not show that she relied on disclosures in those documents in any way; there is no evidence that she would have negotiated further or shopped around for better credit terms had percentage rate been properly presented; thus, customer failed to show that APR violation proximately caused her any injury. *Rucker v Sheehy Alexandria, Inc. (2002, ED Va) 228 F Supp 2d 711.*

**92. Reliance, detrimental reliance, and evidence thereof**

Since detrimental reliance is element of claim for actual damages, it must be proven to recover such damages for disclosure violations. *Perrone v GMAC (2000, CA5 La) 232 F3d 433* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299)* and cert den *(2001) 532 US 971, 149 L Ed 2d 468, 121 S Ct 1601.*

Plaintiffs must demonstrate detrimental reliance in order to be entitled to actual damages under *TILA. Turner v Beneficial Corp. (2001, CA11 Ala) 242 F3d 1023, RICO Bus Disp Guide (CCH) P 10026, 14 FLW Fed C 426,* cert den *(2001) 534 US 820, 151 L Ed 2d 21, 122 S Ct 51.*

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1),* thus, since plaintiff car buyer failed to plead and could not prove detrimental reliance, his Truth in Lending Act claims against defendant bank failed. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

Pledgor who admitted that he was aware of monthly charge under pawn agreement did not actually rely on pawnbroker's failure to make appropriate disclosures under *15 USCS § 1640(a),* as required to establish actual damages. *Wiley v Earl's Pawn & Jewelry (1997, SD Ala) 950 F Supp 1108.*

Since customer read none of documents presented to her in either April 3 or April 13 agreements, she could not show that she relied on disclosures in those documents in any way; there is no evidence that she would have negotiated further or shopped around for better credit terms had percentage rate been properly presented; thus, customer failed to show that APR violation proximately caused her any injury. *Rucker v Sheehy Alexandria, Inc. (2002, ED Va) 228 F Supp 2d 711.*

Plaintiff cardholders could not rely on presumption of reliance and therefore had to prove detrimental reliance for actual damages under Truth in Lending Act (TILA); thus, cardholders' TILA claims were dismissed without prejudice and with leave to renew. *In re Currency Conversion Fee Antitrust Litig. (2003, SD NY) 265 F Supp 2d 385, 2003-2 CCH Trade Cases P 74099.*

Western District of Pennsylvania court agrees with majority approach and holds that in order for borrower to recover actual damages under *15 USCS § 1640(a)* for violation of *15 USCS § 1605(b)* disclosure requirements borrower must show that he or she detrimentally relied on lender's defective disclosure statement. To recover actual damages borrower must prove: (1) that he or she read lender's Truth in Lending Act disclosure statement; (2) that he or she understood charges being disclosed; (3) that had disclosure statement been accurate, he or she would have sought lower price; and (4) that he or she would have obtained lower price for his or her loan transaction. *Vallies v Sky Bank (2008, WD Pa) 583 F Supp 2d 687.*

Summary judgment was entered against vehicle buyer as to his claim for actual damages under *15 USCS § 1640(a),*

arising from bank lender's violation of *15 USCS § 1605(b)* disclosure requirements, because buyer could not show that he detrimentally relied on lender's defective disclosure statement, which proof was required to recover actual damages under Truth in Lending Act (TILA); although lender violated TILA by including cost of accidental debt cancellation insurance in its finance charge without disclosing to buyer cost of insurance or that it was optional, buyer could not show detrimental reliance because he did not decline insurance or insist that lender deduct insurance cost from his loan transaction after company that issued insurance policy informed him of cost and that insurance was optional. *Vallies v Sky Bank (2008, WD Pa) 583 F Supp 2d 687.*

Where employee of creditor, in changing term of payday loan to debtor, failed to correct APR of debtor's loan, in violation of Truth in Lending Act, *15 USCS § 1601* et seq., trustee for debtor was not entitled to actual damages because there was no evidence that debtor would have rejected loan had he been advised of actual *APR. Yarnall v Four Aces Emporium, Inc. (In re Boganski) (2005, BAP9) 322 BR 422.*

Detrimental reliance must be demonstrated in order to recover actual damages under *15 USCS § 1640(a)(1)* for disclosure violation of *15 USCS §§ 1601* et seq. *McDonald v Checks-N-Advance, Inc. (In re Ferrell) (2006, BAP9) 358 BR 777.*

**93. Miscellaneous**

District court properly granted summary judgment in favor of United States, acting on behalf of Department of Health and Human Services, in its action seeking to collect amount of Health Education Assistance Loan indebtedness that debtor incurred while she was student at dental school; although Government committed timing violation as to disclosure of annual percentage rate as required under Truth in Lending Act (TILA), *15 USCS § 1638*, and under *12 CFR §§ 226.17(i)*, and *226.18(e)*, debtor was not entitled to recoupment because she did not establish actual damages under *15 USCS § 1640* and because Government was immune under *15 USCS § 1612(b)* from any civil or criminal penalties for violations of TILA's provisions. *United States v Petroff-Kline (2009, CA6 Ohio) 557 F3d 285, 2009 FED App 79P.*

In order to establish actual damages for creditor's failure to make disclosure of upcharge under *15 USCS § 1638(a)(2)(B)(iii)*, plaintiff must demonstrate that he read TILA disclosure statement, that he understood charges being disclosed, that he would have sought lower price had disclosure been accurate, and that he would have obtained lower price. *Rugambwa v Betten Motor Sales (2001, WD Mich) 200 FRD 358, 49 FR Serv 3d 681.*

Where lender failed to provide required disclosures but lender did not intend to take advantage of debtor by failing to inform debtor of disclosures and debtor knew transaction constituted mortgage, debtor was only entitled to actual damages under Home Ownership and Equity Protection Act of 1994. *Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

Complaint did not assert objection to mortgage servicing agent's proof of claim and this adversary proceeding seeking recovery pursuant to Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., was not presented in nature of defense; thus, Complaint did not state claim for damages upon which relief could be granted; summary judgment, as requested by agent, was appropriate on that ground as to debtors' request for statutory and actual damages. *West v America's Servicing Co. (In re West) (2009, BC WD Pa) 420 BR 284.*

Court may grant actual damages under *15 USCS § 1640* if bank does not make sufficient disclosure of variable interest rate, and if actual damage is excess interest charge over original contract terms, court may order that mortgage be calculated at its original terms and refuse to enforce illegal provision. *Preston v First Bank of Marietta (1983, Washington Co) 16 Ohio App 3d 4, 16 Ohio BR 4, 473 NE2d 1210,* app dismd (Aug 15, 1984).

**4.Statutory Damages**

**a.In General 94. Generally**

Term "subparagraph" in *15 USCS § 1640(a)(2)(A)(ii)* encompasses what is codified as subparts (A)(i) and (A)(ii), not just subpart (A)(ii). *Strange v Monogram Credit Card Bank (1997, CA7 Ill) 129 F3d 943* (criticized in *Schwab v Sears, Roebuck & Co. (In re Derienzo) (2002, BC MD Pa) 282 BR 586).*

*15 USCS § 1640*(a) means that "only" violations of statutes specifically enumerated therein support statutory damages; thus, TILA does not support theory of derivative violations under which errors in form of disclosure must be treated as nondisclosure of key statutory terms. *Brown v Payday Check Advance, Inc. (2000, CA7 Ill) 202 F3d 987,* reh, en banc, den (2000, CA7 Ill) *2000 US App LEXIS 3537* and cert den *(2000) 531 US 820, 148 L Ed 2d 27, 121 S Ct 61* and (criticized in *Lozada v Dale Baker Oldsmobile, Inc. (2001, WD Mich) 145 F Supp 2d 878)* and (criticized in *Daenzer v Wayland Ford, Inc. (2002, WD Mich) 193 F Supp 2d 1030).*

Statutory damages provide at least partial remedy for all material TILA violations; however, actual damages ensure that consumers who have suffered actual harm due to lender's faulty disclosures can be fully compensated, even if total amount of their harm exceeds statutory ceiling on TILA damages. *Turner v Beneficial Corp. (2001, CA11 Ala) 242 F3d 1023, RICO Bus Disp Guide (CCH) P 10026, 14 FLW Fed C 426,* cert den *(2001) 534 US 820, 151 L Ed 2d 21, 122 S Ct 51.*

Under *15 USCS § 1640(a),* recovery of statutory damages is plainly limited to specific violations of disclosure requirements of *15 USCS § 1638(a),* and such damages are not available for violations not enumerated in statute. *McDonald v Checks-N-Advance, Inc. (In re Ferrell) (2006, BAP9) 358 BR 777.*

**95. No proof or recovery of actual damages required**

No showing of actual damages is required in order to recover under provisions of *15 USCS § 1640*. *Redhouse v Quality Ford Sales (1975, CA10 Utah) 523 F2d 1, 20 FR Serv 2d 864.*

Under Truth in Lending Act (*15 USCS §§ 1601* et seq.) statutory damages are available merely on proof of violation, no proof of actual damages is required. *Baker v G. C. Services Corp. (1982, CA9 Or) 677 F2d 775* (criticized in *Terran v Kaplan (1997, CA9 Ariz) 109 F3d 1428, 97 CDOS 2271, 97 Daily Journal DAR 4137, 37 FR Serv 3d 467)* and (criticized in *Frye v Bowman (2002, SD Ind) 193 F Supp 2d 1070)* and (criticized in *Johnson v Riddle (2002, CA10 Utah) 305 F3d 1107).*

Plaintiff in TILA case need not prove that he or she suffered actual monetary damages in order to recover statutory damages. *Purtle v Eldridge Auto Sales (1996, CA6 Tenn) 91 F3d 797, 1996 FED App 247P,* cert den *(1997) 520 US 1252, 138 L Ed 2d 177, 117 S Ct 2411.*

Statutory damages are recoverable without either proof or recovery of actual damages. *Perry v Household Retail Servs. (1998, MD Ala) 180 FRD 423* (criticized in *Shelley v AmSouth Bank (2000, SD Ala) 2000 US Dist LEXIS 11429).*

Court could reasonably infer from facts pleaded that mortgagors received defective disclosures from mortgage servicer, and while mortgagors failed to plead causation, they sought statutory damages which were available under Truth In Lending Act (TILA), *15 USCS § 1640(a)(4),* even in absence of actual damages; the mortgagors TILA claims survived dismissal. *Motley v Homecomings Fin., LLC (2008, DC Minn) 557 F Supp 2d 1005.*

**96. No harm, loss or damage required**

Plaintiff who has shown that lender has violated disclosure requirements of Regulation Z promulgated pursuant to Truth in Lending Act (*15 USCS §§ 1601* et seq.) is entitled to recover damages notwithstanding lender's contention that because borrowers received benefit of "informed use of credit" lender is not liable for any damages, since proven violation of disclosure requirements is presumed to injure borrower by frustrating purpose of permitting consumers to compare various available credit terms. *Herrera v First Northern Sav. & Loan Asso. (1986, CA10 NM) 805 F2d 896, 6 FR Serv 3d 878.*

Ordinarily, one cannot seek damages unless one has suffered loss, but Truth in Lending Act allows monetary recovery even if failure to disclose finance charge caused borrower no harm. *Cowen v Bank United, FSB (1995, CA7 Ill) 70 F3d 937, 33 FR Serv 3d 138.*

Truth in Lending Act (*15 USCS §§ 1601* et seq.) does not require that consumer demonstrate that he has suffered any actual damage; Congress intended to vest considerable enforcement powers in consumers as private attorneys general who, by suing creditors for violations, could achieve widespread compliance without governmental intervention. *Aldrich v Upstate Auto Wholesale, Inc. (1982, ND NY) 564 F Supp 390.*

Debtors were entitled to recovery of penalty from finance company under Truth in Lending Act (*15 USCS §§ 1601* et seq.) where undisputed facts showed that disclosure statements provided by finance company were defective under Act notwithstanding fact that debtors had suffered no actual damage since purpose of penalty provisions is to encourage public to enforce Act. *Lowery v Finance America Corp. (1977) 32 NC App 174, 231 SE2d 904.*

**Unpublished Opinions**

Unpublished: No clear error was shown with regard to award of $ 200 in statutory damages under *15 USCS § 1640(a)(2)(A)(iii)* to borrower's guardian because (1) district court considered all of relevant evidence before concluding that lender committed technical violation of Truth in Lending Act (TILA), by failing properly disclose variable interest being charged on loan as required by *12 CFR §§ 226.17-226.19*, but that it did not violate its duty to deliver material disclosure documents to borrower; and (2) award of only statutory damages was appropriate given guardian's failure to show that borrower would have changed her behavior had she been informed of, and understood consequences of, variable interest rate offered by lender. *Stutzka v McCarville (2007, CA8 Neb) 2007 US App LEXIS 16953.*

**97. Finance charge doubled**

Where contract involving sale of used car contained undisclosed finance charge, in violation of *15 USCS § 1638*, and where parties had stipulated that highest figure customarily charged for similar merchandise during relevant time was $ 325.28 less than contract price, buyer's recovery under *15 USCS § 1640(a)* should not have been limited to statutory minimum of $ 100, but should have been twice $ 325.28, or $ 650.56. *Killings v Jeff's Motors (1974, CA5 Ala) 490 F2d 865.*

If loan is void under state law and also violates federal Truth-in-Lending Act, penalty is twice amount of finance charge that was contracted to maximum of $ 1,000 regardless of state law that voids loan and duty to pay finance charge. *Williams v Public Fin. Corp. (1979, CA5 Ga) 598 F2d 349*, reh den (1979, CA5 Ga) *603 F2d 861*.

Creditor's technical violation by failure to use term "amount financed" on disclosure statements, which caused no damage or actual injury to borrower, warrants statutory damages of twice finance charges where finance charges were less than $ 500. *Huff v Stewart-Gwinn Furniture Co. (1983, CA4 SC) 713 F2d 67.*

Consumer who was defrauded during credit purchase of motor vehicle was entitled to twice entire finance charge in damages under 1995 version of *15 USCS § 1640(a)(2)(A)*. *Nigh v Koons Buick Pontiac GMC, Inc. (2003, CA4 Va) 319 F3d 119*, revd, remanded (2004, US) *160 L Ed 2d 389, 125 S Ct 460, 18 FLW Fed S 13.*

Damages recoverable under *15 USCS § 1640(a)* are twice amount of finance charge which would have been collected in connection with transaction had consumer paid off his account in regular monthly installments; damages are not limited to finance charges actually paid at time of suit since, to so limit damages, would discourage consumers from bringing action until after they had paid their accounts in full. *Willis v American Nat'l Stores (1972, ND Ga) 350 F Supp 173.*

Where finance charges amounted to $ 731.63, plaintiff was entitled to recover double that amount, but in no event more than $ 1,000, from automobile dealer under *15 USCS § 1640(a)*. *Johnson v McCrackin--Sturman Ford, Inc.*

*(1974, WD Pa) 381 F Supp 153,* revd on other grounds (1975, CA3 Pa) *527 F2d 257, 34 ALR Fed 450.*

Since any violation of Truth in Lending Act renders creditor liable to borrower for penalty of twice amount of finance charge, but in no event more than $ 1,000, where finance charge was $ 556.12, plaintiff would be awarded $ 1,000. *Woods v Beneficial Fin. Co. (1975, DC Or) 395 F Supp 9.*

In suit under § 130 of Truth in Lending Act (*15 USCS § 1640*) in which it was established that creditor had failed to disclose prepaid finance charge, damages to which debtor was entitled were twice amount of finance charge in connection with transaction, although it could not be less than $ 100 nor greater than $ 1000. *Campbell v Liberty Fin. Planning (1976, DC Neb) 422 F Supp 1386.*

Borrower shall recover from "title brokers" company $ 1,100 for violations of Truth-in-Lending Act (*15 USCS §§ 1601* et seq.), where company advertised, "Pawn your title, keep your car," and lent money in exchange for pledge of borrower's car title, then leased car back to her for weekly rent plus other charges, because company did not accurately disclose details of "pawn ticket/loans," and § 1640 authorizes recovery of twice amount of finance charge in connection with transaction--but not less than $ 100 nor more than $ 1,000--plus attorney's fees and costs. *Pendleton v American Title Brokers, Inc. (1991, SD Ala) 754 F Supp 860.*

Where lender does not dispute borrowers' contention that its failure to itemize components of finance charge violates Regulation Z as that section read in 1974, borrowers are entitled to damages; because twice amount of finance charge exceeds $ 1,000, damages are limited to $ 1,000 under *15 USCS § 1640(a)(2)(A)(i)* plus costs and reasonable attorney's fees. *In re Chapman (1983, BC DC RI) 33 BR 784.*

Where Creditors violated Truth in Lending Act, *15 USCS §§ 1637* et seq., due to separate accounts, and failures to disclose beginning balance, credits, and ending balance for each account, bankruptcy trustee was awarded damages under *15 USCS § 1640(a)(2)(i)* by doubling finance charges under creditors' original agreements, but damages were limited to one year before bankruptcy under *15 USCS § 1640(e)* and *11 USCS § 108. Schwab v Sears, Roebuck & Co. (In re Derienzo) (2002, BC MD Pa) 282 BR 586.*

Amount of damages to be awarded when disclosure violations under Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) are found is not discretionary; court must award successful litigant-consumer twice "finance charge" involved in relevant transaction, with minimum award being $ 100 and maximum award being $ 1,000. *Martin v Body (1976, Tex Civ App Corpus Christi) 533 SW2d 461.*

**98.--Calculation**

Plaintiff borrower's computation of damages under *15 USCS § 1640,* arrived at by doubling finance charge as it appeared on each of sheets (which plaintiff treated as separate transactions), was incorrect because it created multiplying factor not contemplated by statute, as portion of each finance charge prior to last transaction was repeated in next transaction under consolidation procedure. *Blackmond v Walker-Thomas Furniture Co. (1977, DC Dist Col) 428 F Supp 344.*

Where there was clerical error in finance charge listed on credit disclosure statement, amount which finance charge actually should have been ($ 348.83) would be used in assessing damages rather than amount which had been disclosed ($ 345.83); to this would be added expenses which had been improperly disclosed and therefore not entitled to exemption under *15 USCS § 1605(b)*; damage amount would be twice total finance charge thus computed. *Young v Ouachita Nat'l Bank (1977, WD La) 428 F Supp 1323.*

Creditor who failed to comply with Truth in Lending Act's (TILA) requirements was liable to individual borrower for twice amount of any finance charge in connection with transaction, and liability was statutorily capped at $ 1,000; because double amount of plaintiff borrower's finance charge of $ 681.25 would have exceeded statutory maximum of $ 1,000, and because borrower was entitled to one single recovery for TILA violations, she was entitled to award of $

1,000. *Tweedy v RCAM Title Loans, LLC (2009, WD Va) 611 F Supp 2d 603.*

If there is absolutely no way to determine finance charge, consumer is entitled under § 1640(a)(2)(A) to recover only $ 100 minimum penalty; but if finance charge can be computed, even if not disclosed in promissory note, creditor is liable for penalty of twice amount of finance charge which would have been imposed if consumer had paid obligation in regular installments. *Manley v Wichita Business College (1985) 237 Kan 427, 701 P2d 893.*

**99. Miscellaneous**

Imposition of minimum sanction under *15 USCS § 1640* is proper in cases where finance charge is nonexistent or undetermined. *Mourning v Family Publications Serv. (1973) 411 US 356, 36 L Ed 2d 318, 93 S Ct 1652.*

Plaintiff's claim under Truth in Lending Act, *15 USCS § 1601* et seq., was not rendered moot by district court's earlier decision to rescind mortgage agreement and related documents because plaintiff could still potentially recover statutory damages and attorney's fees. *Stutzka v McCarville (2005, CA8 Neb) 420 F3d 757,* reh den, reh, en banc, den (2005, CA8) *2005 US App LEXIS 23328.*

Consumers may not recover statutory damages under *15 USCS § 1640(a)* for violations of *15 USCS § 1638(b)(1)* and its corresponding regulations, *12 C.F.R. § 226.17(b)* or for violations of *15 USCS § 1632(a)* and its corresponding regulations, *12 C.F.R. § 226.17(a)(22). McDonald v Checks-N-Advance, Inc. (In re Ferrell) (2008, CA9) 539 F3d 1186.*

Plaintiffs established entitlement to judgment as matter of law and court would award maximum statutory penalty of $ 1,000 to each plaintiff, plus costs and reasonable attorney's fees, where automobile credit company was creditor and was not clearly identified as such in manner required by Regulation Z (*12 CFR §§ 226.2, 226.6*). *Rogers v Frank Jackson Lincoln-Mercury (1978, ND Ga) 458 F Supp 1387,* affd in part and revd in part on other grounds (1980, CA5 Ga) *621 F2d 130,* affd in part and revd in part on other grounds *(1981) 452 US 155, 68 L Ed 2d 744, 101 S Ct 2239.*

Car lessees were only entitled to $ 100 each for lessor's technical violation of disclosure requirement, where rebate method applied to them resulted in lower termination charge than one lease disclosed, because lessees suffered no actual damages. *Kedziora v Citicorp Nat'l Servs. (1995, ND Ill) 901 F Supp 1321.*

Car dealer is liable to lessees in amount of $ 1,000 under *15 USCS § 1640(a)(2)(A)(ii)*, where dealer deceived lessees into thinking they had received positive credit for appraised value of their trade-in, because 25 percent of total amount of monthly payments under lease at issue would exceed $ 1,000. *Myers v Hexagon Co. (1998, ED Tenn) 54 F Supp 742, 54 F Supp 2d 742.*

In reading *15 USCS § 1638(a)(2)(B)(iii)* together with *15 USCS § 1640(a)*, it is clear that statutory damages are limited to violations that require disclosure of amount financed; statutory damages are not available under *15 USCS § 1638* for failure to disclose itemization of amount financed. *Rugambwa v Betten Motor Sales (2001, WD Mich) 200 FRD 358, 49 FR Serv 3d 681.*

In borrowers' suit regarding second mortgage that mortgage company immediately assigned to assignee, on assignee's motion to dismiss, borrowers' claim for statutory damages under *15 USCS § 1640(e)* was dismissed because actions for statutory damages under Federal Truth in Lending Act, *15 USCS § 1601* et seq., must be brought within one year from date of occurrence of violation. *Rodrigues v Members Mortg. Co. (2004, DC Mass) 323 F Supp 2d 202.*

Bankruptcy court did not err in awarding debtor minimum damages allowed by *15 USCS § 1640(a)(2)(A)(iii)* because court had discretion to award damages between $ 200 and $ 2,000. *Merriman v Beneficial Mortg. (In re Merriman) (2005, DC Kan) 329 BR 710.*

Car buyer's award of $ 1,000 was statutory maximum; therefore it was neither nominal recovery or de minimus. *Nigh v Koons Buick Pontiac GMC, Inc. (2005, ED Va) 384 F Supp 2d 915.*

Plaintiffs' claim for statutory damages under *15 USCS § 1640* also failed as to right to cancel. *15 USCS § 1640* imposed civil liability on those who violated requirements of Truth in Lending Act; as bank did not violate TILA as to notice of right to cancel, § 1640 claim must also fail. *Barrett v Bank One, N.A. (2007, ED Ky) 511 F Supp 2d 836.*

Used car dealer was creditor under *15 USCS § 1602(f)*, part of Truth in Lending Act and Regulation Z at 12 CFR pt. 226, and thus, was liable for dealer's failure to honor disclosed finance rate under *15 USCS § 1638(b)* and its attempt to force consumer to accept higher rate; thus, consumer was entitled to statutory damages under *15 USCS § 1640(a)*. *Muro v Hermanos Auto Wholesalers, Inc. (2007, SD Fla) 514 F Supp 2d 1343.*

Based on documents produced by debtors and debtor wife's credible testimony, debtors had not received completed copies of notice of right to rescind, as required under *15 USCS § 1635(a)* and Regulation Z, 12 C.F.R. pt. 226.23(b); bankruptcy court found bank, as assignee of loan, had to pay minimum statutory penalty under *15 USCS § 1640(a)(2)(A)(iii)*, and debtors' reasonable attorney's fees, and loan was rescinded and mortgage was void. *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683.*

Chapter 13 debtor was awarded statutory damages of $ 2,000 for creditor bank's failure to provide required notice and disclosures and $ 200 for failure to honor rescission notice, because damages under Truth in Lending Act, *15 USCS §§ 1601* et seq., could be awarded both for creditor's failure to make required disclosures and for its failure to respond properly to debtor's rescission. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

In awarding damages to debtor for lender's failure to provide required disclosures, it was found that $ 200 was appropriate award pursuant to *15 USCS § 1640(a)(2)(A)(iii)* because (1) lender did not intend to take advantage of debtor by failing to inform debtor of disclosures, and (2) evidence established that debtor knew transaction constituted mortgage and debtor agreed to mortgage in good faith. *Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

LLC that seized Chapter 13 debtor's car 16 hours before debtor declared bankruptcy was ordered to pay debtor $ 1,000 in damages, pursuant to *15 USCS § 1640(a)(2)(A)*, because it violated *15 USCS § 1632(a)* when it prepared Motor Vehicle Pawn Contract for debtor to sign before it loaned her $ 2,078 and took title lien on her car; although contract debtor signed included information about finance charge, amount financed, and total payments, it did not provide annual percentage rate in more conspicuous manner than other contract terms. *Spinner v Cash In A Hurry, LLC (In re Spinner) (2008, BC ND Ga) 398 BR 84.*

**Unpublished Opinions**

Unpublished: Assuming that imprecise verb tense in descriptive explanation contained in "total of payments" portion of installment contract violated *15 USCS § 1638(a)(8)* and *12 C.F.R. § 226.18(h)*, purchaser was not entitled to statutory damages under *15 USCS § 1640(a)* where statutory damages were available only for violations of subsections specifically enumerated in § 1640(a), which did not include *15 USCS § 1638(a)(8)* or *12 C.F.R. § 226.18(h)*. *Mize v Joe's Auto Sales, Inc. (2005, SD Ind) 2005 US Dist LEXIS 1648.*

**b.Class Actions 100. Generally**

*15 USCS § 1640*(a)(2)(A) and (2)(B) must be read separately so as to require named plaintiffs in class action to share in class recovery under § 1640(a)(2)(B), rather than allowing named plaintiffs to recover as if they brought individual actions under § 1640(a)(2)(A). *Brame v Ray Bills Finance Corp. (1979, ND NY) 85 FRD 568, 30 FR Serv 2d 426.*

*15 USCS § 1640*(a)(2)(B) did not create statutory right to bring class action under Truth in *Lending Act. Marsh v First USA Bank, N.A. (2000, ND Tex) 103 F Supp 2d 909* (criticized in *Lytle v CitiFinancial Servs. (2002) 2002 PA Super 327, 810 A2d 643).*

**101. Purpose of statutory amendments**

In light of amendments to *15 USCS § 1640(a)* expressly referring to class actions, class action device can be applied to Truth in Lending cases; "horrendous result" objection to class action under old § 1640(a), whereby damages of at least $ 100 would be awarded to each member of class, has been removed by amendments to section limiting total recovery in class action; in most cases, class actions will no longer pose dire consequences to creditor who may have engaged in technical violations of Act. *Boggs v Alto Trailer Sales, Inc. (1975, CA5 La) 511 F2d 114, 19 FR Serv 2d 1490.*

In amending *15 USCS § 1640* to expressly recognize class actions, Congress did not intend that there should be class action in most cases, but intended to encourage Truth in Lending class actions only in sense of removing minimum liability provision which had prevented majority of courts from certifying Truth in Lending cases as class actions. *Agostine v Sidcon Corp. (1975, ED Pa) 69 FRD 437, 21 FR Serv 2d 329.*

Amendments relating to class actions provided by *15 USCS § 1640(a)* represent legislative response to those judicial decisions denying availability of class actions in truth-in-lending cases, and place aggregate limitation on creditor's class action liability for violations not involving actual damages, thereby mitigating potential for enormously large recoveries that led several courts to deny class action treatment; however, amendments by no means require or even recommend class action, but properly leave such determination to sound discretion of courts. *Postow v Oriental Bldg. Ass'n (1975, DC Dist Col) 390 F Supp 1130.*

Purpose of amendments to *15 USCS § 1640* eliminating minimum recovery for class actions and limiting amount of total recovery from creditor is not to discourage large class actions but to undo harshness of crushing damages award against creditors when award for technical violation is unrelated to any real damage to members of purported class. *Fetta v Sears, Roebuck & Co. (1977, DC RI) 77 FRD 411, 25 FR Serv 2d 645.*

Borrowers' Truth In Lending Act (TILA), *15 USCS § 1601* et seq., and state Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D, claims for rescission and statutory damages against lender were certified because 1974 amendment of TILA specifically to limit damages recoverable in class actions under *15 USCS § 1640(a)(2)* did not prohibit class actions for rescission under *15 USCS § 1635*, which did not pose same economic threat to credit industry as class action damages. *McKenna v First Horizon Home Loan Corp. (2006, DC Mass) 429 F Supp 2d 291.*

**102. *Federal Rule of Civil Procedure 23* requirements**

District court erred when it awarded injunctive relief and over $ 22 million in restitution or disgorgement of fees to class of all people in United States who borrowed money from lender or its subsidiaries, based on borrower's claim that lender violated Truth in Lending Act (TILA) when it listed fee for non-filing insurance in wrong column of disclosure form; TILA did not give private litigants right to injunction or other equitable relief such as restitution or disgorgement, and because injunctive relief was not remedy available under TILA, Rule 23(b)(2) certification was improper; far from effectuating declaration regarding borrower's TILA action, district court circumvented remedies Congress provided under TILA: actual damages (which borrower conceded he could not prove) or statutory damages (which borrower waived). *Christ v Ben. Corp. (2008, CA11 Fla) 547 F3d 1292, 21 FLW Fed C 1198.*

Suit brought under Truth In Lending Act (*15 USCS §§ 1601* et seq.) may not proceed as class action unless requirements of *Rule 23, Federal Rules of Civil Procedure*, are met. *Kaminski v Shawmut Credit Union (1976, DC Mass) 416 F Supp 1119, 21 FR Serv 2d 1332.*

While *15 USCS § 1640(a)(2)(B)* is intended to guarantee availability of class actions in TILA suits, it does not obviate plaintiff's traditional burden under *USCS Rule of Civil Procedure 23*. *Perry v Beneficial Finance Co. (1979, WD NY) 81 FRD 490, 27 FR Serv 2d 39.*

Claims under Truth in Lending Act (*15 USCS §§ 1601* et seq.) may be certified as class actions in appropriate

cases, subject to the requirements of *Federal Rule of Civil Procedure, Rule 23. Kleiner v First Nat'l Bank (1983, ND Ga) 97 FRD 683.*

**103. Maximum recovery**

Imposition of maximum recovery in class actions by § 130(a)(2)(B) (*15 USCS § 1640(a)(2)(B)*) alleviates hardships which might result if creditors are subjected to class actions involving large number of credit card holders. *Goldman v First Nat'l Bank (1976, CA7 Ill) 532 F2d 10, 21 FR Serv 2d 710, 36 ALR Fed 638,* cert den *(1976) 429 US 870, 50 L Ed 2d 150, 97 S Ct 183.*

Maximum civil penalty of $ 100,000 [now $ 500,000] in class action under § 130 in Truth in Lending Act (*15 USCS § 1640*) against creditors which failed to include precise terminology required by Act in their credit agreements is reasonable where contract form was so confusing, difficult and misleading that potential damage to numerous customers was great, creditors' failures of compliance with Act were frequent, persistent and extend over long period, creditors had large resources, number of persons adversely affected was large, use of improper form and its continued use after suit was filed was intentional and if class representative bringing suit sued in her own right principal of collateral estoppel might entitle other individual claimants to judgment which could lead to greater liability on part of creditors. *Barber v Kimbrell's, Inc. (1976, WD NC) 424 F Supp 42,* affd in part and revd in part on other grounds (1978, CA4 NC) *577 F2d 216, 25 FR Serv 2d 815,* cert den *(1978) 439 US 934, 58 L Ed 2d 330, 99 S Ct 329* and (criticized in *Strang v JHM Mortgage Sec. Ltd. Partnership (1995, ED Va) 890 F Supp 499)* and (superseded by statute as stated in *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841).*

Congress did not intend, by setting maximum limit on class action recoveries, to limit liability for given violation by defendant-creditor, but rather intended to limit liability for each particular class action; in class action against creditor conducting business on nationwide basis under Truth in Lending Act, predecessor to *15 USCS § 1640(a),* it is not necessary that any class be of nationwide scope rather than limited to particular geographic area since to require nationwide class action will result in few, if any actions being manageable under *USCS Rules of Civil Procedure, Rule 23(b)(3). Zeltzer v Carte Blanche Corp. (1977, WD Pa) 76 FRD 199, 25 FR Serv 2d 963.*

*15 USCS § 1640* provides a ceiling on liability imposed on creditors in class actions to protect creditors from catastrophic judgments. *Kleiner v First Nat'l Bank (1983, ND Ga) 97 FRD 683.*

**104.--Net worth**

In determining maximum liability of defendants in class action under *15 USCS § 1640(a)(2)(B),* District Court errs in basing award on assets of parent corporation where violation of Truth in Lending Act occurred at particular store of one of its subsidiaries; in view of class certified-all persons purchasing furniture from particular store under ad-on credit arrangement--only those assets of defendants properly allocable to store at which plaintiff dealt could be used for determining statutory ceiling. *Barber v Kimbrell's (1978, CA4 NC) 577 F2d 216, 25 FR Serv 2d 815,* cert den *(1978) 439 US 934, 58 L Ed 2d 330, 99 S Ct 329* and (criticized in *Strang v JHM Mortgage Sec. Ltd. Partnership (1995, ED Va) 890 F Supp 499)* and (superseded by statute as stated in *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841).*

Class action under § 130 of Truth in Lending Act (*15 USCS § 1640*) in behalf of those persons who may have been "extended credit" on overdue hospital bills is not allowed since amount recoverable in class actions under section would be 1 percent of hospital's net worth which would be difficult to determine and might be negative figure making it difficult for members of class to decide whether to "opt out" of action; in addition, resources of hospital would have to be considered in any class action award and these would also be difficult to determine. *Fitzgerald v Northeastern Hospital of Philadelphia (1976, ED Pa) 418 F Supp 1041, 23 FR Serv 2d 1363.*

In evaluating resources of creditor in determining award of statutory damages under class action for violation of Truth in Lending Act, it was appropriate to rely on financial statement figure applicable at time of hearing on damages,

as that was appropriate cutoff point for purposes of computing award, even though defendant bank's resources declined significantly since that time. *Adiel v Chase Fed. Sav. & Loan Ass'n (1986, SD Fla) 630 F Supp 131,* affd (1987, CA11 Fla) *810 F2d 1051.*

Defendants' consolidated net worth being greater than $ 50,000,000, Truth-in-Lending Act's $ 500,000 cap applied; as compensatory payment under proposed settlement agreement obviously exceeded that amount, settlement proposal was reasonable. *Smith v Tower Loan of Miss., Inc. (2003, SD Miss) 216 FRD 338,* affd (2004, CA5 Miss) *91 Fed Appx 952,* cert den (2005, US) *160 L Ed 2d 898, 125 S Ct 972.*

**105. Pro rata shares of class members**

Trial court properly denied class certification where plaintiff stated to court that he was willing to represent class as certified only if he could do so without sacrificing full individual statutory award rather than taking pro-rata share of class recovery. *Hooks v General Finance Corp. (1981, CA6 Mich) 652 F2d 651, 31 FR Serv 2d 1490.*

Plaintiff's representation is not rendered inadequate merely because individual recovery could exceed pro-rata share of class recovery where plaintiff is not seeking separately measured damages but will accept pro-rata share of total recovery even if below minimum individual recovery. *Agostine v Sidcon Corp. (1975, ED Pa) 69 FRD 437, 21 FR Serv 2d 329.*

Class certification is denied where named plaintiff has potential of recovering individually more than maximum pro-rata share in class action. *Rollins v Sears, Roebuck & Co. (1976, ED La) 71 FRD 540, 21 FR Serv 2d 1088.*

In class action under § 130 of Truth in Lending Act (*15 USCS § 1640*) which involved over 1000 members of plaintiff class so that statute's provision for maximum recovery of $ 100,000 [$ 500,000] could result in each member of class receiving less than $ 100 which is minimum recovery in individual action under Act, interests of class members will be protected by informing them of possibility of reduced award when notice is sent to class permitting those who wish to litigate their claims individually in hope of greater recovery to do so; fact that prevailing individual plaintiff under Act may recover actual damages, costs and attorney's fees as well as minimum of $ 100 in statutory damages does not necessitate finding that class action is non-superior way of handling claims. *Chevalier v Baird Sav. Asso. (1976, ED Pa) 72 FRD 140, 1976-2 CCH Trade Cases P 61126, 24 FR Serv 2d 1094* (criticized in *In re Linerboard Antitrust Litig. (2001, ED Pa) 203 FRD 197, 7 CCH Trade Cases P 73426).*

Under provisions of *15 USCS § 1640(a)(2)(A)* and (B), because of limitations imposed on recovery in class action, plaintiff will most likely have available much larger recovery in individual action than in class action; fact that there will be only potentially small recovery for each class member is proper factor to be considered in determining whether class action is "superior" under *Federal Rules of Civil Procedure, Rule 23(b)(3). Carter v Public Finance Corp. (1977, ND Ala) 73 FRD 488.*

Class action is not barred despite fact that each member of potential class could receive approximately 30 cents' recovery on pro-rata basis, since each class member will have right to be excluded from case. *Sarafin v Sears, Roebuck & Co. (1977, ND Ill) 73 FRD 585.*

Creditor's contention that representative parties would not fairly and adequately protect interests of class since maximum award would be $ 5.38 prior to deduction for costs of notice and other expenses, substantially less than if members proceeded individually, is no longer valid basis for denying certification as class action. *Fetta v Sears, Roebuck & Co. (1977, DC RI) 77 FRD 411, 25 FR Serv 2d 645.*

Plaintiff, in class action under Truth in Lending Act (*15 USCS §§ 1601* et seq.) may assert only claims which are typical of class as whole and must fairly and adequately represent and protect members of class; in class action where potential class was in excess of 1,000 persons, plaintiff, who had defaulted on installment contract, did not adequately represent class where only approximately 80 persons from total class were in default and where, due to one percent of

net worth limit imposed by *15 USCS § 1640(a)(2)(B)*, class recovery would reduce pro rata recovery of each class member to sum of $ 7.00 to $ 8.00 potentially waiving, not only for plaintiff, but for each member of class, 92 percent to 93 percent of statutory minimum penalty to which each is entitled under *15 USCS § 1640*. *Stranger v American Buyers Club, Inc. (1978, SD Ill) 445 F Supp 790, 25 FR Serv 2d 684.*

There is no merit to contention that *15 USCS § 1640(a)(2)* creates inherent conflict of interest between plaintiff and other members of class in that plaintiff's individual recovery would exceed recovery of each class member who must accept pro-rata share of class recovery, where plaintiff indicates intent to waive individual recovery and accept pro-rata share of class recovery. *Perry v Beneficial Finance Co. (1979, WD NY) 81 FRD 490, 27 FR Serv 2d 39.*

Fact that plaintiff in Truth in Lending Act (*15 USCS §§ 1601* et seq.) action seeks pro rata share less than statutory maximum (*15 USCS § 1640*) does not defeat superiority of class action, as required by *FRCP 23(b)(3)*; to hold otherwise would mean that class of more than 500 could never be certified because named plaintiff's pro rata share would be less than $ 1000.00, and such result would severely weaken class action enforcement provision of Act (*15 USCS § 1640*). *Rivera v Fair Chevrolet Geo Pshp. (1996, DC Conn) 165 FRD 361,* amd on other grounds, adhered to, on reconsideration (1996, DC Conn) *168 FRD 11.*

**106. Actual damages**

District Court did not abuse its discretion in denying class certification under *15 USCS § 1640(a)(2)(B)* to consumers alleging Truth in Lending Act disclosure violations where violations were purely technical, no actual damages were shown, and suit by one consumer resulted in creditor's use of revised installment contract form which conformed to Act's requirements. *Watkins v Simmons & Clark, Inc. (1980, CA6 Mich) 618 F2d 398, 28 FR Serv 2d 929, 61 ALR Fed 592.*

Class of consumers who sued lender under Truth in Lending Act (*15 USCS §§ 1601-1693*) for failure to make proper disclosures in mortgage financing for consumers' purchases of town houses were properly awarded statutory damages under *15 USCS § 1640(a)(2)(B)* rather than actual damages where, although class contended that loan points paid to builder of town houses which arranged financing constituted illegal finance charge that should be considered damage actually incurred, mere fact that class members were led to believe that they were paying loan points directly to lender and not as reimbursement to builder did not render charge illegal since consumers contracted to pay lending institution's closing cost which included loan points and all other costs directly related to mortgage, and this was not unreasonable since they were ultimate recipients of loans. *Adiel v Chase Fed. Sav. & Loan Ass'n (1987, CA11 Fla) 810 F2d 1051.*

Since individual reliance is necessary to prove actual damages, class action may not be certified on that issue. *Perrone v GMAC (2000, CA5 La) 232 F3d 433* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299)* and cert den *(2001) 532 US 971, 149 L Ed 2d 468, 121 S Ct 1601.*

Where there are claims for actual damages under *15 USCS § 1640*, common issues of law or fact which make class actions superior for resolving issues of liability are not present, since each plaintiff will have to show that damages were sustained as result of failure to properly disclose; therefore it would be inappropriate to certify class as to issue of actual damages; class would be certified as to liability only. *McCoy v Salem Mortgage Co. (1976, ED Mich) 74 FRD 8, 24 FR Serv 2d 1065* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299).*

Property owners in development who joined in class action under Truth in Lending Act against bank for failing to comply with credit disclosure requirements faced insurmountable hurdle with respect to proof of damage causation because each member of class must meet requisite showing that property owner could have obtained credit on more favorable terms but for alleged violation of Act, and therefore owners could not recover actual damages; absence of

award for actual damages does not preclude recovery of statutory damages. *Adiel v Chase Fed. Sav. & Loan Ass'n (1986, SD Fla) 630 F Supp 131,* affd (1987, CA11 Fla) *810 F2d 1051.*

Used car buyer's TILA (*15 USCS §§ 1601* et seq.) claim will be set for trial only to determine proper measure of individual and class-based statutory damages to be awarded, where she proved dealer violated § 1638(a)(2)(B)(iii) by not disclosing that it kept part of charge listed for mechanical breakdown protection package, but could not show that she would have sought less expensive warranty plan had she known of dealer markup, because buyer may only recover actual damages by showing detrimental reliance on inaccurate disclosure. *Cannon v Cherry Hill Toyota, Inc. (2001, DC NJ) 161 F Supp 2d 362.*

Since plaintiff claiming actual damages in action under Truth in Lending Act (*15 USCS § 1640(a)*) is required to establish causal connection between alleged inaccurate disclosure and injury by demonstrating reliance upon inaccurate disclosure resulting in prevention of receipt of better credit terms elsewhere, where actual damages in class action may be easily computed, class should be certified; however, where additional damages for each individual member requires individualized proof of reliance and actual injury, it is better practice to certify class liability only, which issue would be res judicata in any action class members desire to bring individually on issue of actual damages. *Vickers v Home Federal Sav. & Loan Asso. (1978, 4th Dept) 62 App Div 2d 1171, 404 NYS2d 201.*

**107. Individual damages**

Named plaintiff and intervenor seeking individual damages may not fairly and adequately represent interest of class because of total recovery limitation provided in *15 USCS § 1640*. *Weathersby v Fireside Thrift Co. (1975, ND Cal) 22 FR Serv 2d 44.*

Named plaintiff in class action under *15 USCS § 1640(a)(2)(B)* is not entitled to recover individual statutory damages over and above individual's pro rata portion of class recovery. *McCoy v Salem Mortgage Co. (1976, ED Mich) 74 FRD 8, 24 FR Serv 2d 1065* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299).*

Named representatives of class bringing class action under § 130 of Truth in Lending Act (*15 USCS § 1640*) will be required to share in class award, if any, and will not be allowed to have separate statutory recovery apart from any class award. *Bantolina v Aloha Motors (1976, DC Hawaii) 419 F Supp 1116.*

Named plaintiff's demand for individual statutory penalty renders him inadequate class representative where recovery of full individual penalty will result in taking substantial share of class award from individual passive class members. *Brame v Ray Bills Finance Corp. (1979, ND NY) 85 FRD 568, 30 FR Serv 2d 426.*

Where named plaintiff in Truth in Lending Act class action insists on full individual recovery from class award, while rest of class would receive substantially lower pro rata award, named plaintiff's interests are antagonistic to class, and he is not adequate class representative. *Rivera v Fair Chevrolet Geo Pshp. (1996, DC Conn) 168 FRD 11.*

**108. State cases**

State Truth-In-Lending Cases are not exempted from § 130(a)(2)(B) of Federal Truth-In-Lending Act (*15 USCS §§ 1640(a)(2)(B)*) which limits damages recoverable in class action suit. *Kaminski v Shawmut Credit Union (1976, DC Mass) 416 F Supp 1119, 21 FR Serv 2d 1332.*

In action under Truth in Lending Act (*15 USCS §§ 1601* et seq.), District Court does not have pendent jurisdiction of state class action claim where potential amount of recovery under state claims is significantly greater than amount prescribed by *15 USCS § 1640(a)(2)(B),* since plaintiff should not be permitted, by procedural device, to accomplish what Congress prohibited. *Wesley v John Mullins & Sons, Inc. (1978, ED NY) 444 F Supp 117, 24 FR Serv 2d 1054.*

**109. Miscellaneous**

District Court abused its discretion in awarding one-half of maximum damages awardable to class under *15 USCS § 1640(a)(2)(B)* in face of its own finding that while frequency and persistence of creditor's actions weighed in favor or substantial award for class, absence of actual damages, creditor's limited resources, number of people adversely affected, and unintentional nature of creditor's actions, all weighed against such award. *Postow v OBA Fed. Sav. & Loan Ass'n (1980, App DC) 201 US App DC 384, 627 F2d 1370, 29 FR Serv 2d 1042.*

In class action against creditor under *15 USCS §§ 1601* et seq., each prevailing plaintiff is permitted to double amount of finance charge provided that total damages do not exceed $ 500,000 where approximately 1,000 consumers received offensive disclosure form, creditor persistently failed to comply with Truth in Lending Act even after numerous lawsuits had been filed against it, and creditor militantly resisted orderly voluntary discovery by failing to promptly comply with discovery orders on several occasions. *Jones v Goodyear Tire & Rubber Co. (1977, ED La) 442 F Supp 1157.*

Creditor is liable to debtors for statutory damages arising from Truth-in-Lending Act violations pursuant to *15 USCS § 1640*, however, creditor is entitled to set off discharged judicial lien under *11 USCS § 553* resulting from incomplete rescission of real estate mortgage against statutory damage award. *Krajci v Mt. Vernon Consumer Discount Co. (1981, ED Pa) 16 BR 464.*

In setting award of statutory damages for class action seeking recovery for violation of Truth in Lending Act where bank failed to provide federal truth-in-lending documents to landowner members of class, bank's argument that transaction, while not assumption, was also not re-financing was unpersuasive and since bank consistently disregarded necessity for disclosure with respect to entire class, such failure militated in favor of award of statutory damages. *Adiel v Chase Fed. Sav. & Loan Ass'n (1986, SD Fla) 630 F Supp 131,* affd (1987, CA11 Fla) *810 F2d 1051.*

39 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1641*

§ 1641. Liability of assignees [Caution: See prospective amendment note below.]

(a) Prerequisites. Except as otherwise specifically provided in this *title [15 USCS §§ 1601* et seq.], any civil action for a violation of this *title [15 USCS §§ 1601* et seq.] or proceeding under section 108 [*15 USCS § 1607*] which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this *title [15 USCS §§ 1601* et seq.].

(b) Proof of compliance with statutory provisions. Except as provided in section 125(c) [*15 USCS 1635(c)*], in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this *title [15 USCS §§ 1601* et seq.] shall be conclusive proof of the delivery thereof and, except as provided in subsection (a), of compliance with this chapter [*15 USCS §§ 1631* et seq.]. This section does not affect the rights of the obligor in any action against the original creditor.

(c) Right of rescission. Any consumer who has the right to rescind a transaction under section 125 [*15 USCS § 1635*] may rescind the transaction as against any assignee of the obligation.

(d) Rights upon assignment of certain mortgages.
(1) In general. Any person who purchases or is otherwise assigned a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required

by this *title [15 USCS §§ 1601* et seq.], the itemization of the amount financed, and other disclosure of disbursements that the mortgage was a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*]. The preceding sentence does not affect rights of a consumer under subsection (a), (b), or (c) of this section or any other provision of this *title [15 USCS §§ 1601* et seq.].

(2) Limitation on damages. Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (1) may not exceed--

(A) with respect to actions based upon a violation of this title, the amount specified in section 130 [*15 USCS § 1640*]; and

(B) with respect to all other causes of action, the sum of--

(i) the amount of all remaining indebtedness; and

(ii) the total amount paid by the consumer in connection with the transaction.

(3) Offset. The amount of damages that may be awarded under paragraph (2)(B) shall be reduced by the amount of any damages awarded under paragraph (2)(A).

(4) Notice. Any person who sells or otherwise assigns a mortgage referred to in section 103(aa) [*15 USCS § 1602(aa)*] shall include a prominent notice of the potential liability under this subsection as determined by the Board.

(e) Liability of assignee for consumer credit transactions secured by real property.

(1) In general. Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any proceeding under section 108 [*15 USCS § 1607*] against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if--

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

(B) the assignment to the assignee was voluntary.

(2) Violation apparent on the face of the disclosure described. For the purpose of this section, a violation is apparent on the face of the disclosure statement if--

(A) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this title.

(f) Treatment of servicer.

(1) In general. A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

(2) Servicer not treated as owner on basis of assignment for administrative convenience. A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) Servicer defined. For purposes of this subsection, the term "servicer" has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 [*12 USCS § 2605(i)(2)*].

(4) Applicability. This subsection shall apply to all consumer credit transactions in existence or consummated on or after the date of the enactment of the Truth in Lending Act Amendments of 1995 [enacted Sept. 30, 1995].

(g) Notice of new creditor.

(1) In general. In addition to other disclosures required by this title, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including--

(A) the identity, address, telephone number of the new creditor;

(B) the date of transfer;

(C) how to reach an agent or party having authority to act on behalf of the new creditor;

(D) the location of the place where transfer of ownership of the debt is recorded; and

(E) any other relevant information regarding the new creditor.

(2) Definition. As used in this subsection, the term "mortgage loan" means any consumer credit transaction that is secured by the principal dwelling of a consumer.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 131, 82 Stat. 157; March 31, 1980, P.L. 96-221, Title VI, § 616(a), 94 Stat. 182; Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 153(c), 108 Stat. 2195; Sept. 30, 1995, P.L. 104-29, § 7, 109 Stat. 274.)

(As amended May 20, 2009, P.L. 111-22, Div A, Title IV, § 404(a), 123 Stat. 1658; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted this section for one which read:

"Except as provided in section 125(c) and except in the case of actions brought under section 130(d), in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this title shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this chapter. This section does not affect the rights of the obligor in any action against the original creditor.".

1994. Act Sept. 23, 1994 added subsec. (d).

1995. Act Sept. 30, 1995 added subsecs. (e) and (f).

2009. Act May 20, 2009, added subsec. (g).

**NOTES:**

Related Statutes & Rules:
This section is referred to in *15 USCS §§ 1640, 1667d*.

Research Guide:

Federal Procedure:
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:5, 6, 20, 24.

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection §§ 143, 155*.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.08-1.10.
1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections §§ 2.04, 2.06.
1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.03.
1A Debtor-Creditor Law (Matthew Bender), ch 14, Liability of Assignees and Related Creditors; The FTC Holder Rule § 14.04.

Annotations:
Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141*.
Civil remedies of consumer for violations of credit transactions provisions of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.), as amended by Truth in Lending Simplification and Reform Act of 1982. *113 ALR Fed 173*.

Texts:
5 Banking Law (Matthew Bender), ch 118, Holder in Due Course: Defenses § 118.04.
5 Banking Law (Matthew Bender), ch 119, Holders in Due Course in Consumer Transactions §§ 119.04, 119.05.
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.03, 152.04, 152.06.
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.09.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.07.

Law Review Articles:
Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303*, Spring 2006.

**Emerging Issues Analysis**

*Fisher and Khandwala on Attacking Foreclosure Rescue Scams*

There is more than one way to lose a house. Foreclosure rescue scammers can steal the title and equity from your client's home. What are you going to do about it? Linda E. Fisher and Leena Khandwala discuss available legal rights and remedies.

Interpretive Notes and Decisions:
1. Generally 2. Relationship with other laws 3. Assignees 4.--Conduits for financing arrangements 5. Mortgage assignments 6. Disclosure statement 7.--Particular cases 8. Rescission right 9. Practice and procedure 10.--Standing 11.--Defenses 12.--Dismissals 13.--Summary judgment 14. Miscellaneous

**1. Generally**

*15 USCS § 1641*(a) does not impose duty of additional inquiry on assignees; only violations that reasonable person can spot on face of disclosure statement or other assigned documents will make assignee liable under *TILA. Taylor v Quality Hyundai (1998, CA7 Ill) 150 F3d 689,* reh den (1998, CA7 Ill) *1998 US App LEXIS 21348* and (criticized in *Lindholt v Walser Ford (1998, DC Minn) 1998 US Dist LEXIS 22765)* and cert den *(1999) 525 US 1141, 143 L Ed 2d 41, 119 S Ct 1032.*

*15 USCS § 1641*(a) overrides clause in private contract that is required by another agency. *Green v Levis Motors, Inc. (1999, CA5 La) 179 F3d 286,* cert den *(1999) 528 US 1020, 145 L Ed 2d 409, 120 S Ct 528.*

There is significant and meaningful distinction between *15 USCS § 1641(e)(2)* and *§ 1641(a)*; definition in § 1641(e)(2) does not contain critical clause "or other assigned documents" found in § 1641(a) and *15 USCS § 1641(a)* applies to assignment of loan not secured by real estate. *Escher v Decision One Mortg. Co., LLC (In re Escher) (2007, BC ED Pa) 369 BR 862.*

**2. Relationship with other laws**

Holder notice required by FTC (*16 CFR § 433.2(a)*) cannot trump TILA's assignee liability mandates. *Ramadan v Chase Manhattan Corp. (2000, CA3 NJ) 229 F3d 194.*

Creditor assignees of car loans can be held liable only for defects that are apparent on face of disclosure statement under *15 USCS § 1641(a),* even though buyers argue that claims preservation clause in contract is required by federal regulation and should be interpreted literally and without reference to § 1641(a), because it is not stated purpose of FTC rule to override § 1641(a), and court cannot elevate regulation over statute. *Cemail v Viking Dodge, Inc. (1997, ND Ill) 982 F Supp 1296* (criticized in *Lindholt v Walser Ford (1998, DC Minn) 1998 US Dist LEXIS 22765).*

Bank cannot be held liable as assignee of dealer's retail installment contracts, where car buyers allege they were unconscionably overcharged for extended warranties and insurance and were not notified that dealer was retaining portion of sales price as commission, relying on state rule that bank is subsequent holder liable to them for any claims they would have had against dealer, because state holder rule is preempted by *15 USCS § 1641(a),* which provides that assignee may be held liable for violations of assignor only when those violations are "apparent on face of disclosure statement." *Alexiou v Brad Benson Mitsubishi (2000, DC NJ) 127 F Supp 2d 557.*

Mortgage assignee's motion for summary judgment on individual's claim seeking to rescind loan transaction on ground that he was required to sign both form describing his right to cancel within three days and form confirming that he was not canceling transaction at closing, in violation of Truth in Lending Act, *15 USCS § 1601* et seq., was denied where individual would have been entitled to rescission under *15 USCS § 1641(c)* if he showed that he was required to

sign confirmation at closing. *Adams v Nationscredit Fin. Servs. Corp. (2004, ND Ill) 351 F Supp 2d 829.*

**3. Assignees**

Nominal assignee who in fact is original extender of credit is not subsequent assignee within meaning of predecessor to *15 USCS § 1641*. *Ford Motor Credit Co. v Cenance (1981) 452 US 155, 68 L Ed 2d 744, 101 S Ct 2239.*

Finance company which had become integral part of seller's financing program in that it bought 95 percent of notes issued by seller for sales of membership in health club, bore full responsibility for all disclosures required under Truth-In-Lending Act (*15 USCS §§ 1601* et seq.). *Joseph v Norman's Health Club, Inc. (1976, CA8 Mo) 532 F2d 86.*

Voluntary assumption of liability by those classified in law as involuntary assignees is not nullified by predecessor to *15 USCS § 1641*, such section describing when voluntary assignees automatically succeed to liability regardless of provisions in assignment agreement; thus, assumption of liability by operation of law is limited to those violations apparent on face of instrument, nothing in predecessor to § 1641 forbidding assignee from assuming liability for violations not apparent on face of instrument, and purchase agreement between bankrupt creditor and assignee of bankrupt's accounts receivable provided account debtor with cause of action against assignee for bankrupt's violations of Truth in Lending Act (*15 USCS §§ 1601* et seq.), where purchase agreement allowed reduction of any outstanding balances owed by bankrupt's account debtors for defenses, offsets, or counterclaims that debtor may assert. *Skinner v W. T. Grant Co. (1981, CA5 La) 642 F2d 981.*

*15 USCS § 1641*(d)(1), part of Home Ownership and Equity Protection Act overrides holder-in-due-course doctrine for high-interest mortgage loans, providing that person who purchases or is otherwise assigned mortgage referred to in *15 USCS § 1602(aa)* shall be subject to all claims and defenses with respect to that mortgage that consumer could assert against creditor of mortgage. *Reiser v Residential Funding Corp. (2004, CA7 Ill) 380 F3d 1027*, cert den (2005, US) *161 L Ed 2d 107, 125 S Ct 1301.*

As assignees, defendants were subject to all claims which could have been brought against originator of loan; to hold otherwise would allow originating bank to cleanse otherwise illegal loan merely by assigning it to national bank. *Thomas v US Bank Nat'l Ass'n ND (2009, CA8 Mo) 575 F3d 794.*

With respect to financing program for satellite dish systems, under which finance company purchased credit accounts from satellite dish company's authorized dealers, finance company was assignee, not creditor, and, thus, could be held liable under *15 USCS § 1641(a)* only for violation apparent on face of disclosure statement. *GE Capital Corp. v DirecTV, Inc. (1999, DC Conn) 94 F Supp 2d 190.*

Pursuant to *15 USCS § 1641(a)*, automobile financing company was treated as assignee for purposes of individual's claim regarding allegedly incorrectly calculated license and registration fees due at lease signing where original lease was prepared on company's preprinted forms, company did not calculate license and registration figures, and any errors in calculation were not apparent on face of lease. *Kennedy v BMW Fin. Servs., N.A. (2005, DC Conn) 363 F Supp 2d 110.*

Assignees argued that borrower's claims for rescission failed because they were merely former assignees who no longer owned loans and therefore could not execute rescission pursuant to *15 USCS § 1635*; however, because *15 USCS § 1641(c)* gave consumers right to rescind against "any assignee," including former assignees, borrower's claims for rescission against assignees survived dismissal. *Miranda v Universal Fin. Group, Inc. (2006, ND Ill) 459 F Supp 2d 760.*

Assignee could not be held liable for statutory damages for failing to comply with notice to rescind under *15 USCS § 1635* of Truth in Lending Act, *15 USCS § 1601* et seq., because underlying basis for requested rescission was alleged disclosure violation that was not apparent on face of disclosure statement; mortgagor and another plaintiff allegedly had not received two copies each of complete notice of right to cancel; under *15 USCS § 1641(a)*, assignee could only be

held liable for violations that were apparent on face of disclosure statement, and § 1641(a) did not require assignee to go beyond documents to investigate plaintiffs' claim. *Bills v BNC Mortg., Inc. (2007, ND Ill) 502 F Supp 2d 773.*

Law firm was not liable as assignee pursuant to *15 USCS § 1641*, based on its efforts to collect cardholder's debt owed to credit card issuer, because, even assuming that issuer had committed violation of Fair Credit Billing Act, law firm was not assignee; there was no evidence that issuer assigned or in any way sold holder's account to law firm, and, in any event, alleged violation was not one that could be passed on to assignee because it was not violation apparent on face of disclosure statement. *Langenfeld v Chase Bank United States, N.A. (2008, ND Okla) 537 F Supp 2d 1181.*

Neither mortgage lender's parent (until 2007), nor trustee holder of secured mortgage deeds of trust, were creditors or assignees of creditors as defined by Truth in Lending Act, *15 USCS §§ 1601* et seq.: neither entity was party to which debt was initially payable, neither was "creditor" pursuant to *15 USCS § 1602(f)(1)*; further, because plaintiff did not allege TILA violation apparent on face of disclosure statement, neither qualified as lender's "assignee" pursuant to *15 USCS § 1641(e). Roach v Option One Mortg. Corp. (2009, ED Va) 598 F Supp 2d 741,* injunction den (2009, ED Va) *2009 US Dist LEXIS 11262.*

Where plaintiff borrowers asserted Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., claim for rescission based on defendant loan originator's alleged failure to adequately disclose annual percentage rate (APR), and that claim was based on statements regarding APR that were apparent through comparison of disclosure statement and note, under *15 USCS § 1641(a),* (e), borrowers could maintain action against defendant loan assignee for alleged TILA violation. *Jordan v Paul Fin., LLC (2009, ND Cal) 644 F Supp 2d 1156.*

Borrowers did not state claim against mortgage loan servicer for assignee liability under *15 USCS § 1641(e)* because there were no allegations as to whether violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., were apparent on face of disclosure statements; however, borrowers sufficiently alleged that servicer qualified as creditor under *15 USCS § 1602(f)* based on its acquisition of or merger with lender that made borrowers' loan. *Seldon v Home Loan Servs. (2009, ED Pa) 647 F Supp 2d 451, 74 FR Serv 3d 235.*

**4.--Conduits for financing arrangements**

Where automobile dealer merely served as "conduit" for placing finance company's contracts with consumers and then regularly assigned contracts to finance company, finance company was "creditor" within meaning of *15 USCS § 1602(f)* and Regulation Z, and finance company was not merely "subsequent assignee" of purchaser's note so as to be entitled to protection under *15 USCS § 1641. Meyers v Clearview Dodge Sales, Inc. (1974, ED La) 384 F Supp 722,* affd in part and revd in part on other grounds (1976, CA5 La) *539 F2d 511,* cert den *(1977) 431 US 929, 53 L Ed 2d 245, 97 S Ct 2633.*

Where bank uses seller as conduit for its financing arrangements, bank is considered, for purposes of Truth in Lending Act (*15 USCS §§ 1631* et seq.) not merely assignee but as "true creditor", and it may not therefore rely on *15 USCS § 1641. Walker v Security Trust Co. (1976) 85 Misc 2d 614, 379 NYS2d 308.*

**5. Mortgage assignments**

Borrower's *15 USCS § 1641* truth-in-lending claim against assignee of mortgage may proceed, where disclosure statement identified full $ 57,600 as amount financed, without reduction by, inter alia, mortgage broker fee, because there is at least one error "apparent on face of disclosure statement." *Hays v Bankers Trust Co. (1999, SD W Va) 46 F Supp 2d 490.*

Home Ownership and Equity Protection Act of 1994, *15 USCS § 1641(d)(1),* does nothing to alter requirements of U.S. Const. Art. III, § 2 standing; rather, it merely eliminates holder in due course defenses for assignees of certain high cost mortgages when assignee holds plaintiffs' loans. *Mull v Alliance Mortg. Banking Corp. (2002, WD Tenn) 219 F Supp 2d 895.*

In borrowers' suit alleging that mortgage assignee was liable for all violations of law committed by original lender, mortgage assignee was not entitled to summary judgment on Home Ownership and Equity Protection Act claim, because it failed to meet burden set forth in *15 USCS § 1641(d)(1)* to exempt itself from liability. *Cooper v First Gov't Mortg. & Investors Corp. (2002, DC Dist Col) 238 F Supp 2d 50.*

In borrowers' suit regarding second mortgage that mortgage company immediately assigned to assignee, on assignee's motion to dismiss, borrowers could not state claim under Federal Truth in Lending Act, *15 USCS § 1601* et seq., based upon mortgage company's designation of assignee as recipient of borrowers' rescission notice because technical violation of Federal Reserve Board Regulation Z, 12 C.F.R. pt. 226 (2004), was minor deviation with no potential for actual harm. *Rodrigues v Members Mortg. Co. (2004, DC Mass) 323 F Supp 2d 202.*

When mortgagor alleged that mortgagee violated Truth in Lending Act, *15 USCS §§ 1601* et seq., and Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, mortgagor could not recover damages or attorneys' fees against FDIC because *15 USCS § 1641(e)(1)* only permitted civil actions against voluntary assignees, and FDIC was not voluntary assignee of mortgage in question, as FDIC was statutorily required to accept appointment as mortgagee's receiver. *King v Long Beach Mortg. Co. (2009, DC Mass) 672 F Supp 2d 238.*

When mortgagor alleged that mortgagee violated Truth in Lending Act, *15 USCS §§ 1601* et seq., and Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, mortgagor was not entitled to exercise right of rescission against FDIC as assignee of mortgage in question, under *15 USCS § 1641(c)*, because FDIC no longer held mortgage, which had been sold to bank. *King v Long Beach Mortg. Co. (2009, DC Mass) 672 F Supp 2d 238.*

When mortgagor alleged that mortgagee violated Truth in Lending Act, *15 USCS §§ 1601* et seq., and, after Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, FDIC sold mortgage in question to bank, bank was not entitled to summary judgment enforcing mortgage because bank was mortgage's current assignee, and fact that FDIC retained liabilities when selling mortgage to bank did not prevent mortgagor from exercising rescission remedy against bank, since that right was exercisable against holder of asset, rather than retainer of liability. *King v Long Beach Mortg. Co. (2009, DC Mass) 672 F Supp 2d 238.*

Bank, as assignee of Home Ownership Equity Protection Act (HOEPA), *15 USCS § 1639* et seq., loan, was liable under *15 USCS § 1641(d)* because it knew loan was HOEPA loan when it was assigned. *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683.*

Under *15 USCS § 1641(d)*, assignees of Home Ownership and Equity Protection Act, *15 USCS §§ 1639* et seq., mortgages are liable for claims that could be asserted against original creditor of mortgage. *Lewis v Delta Funding Corp. (In re Lewis) (2003, BC ED Pa) 290 BR 541* (criticized in *Jeanty v Wash. Mut. Bank F.A. (2004, ED Wis) 305 F Supp 2d 962).*

Chapter 13 debtors' claim alleging that bank that was assigned mortgage on their residence was liable for damages under *15 USCS § 1639* because lender that refinanced mortgage did not tell them that mortgage was "high cost" HOEPA loan was sufficient to survive bank's motion to dismiss; *15 USCS § 1641(d)* provided that any person who purchased or was otherwise assigned mortgage referred to in *15 USCS § 1602(aa)* was subject to all claims and defenses with respect to that mortgage that consumer could have asserted against creditor of mortgage, unless purchaser or assignee demonstrated that reasonable person exercising ordinary due diligence could not have determined, based on documentation required by Truth in Lending Act, *15 USCS §§ 1601* et seq., itemization of amount financed, and other disclosure of disbursements, that mortgage was mortgage referred to in § 1602(aa). *Blythe v HSBC Bank USA, N.A. (In re Blythe) (2009, BC ED Pa) 413 BR 205*, motions ruled upon (2009, BC ED Pa) *2009 Bankr LEXIS 2776.*

**6. Disclosure statement**

Phrase "apparent on the face" in *15 USCS § 1641(a)* means exactly that; for assignee to be liable, violation must be

apparent on face of assigned disclosure documents. *Ramadan v Chase Manhattan Corp. (2000, CA3 NJ) 229 F3d 194.*

Scope of *15 USCS § 1641(a)* is quite narrow, and, in determining assignee liability, court cannot consider documents extraneous to disclosure statement in concluding if alleged violation is "apparent on face of disclosure statement." *Jordan v Chrysler Credit Corp. (1999, DC NJ) 73 F Supp 2d 469.*

*15 USCS § 1641* makes assignee liable to obligor only for those violations that are apparent on face of documents it receives as part of assignment; only violations that reasonable person can spot on face of disclosure statement or other assigned documents will make assignee liable under Truth in *Lending Act. Jenkins v Mercantile Mortg. Co. (2002, ND Ill) 231 F Supp 2d 737* (criticized in *Payton v New Century Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366).*

**Unpublished Opinions**

Unpublished: District court properly concluded that mortgagee's assignee could not be held liable under *15 USCS § 1641(a)* as matter of law because Truth In Lending Act did not impose duty upon assignees to determine whether appropriate disclosures were made, and plaintiff did not allege that disclosure violation was apparent on face of disclosure statement provided by mortgagee. *Parker v Potter (2007, CA11 Fla) 2007 US App LEXIS 3391.*

**7.--Particular cases**

Difference between disclosure statement which left impression that default charge was discretionary with creditor and contract which left no doubt that default charges were automatic was violation of Truth in Lending Act (*15 USCS § 1601* et seq.) and Regulation Z which created liability on part of assignee finance company. *Price v Franklin Inv. Co. (1978, App DC) 187 US App DC 383, 574 F2d 594.*

Assignee of retail installment contract was not liable under Truth in Lending Act (*15 USCS §§ 1601* et seq.) for assigner's failure to make necessary disclosures on debtor's copy of contract where copy of contract given to assignee contained necessary disclosures, debtor had given written acknowledgment that he had received disclosures and evidence indicated that there were no prior instances of assignor having deleted disclosures in copy of contract given to debtor which may have served to put assignee on constructive notice of such activity by assignor. *St. Germain v Bank of Hawaii (1976, DC Hawaii) 413 F Supp 587,* revd (1977, CA9 Hawaii) *573 F2d 572.*

Assignee of automobile purchase agreement was not liable for dealer's violation of *15 USCS § 1641* in failing to disclose that it was retaining portion of purchase price paid for extended warranty coverage, based solely on assignee's alleged general knowledge of dealer's practices in this regard, where dealer's violation was not apparent on face of loan disclosure statement. *Ritter v Durand Chevrolet (1996, DC Mass) 932 F Supp 32.*

Assignee of retail installment contract issued by car dealer is not liable for alleged Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) violation under *15 USCS § 1641(a),* even though buyer points to discrepancy between contract, which listed $ 40 license fee, and vehicle application, which left blank space next to "License," because conflict between documents does not make it "apparent" that $ 17.08 of $ 40 is allegedly "finance charge," nor could TILA violation be "gleaned" from this discrepancy. *Brown v Coleman Invs. (1998, MD La) 993 F Supp 432.*

Buyers of automobiles could not recover from assignee of retail installment sales contract and security agreements, under *15 USCS § 1641,* for seller's violation of requirement that disclosure statement be provided to buyers before completion of transaction, as assignee's liability under statute was limited to seller violations apparent on face of disclosure statement. *Lozada v Dale Baker Oldsmobile, Inc. (2000, WD Mich) 91 F Supp 2d 1087* (criticized in *Johnson v West Suburban Bank (2000, CA3 Del) 225 F3d 366, 48 FR Serv 3d 168)* and (criticized in *Pyburn v Bill Heard Chevrolet (2001, Tenn App) 63 SW3d 351)* and (criticized in *Hale v First USA Bank, N.A. (2001, SD NY) 2001 US Dist LEXIS 8045)* and (criticized in *Gras v Assocs. First Capital Corp. (2001, App Div) 346 NJ Super 42, 786 A2d 886)* and (criticized in *Adams v Am. Residential Servs., L.L.C. (2003, DC Dist Col) 2003 US Dist LEXIS 26478).*

TILA (*15 USCS §§ 1601* et seq.) claim against credit corporation that is retail installment contract assignee is denied summarily, where alleged violation results from official fee overcharge occurring in used car loans, even if buyers could prove that assignee suspected or knew that amount charged exceeded state's statutory amount, because such violation was not "apparent on face" of loan document, as required by § 1641. *Fielder v Credit Acceptance Corp. (2000, WD Mo) 98 F Supp 2d 1104.*

Pursuant to *15 USCS § 1641(a)*, automobile financing company was classified as lessor for purposes of individual's claim regarding allegedly incorrectly calculated excess mileage fees and sales tax due at lease termination where individual submitted evidence that company participated in setting mileage allowance and excess mileage charges for vehicle leases that it assumed from dealer and, at time of lease termination, company was only involved lessor. *Kennedy v BMW Fin. Servs., N.A. (2005, DC Conn) 363 F Supp 2d 110.*

Mortgage company was entitled to dismissal of lawsuit filed by borrowers who alleged violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; differences in two disclosure statements did not violate TILA because second disclosure statement accurately set forth terms of loan, and written acknowledgement of receipt of second disclosure statement was conclusive proof of delivery under *15 USCS § 1641(b). Lynch v RKS Mortg., Inc. (2008, ED Cal) 588 F Supp 2d 1254.*

**8. Rescission right**

In action against assignee, borrowers are entitled to rescission of home improvement loan transaction, including discharge of mortgage and cancellation of promissory note, under *15 USCS §§ 1635(b)* and *1641(c)*, where borrowers never received loan proceeds or copies of required "right to rescind" forms. *Stone v Mehlberg (1989, WD Mich) 728 F Supp 1341, CCH Fed Secur L Rep P 95358.*

Rescission is only remedy to which borrower is entitled under Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.), even though borrower proved 2 small but material violations in miscalculations of finance charge and amount financed with regard to home repair loan, where borrower is suing assignee of original lender, because, while § 1641(c) provides that right to rescind exists even against creditor's assignee, § 1640(a) permits only "creditor" to be held liable for monetary penalty or award of attorney's fees for TILA violation. *Brodo v Bankers Trust Co. (1994, ED Pa) 847 F Supp 353* (criticized in *Fairbanks Capital Corp. v Jenkins (2002, ND Ill) 225 F Supp 2d 910)* and (criticized in *Payton v New Century Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366)* and (criticized in *Briggs v Provident Bank (2004, ND Ill) 349 F Supp 2d 1124).*

Where mortgage borrowers sought rescission under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r*, on basis that they were given copies of notice of right to cancel form that incorrectly stated date of consummation of loan transaction, and assignee of mortgage claimed that forms in loan file showed handwritten corrections to date of consummation, summary judgment was not appropriate because there was material issue of fact as to whether violation that borrowers were claiming would have been apparent to reasonable person on face of documents in loan file. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Notification provided to original lender does not operate to give notice to lender's assignees that borrower intends to exercise his or her right to rescind loan under *15 USCS § 1635*; both *15 USCS § 1635(a)* and *12 CFR § 226.23(a)(2)* state that borrower should notify "creditor," i.e. original lender, to effectuate rescission, and even though there is no explicit reference to assignees in rescission notice provision, there is nothing to indicate that assignee, who has interest in applicable loan and is otherwise subject to same claims and defenses as creditor under *15 USCS § 1641(d)(1)*, is not entitled to receive recission notice, just like original lender. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

**9. Practice and procedure**

Borrower may recover judgment against creditor's assignee in addition to judgment against creditor for truth-in-lending disclosure violation under *15 USCS § 1641(a)*, where violation appears on face of instrument, because

liability is joint and several rather than separate and distinct. *Greenlee v Steering Wheel, Inc. (1988, DC Conn) 693 F Supp 1396.*

Mortgagors' claims against mortgage company are remanded, even though they cite *15 USCS § 1641(d)*, where only reason for relying on statute is to preclude company's holder-in-due-course defense, because mortgagors' claims do not require resolution of substantial question of federal law. *VanDenBroeck v ContiMortgage Corp. (1999, WD Mich) 53 F Supp 2d 965.*

Borrowers were not entitled to certification of national class in their suit against mortgage assignee alleging that assignee was liable by way of *15 USCS § 1641(d)* for violations of federal and state law arising from alleged kickback scheme involving fraudulent settlement charges; borrowers failed to satisfy requirements of *Fed. R. Civ. P. 23(b)(3)* given individualized questions concerning validity of fees paid to law firm for closing services. *Reiser v Residential Funding Corp. (2005, SD Ill) 236 FRD 425.*

Chapter 13 debtor's signature on Homeowner's Equity Protection Act, *15 USCS § 1639*, notice was not conclusive proof of delivery of document to debtor and instead created rebuttable presumption; since debtor testified that debtor's husband was given folder with loan documents but she was given no documents, presumption was overcome and debtor was entitled to rescission. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636.*

**10.--Standing**

Home Ownership and Equity Protection Act of 1994, *15 USCS § 1641(d)(1)*, does nothing to alter requirements of U.S. Const. Art. III, § 2 standing; rather, it merely eliminates holder in due course defenses for assignees of certain high cost mortgages when assignee holds plaintiffs' loans. *Mull v Alliance Mortg. Banking Corp. (2002, WD Tenn) 219 F Supp 2d 895.*

*15 USCS § 1641*(d)(1) did not provide borrowers with standing to sue banks and loan trusts, assignees of loan originator, for alleged illegal acts of loan originator, because borrowers failed to state which of any of banks or loan trusts actually held their loans, and they had not established actual case or controversy between themselves and banks and loan trusts. *Dash v FirstPlus Home Loan Trust 1996-2 (2003, MD NC) 248 F Supp 2d 489.*

**11.--Defenses**

Assignee of mortgage cannot raise defense that he is not liable under Truth in Lending Act (*15 USCS §§ 1601* et seq.) under terms which govern liability of assignees where assignee failed to raise such defense as affirmative defense in any pleading and there was no pretrial order. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899).*

For purposes of its motion to strike affirmative defense and dismiss counterclaim to its foreclosure action, assignee was bound by its allegation in complaint that it was owner of note and mortgage, and it could not claim it was merely servicer of loan for purposes of Truth in Lending Act; nor would court infer from low consideration recited on assignment that assignment was solely for administrative convenience, as authenticity of assignment was disputed. *Fairbanks Capital Corp. v Jenkins (2002, ND Ill) 225 F Supp 2d 910* (criticized in *Walker v Gateway Fin. Corp. (2003, ND Ill) 286 F Supp 2d 965).*

**12.--Dismissals**

District court properly denied financial corporation's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss as to mortgagors' claims alleging violations of Truth in Lending Act and Real Estate Settlement Procedures Act were based on affirmative defense of statute of limitations because district court could only act on complaint, and it was rarely good reason to dismiss based on statute of limitations under *Fed. R. Civ. P. 12(b)(6)*; it was better to await final decision rather than leap into evidence regarding whether *15 USCS § 1641(d)(1)* was applicable because only if mortgagors could

demonstrate justification for delay in suing mortgagee, but could not demonstrate equivalent justification for delay in suing financial corporation, which purchased mortgagors' notes from mortgagee, did effect of § 1641(d)(1) matter. *Reiser v Residential Funding Corp. (2004, CA7 Ill) 380 F3d 1027,* cert den (2005, US) *161 L Ed 2d 107, 125 S Ct 1301.*

Borrower's Truth in Lending Act (*15 USCS §§ 1601* et seq.) claim against lender's assignee will be dismissed, even though claim that loan brokerage services fee required by creditor should have been labeled "finance charge" instead of part of "amount financed" in disclosure documents survives against lender, because fact requiring "finance charge" label (i.e., that lender's informal practice was to require services of loan broker) was not apparent on face of disclosure statement so as to extend lender liability to assignee under *15 USCS § 1641(a). Johnson v Fleet Finance, Inc. (1992, SD Ga) 785 F Supp 1003.*

Assignee of home improvement financing contract is not entitled to dismissal of Truth in Lending Act (TILA) (*15 USCS §§ 1601* et seq.) complaint, where borrowers allege that initial cash sales contracts used by home improvement dealers contained penalty clauses and confession of judgment provisions that negated clear and conspicuous disclosure of their rescission rights, and that they were not informed of rescission rights at time all terms of transaction were finalized and approved, because borrowers allege absolute rescission right against assignee under § 1641(c) since they properly allege predicate § 1635 claim for violation of disclosure requirements. *Mount v LaSalle Bank Lake View (1996, ND Ill) 926 F Supp 759* (criticized in *Lozada v Dale Baker Oldsmobile, Inc. (2000, WD Mich) 91 F Supp 2d 1087)* and (criticized in *Beemus v Interstate Nat'l Dealer Servs. (2003) 2003 PA Super 177, 823 A2d 979).*

Bank is entitled to summary dismissal of car purchasers' truth-in-lending claim, where car dealer disclosed in retail installment contract that $ 40 was being paid to public officials for "license fees," even though dealer may be liable under *15 USCS § 1638(a)(2)(B)(iii)* for not disclosing that $ 18 of that $ 40 fee was really "upcharge" retained by dealer, because bank is not liable as assignee of contract for dealer's nondisclosure of "upcharge" under § 1641(a). *Green v Levis Motors (1997, MD La) 994 F Supp 735,* affd, remanded (1999, CA5 La) *179 F3d 286,* cert den *(1999) 528 US 1020, 145 L Ed 2d 409, 120 S Ct 528.*

For purposes of its motion to strike affirmative defense and dismiss counterclaim to its foreclosure action, assignee was bound by its allegation in complaint that it was owner of note and mortgage, and it could not claim it was merely servicer of loan for purposes of Truth in Lending Act; nor would court infer from low consideration recited on assignment that assignment was solely for administrative convenience, as authenticity of assignment was disputed. *Fairbanks Capital Corp. v Jenkins (2002, ND Ill) 225 F Supp 2d 910* (criticized in *Walker v Gateway Fin. Corp. (2003, ND Ill) 286 F Supp 2d 965).*

Because discovery had not begun, district court found that it was premature to dismiss mortgagors' Truth in Lending Act, *15 USCS § 1601* et seq., claim against one mortgage company based on its contention that it could not be held liable as it was only assignee of mortgage. *Polis v Am. Liberty Fin., Inc. (2002, SD W Va) 237 F Supp 2d 681.*

Loan servicer's motion to dismiss individuals' claims that original loan documents they received violated Truth in Lending Act by failing to disclose full finance charge was granted because if any loan were to be rescinded, loan servicer would have ceased to have any collection or other function in connection rescinded loan and as result, its presence in litigation was unnecessary under *Fed. R. Civ. P. 19(a). Walker v Gateway Fin. Corp. (2003, ND Ill) 286 F Supp 2d 965.*

Where mortgage borrowers settled with originator of their mortgage loan on their statutory damages claim under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r,* dismissal of statutory damages claim against assignee of mortgage was warranted because borrowers had failed to raise issue of material fact as to whether assignee's liability was greater than borrowers' refund from and settlement with originator. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Company that held lease was subject only to those claims which lessees could have asserted against dealership that

leased car to them and which were apparent on face of lease, and because lessees' claim for rescission of lease attempted to make holder liable for misrepresentations made by dealer's employee which were not apparent on face of lease, trial court properly dismissed that claim. *Jarvis v S. Oak Dodge, Inc. (2002) 201 Ill 2d 81, 265 Ill Dec 877, 773 NE2d 641.*

**Unpublished Opinions**

Unpublished: Although district court properly determined that mortgagee's assignee could not be held liable under *15 USCS §§ 1640(a), 1641(a),* because assignee was not "creditor" as defined in Truth In Lending Act and assignee had no statutory duty to make sure that proper disclosures were made by mortgagee, it erred in dismissing mortgagor's suit under *Fed. R. Civ. P. 12(b)(6)* because mortgagor was seeking recission under *15 USCS § 1635*, and assignee could possibly be required to provide recission under *15 USCS § 1641(c)*; dismissal order was vacated and mortgagor's case was remanded back to district court to determine if she had sufficiently alleged claim for recission against assignee pursuant to *15 USCS §§ 1635, 1641(c). Parker v Potter (2007, CA11 Fla) 2007 US App LEXIS 3391.*

**13.--Summary judgment**

Mortgage company is not entitled to summary judgment in mortgagors' action for violations of TILA (*15 USCS § 1641*), where at some point following sale of servicing rights to mortgage company by mortgage holder, which had sold mortgagee to Freddie Mac, delivered unrecorded assignment of note and mortgage to Freddie Mac, and retained rights to service loan on behalf of Freddie Mac, mortgage holder retrieved unrecorded mortgage from Freddie Mac at which time it became actual owner of mortgage and debt it secured, following which mortgage company recorded assignment of mortgage debt and note from mortgage holder and reassigned mortgage to Freddie Mac, because mortgage holder was assignee of creditor and may be held liable under *TILA. Myers v Citicorp Mortgage (1995, MD Ala) 878 F Supp 1553.*

Summary judgment is appropriate in favor of automobile finance company regarding assignee liability for alleged inaccuracies in disclosure statement, even if dealer statement failed to properly disclose upcharges by labeling them "license fees," where buyer merely alleges that assignee had knowledge of inaccuracy in disclosure, because there is no violation apparent on face of disclosure statement, as required by *15 USCS § 1641(a). Brister v All Star Chevrolet (1997, MD La) 986 F Supp 1003* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299).*

In borrowers' suit alleging that mortgage assignee was liable for all violations of law committed by original lender, mortgage assignee was not entitled to summary judgment on Home Ownership and Equity Protection Act claim, because it failed to meet burden set forth in *15 USCS § 1641(d)(1)* to exempt itself from liability. *Cooper v First Gov't Mortg. & Investors Corp. (2002, DC Dist Col) 238 F Supp 2d 50.*

In car buyers' suit alleging that lender, dealer, and general manager violated Truth in Lending Act, *15 USCS § 1601* et seq., through special financing program that involved acquisition fees, lender was entitled to summary judgment as to hidden finance charge and disclosure claims because nothing on face of documents assigned indicated hidden finance charge. *Knapp v Americredit Fin. Servs. (2003, SD W Va) 245 F Supp 2d 841.*

Loan assignee's motion for summary judgment as to payee's claims under Truth in Lending Act was denied where payee's loan qualified as high cost loan under Home Owner's Equity Protection Act (HOEPA) because points and fees paid by payee at closing clearly exceeded 8% trigger, so that reasonable jury could conclude that payee was entitled to HOEPA protection and thus holder-in-due-course defense was not available to assignee. *Short v Wells Fargo Bank Minn., N.A. (2005, SD W Va) 401 F Supp 2d 549.*

**14. Miscellaneous**

Judicial sale of assets by trustee constitutes involuntary assignment for purposes of predecessor to *15 USCS § 1641*. *Skinner v W. T. Grant Co. (1979, ED La) 1 BR 484.*

Loan servicer's motion for summary judgment as to payee's claims under Truth in Lending Act was granted where servicer of loan could not be held liable for any claims by payee stemming from origination of loan by loan broker pursuant to *15 USCS § 1641(f)* because servicer never owned loan. *Short v Wells Fargo Bank Minn., N.A. (2005, SD W Va) 401 F Supp 2d 549.*

Defendant mortgage borrowers' federal statutory claims against plaintiff bank could be arbitrated even though arbitration agreements prohibited common law punitive damages; borrowers' federal, statutory, lender-liability claims under *12 USCS § 2601, 15 USCS § 1640,* and *15 USCS § 1641(d)(1)* could be arbitrated and bank's motion to compel arbitration was granted. *New South Fed. Sav. Bank v Anding (2005, SD Miss) 414 F Supp 2d 636.*

Under *15 USCS § 1641(f)(1)* of Truth in Lending Act, *15 USCS § 1601* et seq., mortgage loan servicer could not be held liable in mortgagor's suit seeking damages and rescission of loan due to disclosure violations, nor was servicer necessary party under *Fed. R. Civ. P. 19(a)*; any concern that servicer might have engaged in improper reporting to credit agencies following rescission of loan or might have attempted to foreclose on rescinded loan was purely speculative and did not warrant retaining servicer as defendant. *Bills v BNC Mortg., Inc. (2007, ND Ill) 502 F Supp 2d 773.*

Court denied motion of defendants, real estate broker, real estate holding company, and related company, for summary judgment as to homeowners' Home Ownership and Equity Protection Act (HOEPA) and Truth in Lending Act (TILA) claims, which alleged that defendants violated disclosure requirements of both statutes as set forth in *15 USCS §§ 1602, 1638, 1639,* and *1641* and implementing regulations, *12 CFR §§ 226.31* and .32, and which sought rescission under *15 USCS § 1635* and *12 CFR § 226.23(a)(2),* because genuine issues of fact existed as to whether parties intended outright sale, in which case TILA and HOEPA were inapplicable, or whether, given facts surrounding transaction, transaction could be construed as equitable mortgage, in which case TILA and HOEPA applied, and with regard to rescission, given discretion within which court could condition right to rescission, it was not necessary that owners demonstrate they had means to secure necessary financing at instant stage of proceedings. *Jones v REES-MAX, LLC (2007, DC Minn) 514 F Supp 2d 1139.*

Where borrower did not properly deny defendants' assertion that company was merely servicer of borrower's loan pursuant to *15 USCS § 1641(f)(3),* that fact was deemed admitted; because there was nothing in record to suggest that company was creditor with respect to mortgage, which would subject company to relevant provisions under Truth In Lending Act, borrower's claims against company were dismissed by summary judgment. *Lippner v Deutsche Bank Nat'l Trust Co. (2008, ND Ill) 544 F Supp 2d 695.*

For purposes of motion to dismiss, loan servicer could be liable under TILA where borrowers sufficiently alleged that servicer was also owner of obligation at issue under *15 USCS § 1641(f)(1). Olivera v Am. Home Mortg. Servicing, Inc. (2010, ND Cal) 689 F Supp 2d 1218.*

*15 USCS § 1641* deals with assignments between lenders; it would be leap of faith to conclude that words "provided in" of § 1641(e) includes more documents than are disclosed at time of assignment. *Armstrong v Nationwide Mortg. Plan/ Trust (In re Armstrong) (2003, BC ED Pa) 288 BR 404.*

40 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1642*

§ 1642. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 132 as added Oct. 26, 1970, P.L. 91-508, Title V, § 502(a), 84 Stat. 1126.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
Section 503(1) of Title V of Act Oct. 26, 1970, provides that this section "takes effect upon the date of enactment of this title [enacted Oct. 26, 1970].".

**NOTES:**

Related Statutes & Rules:
This section is referred to in *15 USCS § 1645*.

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 1.*
*20 Am Jur 2d, Credit Cards and Charge Accounts § 29.*

Am Jur Proof of Facts:
81 Am Jur Proof of Facts 3d, Identity Theft and Other Misuses of Credit and Debit Cards, p. 113.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.
1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.07.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.18.

Texts:
4 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.10.

Law Review Articles:
Dobson. Credit Cards. *1979 J Bus L 331,* Oct 1979.
Weistart. Consumer Protection in the Credit Card Industry: Federal Legislative Controls. *70 Mich L Rev 1475, 1972.*
Consumer Protection--Credit Card Protection under the Truth in Lending Act. *49 NC L Rev 775, 1970-71.*
Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

Interpretive Notes and Decisions:

Because consumer did not indicate that she retained a interest in the resolution of the class certification issue in the settlement of her individual *15 USCS § 1642* claim, the appellate court discerned no live, concrete controversy between the consumer and the retailer that justified permitting her to appeal the district court's determination with respect to the certification of the class. *Muro v Target Corp. (2009, CA7 Ill) 580 F3d 485.*

41 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1643*

§ 1643. Liability of holder of credit card

(a) Limits on liability.
(1) A cardholder shall be liable for the unauthorized use of a credit card only if--
(A) the card is an accepted credit card;
(B) the liability is not in excess of $ 50;
(C) the card issuer gives adequate notice to the cardholder of the potential liability;
(D) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 127(b) [*15 USCS 1637(b)*] or on a separate notice accompanying such statement;
(E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and
(F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.
(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) Burden of proof. In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a), have been met.

(c) Liability imposed by other laws or by agreement with issuer. Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Exclusiveness of liability. Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 133 as added Oct. 26, 1970, P.L. 91-508, Title V, § 502(a), 84 Stat. 1126; March 31, 1980, P.L. 96-221, Title VI, § 617, 94 Stat. 182.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:

Section 503(2) of Act Oct. 26, 1970, provides that this section "takes effect upon the expiration of 90 days after such date of enactment [enacted Oct. 26, 1970].".

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted subsec. (a) for one which read:

"(a) A cardholder shall be liable for the unauthorized use of a credit card only if the card is an accepted credit card, the liability is not in excess of $ 50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1602, 1645*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection § 15:5.

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 1.*
*20 Am Jur 2d, Credit Cards and Charge Accounts §§ 38, 40-44.*

Am Jur Proof of Facts:
81 Am Jur Proof of Facts 3d, Identity Theft and Other Misuses of Credit and Debit Cards, p. 113.
26 Am Jur Proof of Facts, Liability for Unauthorized Use of Credit Card, p. 497.

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:154-157.
7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards §§ 14, 15, 22, 23, 63-65.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.07, 1.09.
1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.04.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.18.

Annotations:
Liability of Retailer and Its Affiliate Bank to Credit Card Issuer for Costs Arising out of Breach of Retailer's Computer Security. *51 ALR6th 311.*

Texts:
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.08.
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.
4 The Law of Advertising (Matthew Bender), ch 58, Telemarketing § 58.04.

Law Review Articles:
Dobson. Credit Cards. *1979 J Bus L 331,* Oct 1979.
Weistart. Consumer Protection in the Credit Card Industry: Federal Legislative Controls. *70 Mich L Rev 1475, 1972.*
Consumer Protection--Credit Card Protection under the Truth in Lending Act. *49 NC L Rev 775, 1970-71.*
Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

Interpretive Notes and Decisions:
1. Generally 2. Unauthorized use 3. Limitation on liability 4. Miscellaneous

**1. Generally**

View that mere silence did not confer apparent authority was consistent with text and purpose of *15 USCS § 1643* and Regulation Z; plain language of *15 USCS § 1643* did not require cardholder to inspect monthly billing statements in order to invoke its protections and text set no preconditions to its protections, such as exhaustion requirement, and made no reference to other remedies, such as those under *15 USCS § 1666*, part of Fair Credit Billing Act, which permitted, but did not require, cardholder to seek correction of billing errors by reporting them to card issuer in writing. *DBI Architects, P.C. v Am. Express Travel-Related Servs. Co. (2004, App DC) 388 F3d 886.*

Federal Reserve Board explained in Regulation Z that cardholder need not contest charges under *15 USCS § 1666* in order to pursue remedies under *15 USCS § 1643*; because Board's interpretation was consistent with *15 USCS §§ 1643, § 1666*, deference to *Regulation Z was due. DBI Architects, P.C. v Am. Express Travel-Related Servs. Co. (2004, App DC) 388 F3d 886.*

*15 USCS § 1643* limits card holders' liability only for "unauthorized use" as defined in § 1602; issuer is entitled to seek full payment from holder who sells or gives credit card to another with knowledge that other intends to use such card without making payment. *United States v Kasper (1980, ED Pa) 483 F Supp 1208.*

**Unpublished Opinions**

Unpublished: Conclusion that *15 USCS § 1643* is violated when sale transaction is "consummated" is inconsistent with statutory scheme under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., Federal Reserve Board's interpretation of its Regulation Z, and text of § 1643; violation of *15 USCS § 1643* occurs when card issuer notifies cardholder that despite cardholder's claim of fraud, card issuer will not reimburse cardholder for disputed amount. *Asher v Chase Bank United States, N.A. (2009, CA7 Ill) 2009 US App LEXIS 3733.*

**2. Unauthorized use**

Under parameters established by Congress, inquiry into "unauthorized use" properly focuses on whether user acted as cardholder's agent in incurring debt in dispute; cardholder, as principal, can create express and implied authority only through manifestations to user of consent to particular transactions into which user has entered. *Towers World Airways, Inc. v PHH Aviation Systems, Inc. (1991, CA2 NY) 933 F2d 174,* cert den *(1991) 502 US 823, 116 L Ed 2d 59, 112 S Ct 87.*

Credit card holder's failure to examine credit card statements that would reveal fraudulent use of card constitutes negligent omission that creates apparent authority for charges that would otherwise be considered unauthorized under *TILA. Minskoff v American Express Travel Related Servs. Co. (1996, CA2 NY) 98 F3d 703, 30 UCCRS2d 999.*

Credit cardholder's claims against bank under *15 USCS §§ 1643* and *1666* were barred because cardholder's personal assistant, who allegedly used card to misappropriate over $ 1 million, had apparent authority to use card; cardholder did not review bank statements or exercise oversight over employee. *Azur v Chase Bank, USA (2010, CA3 Pa) 601 F3d 212.*

Use of credit card issued to business association, by association's office manager for his personal gain, was unauthorized use of card where issuance of card was upon his written request without actual or implied authority and issuer was negligent in failing to verify his authority to request card. *Pritchett v Executive Director of Social Serv. Bd. (1982, ND) 325 NW2d 217* (ovrld by *R.F. v C.A.M. (In re S.R.F.) (2004) 2004 ND 150, 683 NW2d 913).*

Bank did not have equitable indemnification case against retailer or processor of credit card information because bank was not required to pay for unauthorized charges to credit card; *15 USCS § 1643* merely limited cardholder's liability. *Sovereign Bank v BJ's Wholesale Club, Inc. (2005, MD Pa) 395 F Supp 2d 183.*

Credit card company was granted summary judgment on consumer's claim brought under Truth in Lending Act, *15 USCS § 1643,* arising out of alleged unauthorized use of his credit card, because (1) consumer did not file action until more than one year after he discovered unauthorized uses, as defined by *15 USCS § 1602(o),* so claim was time-barred under *15 USCS § 1640(e)*; (2) consumer's argument that no contractual obligation existed between consumer and company because underlying charges were fraudulent, and thus, statute of limitations did not begin to run at time of alleged unauthorized uses, was inconsistent with language of *15 USCS § 1643*, which presupposed some type of contractual relationship between cardholder and card issuer, and record, which contained allegations of existence of contractual relationship and breach of cardholder agreement; and (3) statute of limitations was not tolled in light of *15 USCS § 1666* and its enacting regulation because § 1666 set forth different cause of action, complaint was devoid of allegations that would state claim under § 1666, and even if properly pled, there was no evidence in record that contradicted company's claim that consumer failed to comply with notice requirements of § 1666. *Asher v Bank One (2008, ND Ill) 538 F Supp 2d 1037.*

Where cardholder was notified of suspicious activity on its master corporate account perpetrated by its accounts payable supervisor, credit card company refused reimbursement and cardholder filed suit under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; district court refused dismiss claim based on doctrine of apparent authority as defense to unauthorized use; even if cardholder's continued payment of fraudulent charges after notice constituted negligent act that cloaked accounts payable supervisor in apparent authority, district court could not determine point at which this authority arose based on pleadings; therefore, TILA claim could not be dismissed. *Permobil, Inc. v Am. Express Travel Related Servs. Co (2008, MD Tenn) 571 F Supp 2d 825.*

Definition of "unauthorized use" excludes from category use by any person who has actual, implied, or apparent authority; credit cards issued upon representations that spouses are authorized to make charges upon accounts confers apparent authority, and apparent authority of spouse to use cards is withdrawn under contract only after cards are returned to bank and accounts are terminated. *Walker Bank & Trust Co. v Jones (1983, Utah) 672 P2d 73,* cert den *(1984) 466 US 937, 80 L Ed 2d 460, 104 S Ct 1911.*

*15 USCS § 1643*(a) is not applicable where cardholder voluntarily and knowingly allows another to use his card and such person subsequently misuses card; unauthorized use of card occurs only where there is no actual, implied, or apparent authority for such use by cardholder and cardholder who gave another actual, implied, or apparent authority not to exceed $ 500 and wrote to credit card company requesting that amounts charged not exceed $ 1,000, cardholder was not entitled to rely on provisions of *15 USCS § 1643(a)* and would be held responsible for any purchases made through use of card. *Martin v American Express (1978, Ala Civ App) 361 So 2d 597.*

**Unpublished Opinions**

Unpublished: Allegedly fraudulent charges that were made on plaintiff credit cardholder's account by his personal secretary were not "unauthorized" under *15 USCS §§ 1643* and *1602(o)* since secretary had apparent authority to use account; in instant case, cardholder had paid his bills in full, including disputed charges, for three years without protest and that scenario made compelling case for concluding that secretary had apparent authority to make charges on account. *Asher v Chase Bank United States, N.A. (2009, CA7 Ill) 2009 US App LEXIS 3733.*

**3. Limitation on liability**

Provision of *15 USCS § 1643(a)* limiting liability exposure to $ 50 where use of credit card has been unauthorized applies to all credit card holders, including corporations as well as individuals. *American Airlines, Inc. v Remis Industries, Inc. (1974, CA2 NY) 494 F2d 196.*

Credit card issuer could not base equitable indemnification claim against acquirer and merchant on ceiling placed on cardholder liability for unauthorized charges by *15 USCS § 1643(a)* and (d); § 1643 did not obligate issuer to reimburse its cardholders' accounts for amount of unauthorized charges that resulted from theft of credit card information from merchant. *Sovereign Bank v BJ's Wholesale Club, Inc. (2008, CA3 Pa) 533 F3d 162.*

Credit cardholder could not recover costs associated with fraudulent use of card from issuing bank under *15 USCS § 1643*; section 1643 does not provide cardholder with right to reimbursement. *Azur v Chase Bank, USA (2010, CA3 Pa) 601 F3d 212.*

All credit cards, whether used for business or consumer purposes, are covered by $ 50 liability limit contained in *15 USCS § 1643*, and such limit applies to corporate as well as individual cardholders; limitation on liability for unauthorized use of credit card is not intended by Congress to be affected by fact that certain "credit transactions" are exempted from Truth in Lending Act by *15 USCS § 1603(1). Credit Card Service Corp. v Federal Trade Com. (1974, App DC) 161 US App DC 424, 495 F2d 1004, 1974-1 CCH Trade Cases P 74996.*

Corporate credit card account holder could not avoid liability for its manager's fraudulent charges because its repeated payments in full after notice led issuer reasonably to believe that manager had authority to use corporate credit card; holder was estopped from avoiding liability to issuer for charges manager incurred on corporate account after her apparent authority arose, although question remained when her apparent authority arose. *DBI Architects, P.C. v Am. Express Travel-Related Servs. Co. (2004, App DC) 388 F3d 886.*

Issuer of credit card is liable for fraudulent purchases by business association's office manager from time credit card was issued until association received first statement containing manager's fraudulent charges, plus reasonable time to examine statement, where card was issued to association upon written request of manager who had no actual or implied authority to request card and issuer negligently failed to verify his authority; association is liable for remaining fraudulent charges because of its negligence in failing to examine statements and discover manager's fraud. *Transamerica Ins. Co. v Standard Oil Co. (1982, ND) 325 NW2d 210.*

Credit card holder who claimed that certain purchases made with credit card were unauthorized purchases made after card was stolen and who had informed employee of issuer of credit card that card had been stolen more than month after alleged unauthorized purchases were made was liable only for $ 50 on the unauthorized purchases. *First Nat'l City Bank v Mullarkey (1976) 87 Misc 2d 1, 385 NYS2d 473.*

**4. Miscellaneous**

Prevailing party in action pursuant to *15 USCS § 1643* that was business entity using credit account for business purpose was not entitled to attorneys' fees and costs under *15 USCS § 1640(a)(3)*, as plain language of Truth in Lending Act (TILA) excluded that party from obtaining attorneys' fees and costs pursuant to § 1640(a)(3); with few clearly delineated exceptions, most sections of TILA did not apply to businesses, and § 1640 was not included in list of exceptions to business credit transaction exemption clearly delineated in *15 USCS § 1645*; therefore, on its face, business exemption of TILA provided by *15 USCS § 1603(1)* did apply to *15 USCS § 1640* such that party was not entitled to attorneys' fees or costs. *DBI Architects, P.C. v Am. Express Travel Related Servs. Co. (2006, DC Dist Col) 462 F Supp 2d 1.*

When credit card company failed to reimburse cardholder for unauthorized charges, cardholder filed suit against credit card company for violation of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; district court held that TILA did not preempt cardholder's claims for negligence, conversion, or misrepresentation; state law claims were not inconsistent with federal law because they did not require credit card holder to make disclosures or take action that contradicted TILA; negligence claim could not survive motion to dismiss, because *15 USCS § 1643(a)(1)(E)* does not give rise to state law duty in tort. *Permobil, Inc. v Am. Express Travel Related Servs. Co (2008, MD Tenn) 571 F Supp 2d 825.*

Credit card registration company grossly overstated value of its services and would be ordered to stop its misrepresentations that because credit cardholder was liable for full amount charged to lost or stolen card, company's services were valuable; such claims are deceptive under Truth in Lending Act, which limits potential liability for lost or stolen credit card to maximum of $ 50 per card; however, restitution would not be ordered, since consumers received services of value from company, in that company's services could relieve cardholder of $ 50 liability, and company resolved billing errors of credit card issuers and obtained new cards for customers whose cards had been lost or stolen. *Re Credit Card Service Corp. (1973) 82 FTC 191,* affd *161 App DC 424, 495 F2d 1004.*

Order requiring credit card service organization to incorporate in all written advertisements offering public sale of its credit card registration service specific notice setting forth conditions of liability and limitations in case of loss or theft of credit card, will be modified to eliminate requirement of providing pre-stamped envelope for subscribers to use in reporting loss of credit card, consistent with changes in *15 USCS § 1643* and Regulation Z. *Re Credit Card Service Corp. (1981) 98 FTC 887.*

**Unpublished Opinions**

Unpublished: Consumer's claims, which alleged that defendants, credit card issuer and various merchants, violated Truth-in-Lending Act (TILA) by requiring consumer to provide valid identification before processing his credit card transactions, were properly dismissed because TILA did not prohibit practice of which consumer complained, and statute clearly contemplated that such methods of identification would have been used, under *15 USCS § 1643(a)(1)(F). Corrigan v VISA USA (2007, CA9 Wash) 2007 US App LEXIS 21310.*

Unpublished: Violation of *15 USCS § 1643* was deemed to have occurred, and limitations period under *15 USCS § 1640(e)* began to run, when defendant bank notified plaintiff credit cardholder that it deemed him liable for charges that were fraudulently made by cardholder's personal secretary; because cardholder's suit against bank was filed within year of when that occurred, suit was not time-barred. *Asher v Chase Bank United States, N.A. (2009, CA7 Ill) 2009 US App LEXIS 3733.*

42 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1644*

§ 1644. Fraudulent use of credit cards; penalties

(a) Use, attempt or conspiracy to use card in transaction affecting interstate or foreign commerce. Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $ 1,000 or more; or

(b) Transporting, attempting or conspiring to transport card in interstate commerce. Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(c) Use of interstate commerce to sell or transport card. Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(d) Receipt, concealment, etc., of goods obtained by use of card. Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $ 1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

(e) Receipt, concealment, etc., of tickets for interstate or foreign transportation obtained by use of card. Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $ 500 or more, and

(2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

(f) Furnishing of money, etc., through use of card. Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $ 1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained--

shall be fined not more than $ 10,000 or imprisoned not more than ten years, or both.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 134, as added Oct. 26, 1970, P.L. 91-508, Title V, § 502(a), 84 Stat. 1127; Oct. 28, 1974, P.L. 93-495, Title IV, § 414, 88 Stat. 1520.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Amendments:

1974. Act Oct. 28, 1974 (effective 10/28/74, as provided by § 416 of such Act which appears as *15 USCS § 1665a* note), substituted section for one which read: "Whoever, in a transaction affecting interstate or foreign commerce, uses any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain goods or services, or both, having a retail value aggregating $ 5,000 or more, shall be fined not more than $ 10,000 or imprisoned not more than five years, or both.".

Other provisions:

**Application of section.** Section 503(3) of Act Oct. 26, 1970, provided that this section, as originally enacted, "applies to offenses committed on or after such date of enactment [enacted Oct. 26, 1970].".

**NOTES:**

Related Statutes & Rules:

Sentencing Guidelines for the United States Courts, *18 USCS Appx § 2B1.1*.

This section is referred to in *15 USCS § 1645*.

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 1*.

*20 Am Jur 2d, Credit Cards and Charge Accounts §§ 9-12, 14, 17*.

Am Jur Proof of Facts:
81 Am Jur Proof of Facts 3d, Identity Theft and Other Misuses of Credit and Debit Cards, p. 113.
26 Am Jur Proof of Facts, Liability for Unauthorized Use of Credit Card, p. 497.

Criminal Law and Practice:
6 Business Crime (Matthew Bender), ch 32, Mail and Wire Fraud P 32.03.

Annotations:
What Constitutes Violation of § 134 of Consumer Credit Protection Act (*15 U.S.C.A. § 1644* [*15 USCS § 1644*]), Prohibiting Fraudulent Use of Credit Card. *173 ALR Fed 613.*
Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure. *53 ALR4th 231.*
Liability of holder of credit card or plate for purchases made thereon by another person. *15 ALR3d 1086.*
Criminal liability for unauthorized use of credit card. *24 ALR3d 986.*

Texts:
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.03.

Law Review Articles:
Dobson. Credit Cards. *1979 J Bus L 331,* Oct 1979.
Weistart. Consumer Protection in the Credit Card Industry: Federal Legislative Controls. *70 Mich L Rev 1475, 1972.*
Consumer Protection--Credit Card Protection under the Truth in Lending Act. *49 NC L Rev 775, 1970-71.*

Interpretive Notes and Decisions:
1. Relationship with other laws 2. Account numbers 3. Aggregation of value 4.--Jurisdictional nature 5. Intent and material misrepresentations 6. Miscellaneous

**1. Relationship with other laws**

Provisions of *15 USCS § 1644* were not intended to constitute sole vehicle for prosecution of credit card frauds or to preclude prosecution of credit card frauds under mail fraud statute (*18 USCS § 1341*). *United States v Green (1974, CA5 Tex) 494 F2d 820,* reh den (1974, CA5 Tex) *497 F2d 1368* and cert den *(1974) 419 US 1004, 42 L Ed 2d 280, 95 S Ct 325.*

Enactment of *15 USCS § 1644* did not bar prosecution of defendant for alleged credit card fraud under *18 USCS § 1014*, which makes it criminal offense to knowingly make false statement or report for purpose of influencing action of federally insured banks upon any application, advance, discounts, purchase agreement, repurchase agreements, commitment, or loan, as enactment of *15 USCS § 1644* did not preempt *18 USCS § 1014* as exclusive vehicle for prosecution of credit card fraud. *United States v Maalouf (1981, ED NY) 514 F Supp 851.*

**2. Account numbers**

Conviction of defendant under *15 USCS § 1644* for transporting fraudulently obtained credit card in interstate commerce is invalid where conviction was based on defendant having communicated fraudulently obtained credit card account numbers by telephone, as term "credit card", as used in § 1644, means small, flat tablet upon which credit card account number is imprinted, but does not mean that number alone. *United States v Callihan (1982, CA9 Hawaii) 666 F2d 422.*

Individual who ordered goods in fictitious name by telephone, using credit card numbers not hers without authorization of card holders, although she did not have cards in her possession, violated *15 USCS § 1644(a)*, since core element of credit card is number, not plastic card itself, which can be used over telephone without seller ever seeing it. *United States v Bice-Bey (1983, CA4 NC) 701 F2d 1086, 12 Fed Rules Evid Serv 1280,* cert den *(1983) 464 US 837, 78 L Ed 2d 123, 104 S Ct 126.*

**3. Aggregation of value**

Under *15 USCS § 1644*, prior to 1974 amendment, numerous purchases and charges could be aggregated to constitute "transaction" within meaning of statute, which penalized whoever, in transaction affecting interstate or foreign commerce, fraudulently used credit card to obtain goods or services having retail value aggregating $ 5,000 or more. *United States v Mikelberg (1975, CA5 Tex) 517 F2d 246,* reh den (1975, CA5 Tex) *521 F2d 816* and cert den *(1976) 424 US 909, 47 L Ed 2d 313, 96 S Ct 1104,* reh den *(1976) 425 US 926, 47 L Ed 2d 772, 96 S Ct 1524.*

*15 USCS § 1644*(a) reference to obtaining money or anything else which within one-year period has value "aggregating $ 1,000 or more" does not require aggregation in single offense of all transactions conducted within one-year period, and does not forbid charging accused with separate offense for each use of card within one-year period, where each alleged use involved obtaining cash or goods in excess of $ 1,000. *United States v Abod (1985, CA5 Tex) 770 F2d 1293.*

Sales tax can be included in calculation of $ 1,000.00 threshold jurisdictional aggregate value under *15 USCS § 1644(a). United States v Draves (1997, CA7 Ind) 103 F3d 1328,* reh den (1997, CA7 Ind) *1997 US App LEXIS 3715* and cert den *(1997) 521 US 1127, 138 L Ed 2d 1028, 117 S Ct 2528* and (criticized in *United States v McDonald (1999, CA6 Tenn) 165 F3d 1032, 1999 FED App 21P).*

**4.--Jurisdictional nature**

*15 USCS § 1644*(a) $ 1,000 monetary threshold is purely jurisdictional device, and knowledge by accused of threshold is not element of offense. *United States v Abod (1985, CA5 Tex) 770 F2d 1293.*

$ 1,000.00 statutory minimum provided in *15 USCS § 1644(a)* is jurisdictional. *United States v Draves (1997, CA7 Ind) 103 F3d 1328,* reh den (1997, CA7 Ind) *1997 US App LEXIS 3715* and cert den *(1997) 521 US 1127, 138 L Ed 2d 1028, 117 S Ct 2528* and (criticized in *United States v McDonald (1999, CA6 Tenn) 165 F3d 1032, 1999 FED App 21P).*

**5. Intent and material misrepresentations**

Where jury reasonably found that individual had, in applications for credit cards, stated that he intended to pay obligations incurred with cards when in fact he did not so intend, misrepresentations were material and justified convictions on each card so obtained under § 134 of Truth in Lending Act (*15 USCS § 1644*); although trial court erred in instructing jury that material fact within meaning of § 134 is one which reasonably prudent credit company would require before issuing credit card and instruction should have limited material fact to misstatements, half-truths and omissions of matters fairly raised by questions in application, where both companies in fact requested representation as to applicant's intention to pay charges incurred, and jury found this intention to have been misrepresented, error was harmless; intent not to pay at time of application for card could reasonably be inferred from applicant's subsequent course of conduct. *United States v Kay (1977, CA5 Tex) 545 F2d 491,* reh den (1977, CA5 Tex) *553 F2d 101* and cert

den *(1977) 434 US 833, 54 L Ed 2d 94, 98 S Ct 119.*

Provision of *15 USCS § 1644(b)* which conditions violation upon "fraudulent intent" is not void for vagueness. *United States v Peden (1977, CA5 Tex) 556 F2d 278, 2 Fed Rules Evid Serv 375,* cert den *(1977) 434 US 871, 54 L Ed 2d 150, 98 S Ct 216.*

Trial court did not abuse its discretion, in prosecution under *15 USCS § 1644(b)*, by allowing government to introduce credit card receipts signed by defendant and maintained as business records by issuing companies, which receipts were probative of defendant's criminal intent. *United States v Peden (1977, CA5 Tex) 556 F2d 278, 2 Fed Rules Evid Serv 375,* cert den *(1977) 434 US 871, 54 L Ed 2d 150, 98 S Ct 216.*

Evidence that individuals to whom defendant had delivered unembossed credit cards printed by accused used counterfeit cards with fraudulent intent and in accordance with scheme to defraud, and that accused knew of unlawful use to which cards were to be put where he supplied them is sufficient to support accused's conviction as aider and abettor in violation of *15 USCS § 1644(a)* notwithstanding contention that he could not be found to have aided and abetted unlawful use of cards because use was so far removed from any action on his part and took place after he was arrested. *United States v Zambrano (1985, CA2 NY) 776 F2d 1091.*

In prosecution for use of counterfeit credit cards to obtain goods in violation of *15 USCS § 1644(a)* and *18 USCS § 2*, business card on which defendant had written advice to his son, including advice to "beat the system," was not admissible on government's theory that conspiracy involving use of counterfeit credit cards is case where perpetrators intend to "beat the system," but rather, only use of card was for purpose of painting defendant as "bad man," and card was thus irrelevant and inadmissible, although conviction would be upheld where other evidence was overwhelming. *United States v Gonzalez (1987, CA11 Fla) 833 F2d 1464.*

**6. Miscellaneous**

Criminal fraud requires only proof of "tendency to induce reliance," rather than showing of actual reliance in order to establish that credit card was fraudulently obtained within the meaning of *15 USCS § 1644. United States v Chapman (1979, CA9 Wash) 591 F2d 1287.*

Offense of aiding and abetting making of false statements to federally insured bank in violation of *18 USCS §§ 1014* and *2* is not lesser included offense of conspiracy to obtain money by use of fraudulent credit card sales receipts in violation of *15 USCS § 1644(a). United States v Price (1985, CA4 W Va) 763 F2d 640.*

Person to whom credit card holder willingly gives or sells such card does not fraudulently obtain such card for purposes of *15 USCS § 1644*; some deceitful or false action by obtainer with regard to one from whom card is actually obtained is necessary predicate to violation of § 1644. *United States v Kasper (1980, ED Pa) 483 F Supp 1208.*

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1645*

§ 1645. Business credit cards; limits on liability of employees

The exemption provided by section 104(1) [*15 USCS § 1603(1)*] does not apply to the provisions of sections 132, 133, and 134 [*15 USCS §§ 1642*, *1643*, and *1644*], except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 133 [*15 USCS § 1643*], but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 133 [*15 USCS § 1643*].

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 135, as added Oct. 28, 1974, P.L. 93-495, Title IV, § 410(a), 88 Stat. 1519.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
Section 416 of Act Oct. 28, 1974, which appears as *15 USCS § 1665a* note, provides that this section take effect on the date of enactment [enacted Oct. 28, 1974].

**NOTES:**

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 1.*
*20 Am Jur 2d, Credit Cards and Charge Accounts § 38.*

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

Texts:
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.04.

Law Review Articles:
Dobson. Credit Cards. *1979 J Bus L 331*, Oct 1979.
Weistart. Consumer Protection in the Credit Card Industry: Federal Legislative Controls. *70 Mich L Rev 1475, 1972.*
Consumer Protection--Credit Card Protection under the Truth in Lending Act. *49 NC L Rev 775, 1970-71.*

Interpretive Notes and Decisions:

Prevailing party in action pursuant to *15 USCS § 1643* that was business entity using credit account for business purpose was not entitled to attorneys' fees and costs under *15 USCS § 1640(a)(3)*, as plain language of Truth in Lending Act (TILA) excluded that party from obtaining attorneys' fees and costs pursuant to § 1640(a)(3); with few clearly delineated exceptions, most sections of TILA did not apply to businesses, and § 1640 was not included in list of exceptions to business credit transaction exemption clearly delineated in *15 USCS § 1645*; therefore, on its face, business exemption of TILA provided by *15 USCS § 1603(1)* did apply to *15 USCS § 1640* such that party was not entitled to attorneys' fees or costs. *DBI Architects, P.C. v Am. Express Travel Related Servs. Co. (2006, DC Dist Col) 462 F Supp 2d 1.*

State law controls as to whether card issuer and business card holder must renegotiate contract setting liability limits higher than $ 50, entered into prior to effective date of § 135 of Truth in Lending Act (*15 USCS § 1645*). Board of Governors of the Federal Reserve System Official Staff Interpretation FC-0016, *41 Fed Reg 51390, 41 Fed Reg 54478.*

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1646*

§ 1646. Dissemination of annual percentage rates; implementation, etc. [Caution: See prospective amendment note below.]

(a) Annual percentage rates. The Board shall collect, publish, and disseminate to the public, on a demonstration basis in a number of standard metropolitan statistical areas to be determined by the Board, the annual percentage rates charged for representative types of nonsale credit by creditors in such areas. For the purpose of this section, the Board is authorized to require creditors in such areas to furnish information necessary for the Board to collect, publish and disseminate such information.

(b) Credit card price and availability information.
(1) Collection required. The Board shall collect, on a semiannual basis, credit card price and availability information, including the information required to be disclosed under section 127(c) of this chapter [*15 USCS § 1637(c)*], from a broad sample of financial institutions which offer credit card services.
(2) Sample requirements. The broad sample of financial institutions required under paragraph (1) shall include--
(A) the 25 largest issuers of credit cards; and
(B) not less than 125 additional financial institutions selected by the Board in a manner that ensures--
(i) an equitable geographical distribution within the sample; and
(ii) the representation of a wide spectrum of institutions within the sample.
(3) Report of information from sample. Each financial institution in the broad sample established pursuant to paragraph (2) shall report the information to the Board in accordance with such regulations or orders as the Board may prescribe.
(4) Public availability of collected information, report to Congress. The Board shall--
(A) make the information collected pursuant to this subsection available to the public upon request; and
(B) report such information semiannually to Congress.

(c) Implementation. The Board is authorized to enter into contracts or other arrangements with appropriate persons,

organizations, or State agencies to carry out its functions under subsections (a) and (b) and to furnish financial assistance in support thereof.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 136, as added March 31, 1980, P.L. 97-221, Title VI, § 618(a), 94 Stat. 183; Nov. 3, 1988, P.L. 100-583, § 5, 102 Stat. 2967.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

Act March 31, 1980, P.L. 96-221, Title VI, § 625(a), 94 Stat. 185; Dec. 26, 1981, P.L. 97-110, Title III, § 301, 95 Stat. 1515, which appears as *15 USCS § 1602* note, provides that this section shall take effect upon the expiration of two years and six months after the date of the enactment of this title [enacted on March 31, 1980].

Amendments:

1988. Act Nov. 3, 1988, added a new subsec. (b); redesignated former subsec. (b) as subsec. (c), and in such subsec., as redesignated, substituted "subsections (a) and (b)" for "subsection (a)".

**NOTES:**

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 34*.

Am Jur Proof of Facts:

73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

45 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1647*

§ 1647. Home equity plans [Caution: See prospective amendment note below.]

(a) Index requirement. In the case of extensions of credit under an open end consumer credit plan which are subject to a variable rate and are secured by a consumer's principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related shall be based on an index or rate of interest which is publicly available and is not under the control of the creditor.

(b) Grounds for acceleration of outstanding balance. A creditor may not unilaterally terminate any account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling and require the immediate repayment of any outstanding balance at such time, except in the case of--
(1) fraud or material misrepresentation on the part of the consumer in connection with the account;
(2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or
(3) any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor in such security.

This subsection does not apply to reverse mortgage transactions.

(c) Change in terms.
(1) In general. No open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under section 127A(a) [*15 USCS § 1637a(a)*] or any other term, except a change in insignificant terms such as the address of the creditor for billing purposes.
(2) Certain changes not precluded. Notwithstanding the provisions of subsection (1), a creditor may make any of the following changes:
(A) Change the index and margin applicable to extensions of credit under such plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate.

(B) Prohibit additional extensions of credit or reduce the credit limit applicable to an account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling.

(C) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances.

(D) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement.

(E) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which--

(i) the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement; or

(ii) any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than 120 percent of the amount of the credit limit applicable to the account.

(F) Any change that will benefit the consumer.

(3) Material obligations. Upon the request of the consumer and at the time an agreement is entered into by a consumer to open an account under an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer shall be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement for purposes of paragraph (2)(D).

(4) Consumer benefit.

(A) In general. For purposes of paragraph (2)(F), a change shall be deemed to benefit the consumer if the change is unequivocally beneficial to the borrower and the change is beneficial through the entire term of the agreement.

(B) Board categorization. The Board may, by regulation, determine categories of changes that benefit the consumer.

(d) Terms changed after application. If any term or condition described in section 127A(a) [*15 USCS § 1637a(a)*] which is disclosed to a consumer in connection with an application to open an account under an open end consumer credit plan described in such section [*15 USCS § 1637a(a)*] (other than a variable feature of the plan) changes before the account is opened, and if, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor shall refund all fees paid by the consumer in connection with such application.

(e) Additional requirements relating to refunds and imposition of nonrefundable fees.

(1) In general. No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under any open end consumer credit plan which provides for extensions of credit which are secured by a consumer's principal dwelling before the end of the 3-day period beginning on the date such consumer receives the disclosure required under section 127A(a) [*15 USCS § 1637a(a)*] and the pamphlet required under section 127A(e) [*15 USCS § 1637a(e)*] with respect to such application.

(2) Constructive receipt. For purposes of determining when a nonrefundable fee may be imposed in accordance with this subsection if the disclosures and pamphlet referred to in paragraph (1) are mailed to the consumer, the date of the receipt of the disclosures by such consumer shall be deemed to be 3 business days after the date of mailing by the creditor.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 137, as added Nov. 23, 1988, P.L. 100-709, § 3, 102 Stat. 4731; Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 154(c), 108 Stat. 2197.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Amendments:

1994. Act Sept. 23, 1994, in subsec. (b), added the concluding matter.

Other provisions:

**Effective date and application of section; regulations.** For the effective date and application of this section and regulations under this section, see § 7 of Act Nov. 23, 1988, P.L. 100-709, 102 Stat. 4734, which appears as *15 USCS § 1637a* note.

**NOTES:**

Related Statutes & Rules:

This section is referred to in: *12 USCS § 1637a; 15 USCS § 1637a*.

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 77-81*.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

Texts:

9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.

10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.07, 174.15.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

2 The Law of Advertising (Matthew Bender), ch 17, The Jurisdiction of the Federal Trade Commission in Advertising § 17.02.

Interpretive Notes and Decisions:

Court granted bank's motion to dismiss borrower's claim that bank acted in violation of *15 USCS § 1647(c)(2)(B)* and *12 CFR § 226.5b(f)(3)(vi)(A)* by requiring borrower to obtain and pay for property appraisals upfront in order to seek reinstatement as part of its appeals process because (1) complaint and its attachments revealed that bank complied with relevant provisions of TILA and its implementing regulations; (2) each of statutory and regulatory provisions on which borrower based claim concerned actions taken after borrower requested reinstatement of its credit limit and borrower had not alleged that he requested reinstatement; (3) borrower had not alleged that bank demanded or collected any fees from borrower or class that bank did not incur; (4) neither TILA, regulations, nor official staff commentary issued by Federal Reserve Board contained any provisions prohibiting bank from shifting burden of obtaining and paying upfront for property appraisal to borrowers. *Hickman v Wells Fargo Bank N.A. (2010, ND Ill) 683 F Supp 2d 779.*

Court denied bank's motion to dismiss borrower's claim that bank reduced his home equity line of credit (HELOC) in violation of *15 USCS § 1647(c)(2)(B)* and *12 CFR § 226.5b(f)(3)(vi)(A)* because borrower's complaint provided bank with sufficient notice of his claim as required under *Fed. R. Civ. P. 8* as borrower specifically alleged that bank reduced his HELOC in contravention of TILA based on fact that his home did not experience significant decline in value. *Hickman v Wells Fargo Bank N.A. (2010, ND Ill) 683 F Supp 2d 779.*

Court granted bank's motion to dismiss borrower's claim that bank violated *15 USCS § 1647(c)(2)(B)* and *12 CFR § 226.5b(f)(3)(vi)(A)* on ground that notices sent to borrower and class members informing them of reduction in their home equity lines of credit (HELOCs) did not contain specific reasons for action taken because notice sent to borrower specifically identified statutorily permissible reason for reducing borrower's HELOC, i.e., substantial decline in value of property securing account, and borrower provided no persuasive support for his contention that reason given by bank in its notice to borrower was not sufficiently "specific" to meet standards of *TILA and Regulation Z. Hickman v Wells Fargo Bank N.A. (2010, ND Ill) 683 F Supp 2d 779.*

46 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1648*

§ 1648. Reverse mortgages [Caution: See prospective amendment note below.]

(a) In general. In addition to the disclosures required under this *title [15 USCS §§ 1601* et seq.], for each reverse mortgage, the creditor shall, not less than 3 days prior to consummation of the transaction, disclose to the consumer in conspicuous type a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate shall be based on a projected total future credit extension balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure shall include--

(1) statements of the annual interest rates for not less than 3 projected appreciation rates and not less than 3 credit transaction periods, as determined by the Board, including--

(A) a short-term reverse mortgage;

(B) a term equaling the actuarial life expectancy of the consumer; and

(C) such longer term as the Board deems appropriate; and

(2) a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure required under this section or has signed an application for the reverse mortgage.

(b) Projected total cost. In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection (a), the creditor shall take into account--

(1) any shared appreciation or equity that the lender will, by contract, be entitled to receive;

(2) all costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction;

(3) all payments to and for the benefit of the consumer, including, in the case in which an associated annuity is purchased (whether or not required by the lender as a condition of making the reverse mortgage), the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and

(4) any limitation on the liability of the consumer under reverse mortgage transactions (such as nonrecourse limits and equity conservation agreements).

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 138, as added Sept. 23, 1994, P.L. 103-325, Title I, Subtitle B, § 154(b), 108 Stat. 2196.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

**NOTES:**

Research Guide:

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.12.

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.08.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.07.

47 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1649*

§ 1649. Certain limitations on liability [Caution: See prospective amendment note below.]

(a) Limitations on liability. For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this *title [15 USCS §§ 1601* et seq.], and that is consummated before the date of the enactment of the Truth in Lending Act Amendments of 1995 [enacted Sept. 30, 1995], a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this *title [15 USCS §§ 1601* et seq.] for, and a consumer shall have no extended rescission rights under section 125(f) [*15 USCS § 1635(f)*] with respect to--

(1) the creditor's treatment, for disclosure purposes, of--

(A) taxes described in section 106(d)(3) [*15 USCS § 1605(d)(3)*];

(B) fees described in section 106(e)(2) and (5) [*15 USCS § 1605(e)(2)*, (5)];

(C) fees and amounts referred to in the 3rd sentence of section 106(a) [*15 USCS § 1605(a)*]; or

(D) borrower-paid mortgage broker fees referred to in section 106(a)(6) [*15 USCS § 1605(a)(6)*];

(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 [*15 USCS § 1635*] if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed--

(A) may be treated as accurate for purposes of this *title [15 USCS §§ 1601* et seq.] if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $ 200;

(B) may, under section 106(f)(2) [*15 USCS § 1605(f)(2)*], be treated as accurate for purposes of section 125 [*15 USCS § 1635*]; or

(C) is greater than the amount or percentage required to be disclosed under this *title [15 USCS §§ 1601* et seq.].

(b) Exceptions. Subsection (a) shall not apply to--

(1) any individual action or counterclaim brought under this *title [15 USCS §§ 1601* et seq.] which was filed before

June 1, 1995;

(2) any class action brought under this *title [15 USCS §§ 1601* et seq.] for which a final order certifying a class was entered before January 1, 1995;

(3) the named individual plaintiffs in any class action brought under this *title [15 USCS §§ 1601* et seq.] which was filed before June 1, 1995; or

(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch. 2, § 139, as added Sept. 30, 1995, P.L. 104-29, § 4(a), 109 Stat. 273; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2107(a), 110 Stat. 3009-402.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Amendments:

1996. Act Sept. 30, 1996 (effective 9/30/95, as provided by § 2107 of such Act, which appears as a note to this section), in subsec. (a), substituted "For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this title, and" for "For any consumer credit transaction subject to this title".

Other provisions:

**Effective date of Sept. 30, 1996 amendment.** Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2107(b), 110 Stat. 3009-402, provides: "The amendment made by subsection (a) [amending subsec. (a) of this section] shall be effective as of September 30, 1995.".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1635*.

Research Guide:

Federal Procedure:

5 Moore's Federal Practice (Matthew Bender 3d ed.), ch 23, Class Actions § 23.45.

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 146.*

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.05, 1.08, 1.09.

Interpretive Notes and Decisions:

Mortgagors have no viable right to relief under Truth in Lending Act (*15 USCS §§ 1601* et seq.), where they allege that lender overstated annual percentage rate applicable to their mortgage by approximately one-fourth of one percent, because *15 USCS § 1649(a)(3)(C)* provides that "consumer shall have no extended rescission rights under *15 USCS § 1635(f)* . . . with respect to any disclosure relating to finance charge . . . if amount or percentage actually disclosed . . . is greater than amount or percentage required to be disclosed." *Young v 1st Am. Fin. Servs. (1998, DC Dist Col) 992 F Supp 440.*

Borrowers' TILA (*15 USCS §§ 1601* et seq.) claim against lender and others is not barred by *15 USCS § 1649*, even though borrowers do not allege that finance charge was more than amount disclosed by bank, because TILA is remedial statutory scheme and should be read to include disclosures which, though not greater or less than amount actually charged, misstated cost of services provided. *Weil v Long Island Sav. Bank, FSB (1999, ED NY) 77 F Supp 2d 313, RICO Bus Disp Guide (CCH) P 9843.*

48 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1650*

§ 1650. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest
[Caution: See prospective amendment note below.]

(a) Definitions. As used in this section--
(1) the term "covered educational institution"--
(A) means any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education); and
(B) includes an agent, officer, or employee of the educational institution;
(2) the term "gift"--
(A) (i) means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having more than a de minimis monetary value, including services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred; and
(ii) includes an item described in clause (i) provided to a family member of an officer, employee, or agent of a covered educational institution, or to any other individual based on that individual's relationship with the officer, employee, or agent, if--
(I) the item is provided with the knowledge and acquiescence of the officer, employee, or agent; and
(II) the officer, employee, or agent has reason to believe the item was provided because of the official position of the officer, employee, or agent; and
(B) does not include--
(i) standard informational material related to a loan, default aversion, default prevention, or financial literacy;
(ii) food, refreshments, training, or informational material furnished to an officer, employee, or agent of a covered educational institution, as an integral part of a training session or through participation in an advisory council that is designed to improve the service of the private educational lender to the covered educational institution, if such training or participation contributes to the professional development of the officer, employee, or agent of the covered educational institution;
(iii) favorable terms, conditions, and borrower benefits on a private education loan provided to a student employed

by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student's employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in coordination with a covered educational institution, to the extent that such counseling or services are not undertaken to secure--

(I) applications for private education loans or private education loan volume;

(II) applications or loan volume for any loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (*20 U.S.C. 1070* et seq.); or

(III) the purchase of a product or service of a specific private educational lender;

(v) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

(vi) State education grants, scholarships, or financial aid funds administered by or on behalf of a State;

(3) the term "institution of higher education" has the same meaning as in section 102 of the Higher Education Act of 1965 (*20 U.S.C. 1002*);

(4) the term "postsecondary educational expenses" means any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (*20 U.S.C. 1087ll*);

(5) the term "preferred lender arrangement" has the same meaning as in section 151 of the Higher Education Act of 1965 [*20 USCS § 1019*];

(6) the term "private educational lender" means--

(A) a financial institution, as defined in section 3 of the Federal Deposit Insurance Act (*12 U.S.C. 1813*) that solicits, makes, or extends private education loans;

(B) a Federal credit union, as defined in section 101 of the Federal Credit Union Act (*12 U.S.C. 1752*) that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;

(7) the term "private education loan"--

(A) means a loan provided by a private educational lender that--

(i) is not made, insured, or guaranteed under of title IV of the Higher Education Act of 1965 (*20 U.S.C. 1070* et seq.); and

(ii) is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(B) does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; and

(8) the term "revenue sharing" means an arrangement between a covered educational institution and a private educational lender under which--

(A) a private educational lender provides or issues private education loans with respect to students attending the covered educational institution;

(B) the covered educational institution recommends to students or others the private educational lender or the private education loans of the private educational lender; and

(C) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

(b) Prohibition on certain gifts and arrangements. A private educational lender may not, directly or indirectly--

(1) offer or provide any gift to a covered educational institution in exchange for any advantage or consideration provided to such private educational lender related to its private education loan activities; or

(2) engage in revenue sharing with a covered educational institution.

(c) Prohibition on co-branding. A private educational lender may not use the name, emblem, mascot, or logo of the

covered educational institution, or other words, pictures, or symbols readily identified with the covered educational institution, in the marketing of private education loans in any way that implies that the covered educational institution endorses the private education loans offered by the private educational lender.

(d) Advisory board compensation. Any person who is employed in the financial aid office of a covered educational institution, or who otherwise has responsibilities with respect to private education loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a private educational lender or group of such lenders shall be prohibited from receiving anything of value from the private educational lender or group of lenders. Nothing in this subsection prohibits the reimbursement of reasonable expenses incurred by an employee of a covered educational institution as part of their service on an advisory board, commission, or group described in this subsection.

(e) Prohibition on prepayment or repayment fees or penalty. It shall be unlawful for any private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of any private education loan.

(f) Credit card protections for college students.

(1) Disclosure required. An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(2) Inducements prohibited. No card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open end consumer credit plan offered by such card issuer or creditor, if such offer is made--

(A) on the campus of an institution of higher education;

(B) near the campus of an institution of higher education, as determined by rule of the Board; or

(C) at an event sponsored by or related to an institution of higher education.

(3) Sense of the Congress. It is the sense of the Congress that each institution of higher education should consider adopting the following policies relating to credit cards:

(A) That any card issuer that markets a credit card on the campus of such institution notify the institution of the location at which such marketing will take place.

(B) That the number of locations on the campus of such institution at which the marketing of credit cards takes place be limited.

(C) That credit card and debt education and counseling sessions be offered as a regular part of any orientation program for new students of such institution.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 2, § 140, as added Aug. 14, 2008, P.L. 110-315, Title X, Subtitle A, § 1011(a), 122 Stat. 3479; May 22, 2009, P.L. 111-24, Title III, § 304, 123 Stat. 1749; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section, excluding subsec. (c), became effective on enactment, pursuant to § 1003 of Act Aug. 14, 2008, P.L. 110-315, which appears as *15 USCS § 1638* note.

Subsec. (c) of this section becomes effective on the earlier of the date on which regulations issued under § 1002 (*15 USCS § 1638* note) become effective or 18 months after enactment, pursuant to § 1003 of Act Aug. 14, 2008, P.L. 110-315, which appears as *15 USCS § 1638* note.

Amendments:

2009. Act May 22, 2009 (effective 9 months after enactment, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note), added subsec. (f).

**NOTES:**

**Emerging Issues Analysis**

*Sonnenschein, Nath, and Rosenthal, LLP on the Recent Amendments to the Truth-in-Lending Act and Regulation Z for Private Student Loans*

In this Emerging Issues Analysis, Stephen F.J. Ornsein, Matthew Yoon, and John P. Holahan of Sonnenschein, Nath and Rosenthal, LLP examine the private student loan provisions of the federal Truth-in-Lending Act as promulgated by the Board of Governors of the Federal Reserve under Regulation Z, and address the recent amendments to both TILA and Regulation Z which were made pursuant to the Higher Education Opportunity Act of 2008 ("HEOA").

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT TRANSACTIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1651*

§ 1651. Procedure for timely settlement of estates of decedent obligors [Caution: See prospective amendment note below.]

The Board, in consultation with the Federal Trade Commission and each other agency referred to in section 108(a) [*15 USCS § 1607(a)*], shall prescribe regulations to require any creditor, with respect to any credit card account under an open end consumer credit plan, to establish procedures to ensure that any administrator of an estate of any deceased obligor with respect to such account can resolve outstanding credit balances in a timely manner.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 2, § 140A, as added May 22, 2009, P.L. 111-24, Title V, § 504(a), 123 Stat. 1756; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (3), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (3), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau", and by striking "Federal Trade Commission" each place that term appears and inserting "Bureau".

Effective date of section:
This section took effect 9 months after enactment of Act May 22, 2009, P.L. 111-24, as provided by § 3 of such Act,

which appears as *15 USCS § 1602* note.

50 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS prec § 1661*

Preceding § 1661

**NOTES:**

Related Statutes & Rules:
This part is referred to in *15 USCS § 1610*.

51 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1661*

§ 1661. Catalogs and multiple-page advertisements

For the purposes of this chapter [*15 USCS §§ 1661* et seq.], a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this chapter [*15 USCS §§ 1661* et seq.] is clearly set forth.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 141, 82 Stat. 158.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

**NOTES:**

Research Guide:

Am Jur:
*3 Am Jur 2d, Advertising § 14.*
*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 111.*
*67 Am Jur 2d, Sales § 283.*

*68A Am Jur 2d, Secured Transactions §§ 174, 217.*

Am Jur Proof of Facts:
73 Am Jur Proof of Facts 3d, Violation of the Truth-in-Lending Act and Regulation Z, p. 275.

Forms:
7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards § 31.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.17.

Annotations:
Right to Private Action Under State Consumer Protection Act--Preconditions to Action. *117 ALR5th 155.*

Texts:
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.06.
9 Banking Law (Matthew Bender), ch 172, Application Evaluation § 172.03.
2 The Law of Advertising (Matthew Bender), ch 15, Federal Remedies Available to Consumers § 15.04.
3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

Law Review Articles:
Greenfield. Credit Advertising Under Truth in Lending Simplication and Revised Regulation Z. *100 Banking L J 388,* May-June 1983.
Griffith. The truth and nothing but the truth: confronting the challenge in the Truth in Lending Act and Regulation Z. *40 Hous L Rev 345,* Summer 2003.
Thain. Credit Advertising and the Law: Truth in Lending and Related Matters. *1976 Wash U L Q 257,* Spring 1976.

Interpretive Notes and Decisions:
1. Generally 2. Advertisement

**1. Generally**

Legislative history of Truth in Lending Act shows that Congress did not intend to confer original subject matter jurisdiction in federal courts over claim of violation of credit advertising provisions of Act by private individuals; rather, authority to enforce compliance with credit advertising requirements is delegated to administrative agencies. *Jordan v Montgomery Ward & Co. (1971, CA8 Minn) 442 F2d 78, 11 ALR Fed 808,* cert den *(1971) 404 US 870, 30 L Ed 2d 114, 92 S Ct 78.*

**2. Advertisement**

Term "advertisement," within meaning of credit advertising provisions of Truth In Lending Act, includes only traditional notice of selling of goods and services designed and generally circulated to attract public attention; retail installment contract is not advertisement. *Garza v Chicago Health Clubs, Inc. (1971, ND Ill) 329 F Supp 936.*

State statute and regulation which requires posting of APR's and finance charges is not advertisement when used in manner prescribed by statute and regulation. Board of Governors of the Federal Reserve System Official Staff Interpretation FC-0045, *42 Fed Reg 12851.*

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1662*

§ 1662. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state
(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.
(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 142, 82 Stat. 158.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

**NOTES:**

Research Guide:

Am Jur:
*3 Am Jur 2d, Advertising § 14.*

*17 Am Jur 2d, Consumer and Borrower Protection § 112*.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.12, 62.17.

Texts:

3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

Law Review Articles:

Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

Thain. Credit Advertising and the Law: Truth in Lending and Related Matters. *1976 Wash U L Q 257,* Spring 1976.

53 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1663*

§ 1663. Advertising of open end credit plans [Caution: See prospective amendment note below.]

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan unless it also clearly and conspicuously sets forth all of the following items:

(1) Any minimum or fixed amount which could be imposed.

(2) In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(3) Any other term that the Board may by regulation require to be disclosed.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 143, 82 Stat. 158; March 31, 1980, P.L. 96-221, Title VI, §§ 613(f), 619(a), 94 Stat. 177, 183.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months from the date of enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), in the introductory matter, deleted "or the appropriate rate determined under section 127(a)(5)" following "of that plan", and substituted paras (1) to (3) for paras (1)-(5), which read:

"(1) The time period, if any, within which any credit extended may be repaid without incurring a finance charge.

"(2) The method of determining the balance upon which a finance charge will be imposed.

"(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

"(4) Where periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

"(5) Such other or additional information for the advertising of open end credit plans as the Board may by regulation require to provide for adequate comparison of credit costs as between different types of open end credit plans.".

**NOTES:**

Research Guide:

Am Jur:

*3 Am Jur 2d, Advertising § 14.*

*17 Am Jur 2d, Consumer and Borrower Protection § 113.*

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.12, 62.17.

Texts:

3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

Law Review Articles:

Thain. Credit Advertising and the Law: Truth in Lending and Related Matters. *1976 Wash U L Q 257,* Spring 1976.

54 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1664*

§ 1664. Advertising of credit other than open end plans [Caution: See prospective amendment note below.]

(a) Exclusion of open end credit plans. Except as provided in subsection (b), this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this *title [15 USCS §§ 1601* et seq.], other than an open end credit plan.

(b) Advertisements of residential real estate. The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) Rate of finance charge expressed as annual percentage rate. If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) Requisite disclosures in advertisement. If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:
(1) The downpayment, if any.
(2) The terms of repayment.
(3) The rate of the finance charge expressed as an annual percentage rate.

(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that--
(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and

charges.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 134, 82 Stat. 158; March 31, 1980, P.L. 96-221, Title VI, § 619(b), 94 Stat. 183.)

(As amended April 20, 2005, P.L. 109-8, Title XIII, § 1302(b)(2), 119 Stat. 209; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), in subsec. (d), substituted paras. (1)-(3) for paras. (1)-(4) which read:

"(1) The cash price or the amount of the loan as applicable.

"(2) The downpayment, if any.

"(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

"(4) The rate of the finance charge expressed as an annual percentage rate.".

2005. Act April 20, 2005 (effective 180 days after enactment and inapplicable to cases commenced before the effective date, as provided by § 1501 of such Act, which appears as *11 USCS § 101* note), added subsec. (e).

**NOTES:**

Research Guide:

Am Jur:

*3 Am Jur 2d, Advertising § 14.*

*17 Am Jur 2d, Consumer and Borrower Protection § 113.*

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.12, 62.17.

Texts:

9 Banking Law (Matthew Bender), ch 170, Advertising §§ 170.03, 170.05.

2 The Law of Advertising (Matthew Bender), ch 15, Federal Remedies Available to Consumers § 15.04.

3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions §§ 52.05, 52.09.

Law Review Articles:

Dobbs; Anderson. Bankruptcy Law Changes Will Affect Business Cases Too: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *11 Ga Bar J 32*, October 2005.

Thain. Credit Advertising and the Law: Truth in Lending and Related Matters. *1976 Wash U L Q 257*, Spring 1976.

Interpretive Notes and Decisions:

There is no implied private remedy for violations of *15 USCS § 1664*. *Smeyres v General Motors Corp. (1987, CA6 Ohio) 820 F2d 782.*

No private cause of action exists for alleged violation of Credit Advertising Provisions of Truth In Lending Act under *15 USCS § 1664*, where car buyer claims corporations advertised 7.7 percent financing on model he purchased but refused to provide it, because (1) no cause of action is explicitly granted in statutory part comprising Credit Advertising Provisions, (2) *15 USCS § 1640* provides for civil liability with respect to other parts but not advertising part, and (3) legislative intent behind § 1664 was to protect general public and not to provide private remedy for any identifiable class of beneficiaries. *Smeyres v General Motors Corp. (1986, ND Ohio) 660 F Supp 31*, affd (1987, CA6 Ohio) *820 F2d 782.*

Where real estate buyer claimed that sellers and appraisers violated Pennsylvania Unfair Trade Practices and Consumer Protection Law, *73 Pa. Stat. Ann. §§ 201-1* et seq., by violating Truth in Lending Act (TILA), *15 USCS § 1664(d)* and Regulation Z, *12 CFR § 226.24(c)(1)*, but did not present any advertisement claimed to have been read by him and which violated *15 USCS § 1664(d)* or Regulation Z, buyer's claim failed to survive summary judgment. *Hearns v Parisi (2008, MD Pa) 548 F Supp 2d 132.*

Home purchasers failed to establish that developers' advertisements violated *15 USCS § 1664(d)* or that appraiser engaged in any advertising activity; purchasers therefore could not show that developers and appraiser violated Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 to -9.3, based on Truth in Lending Act violation. *Wilson v Parisi (2008, MD Pa) 549 F Supp 2d 637.*

55 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1665*

§ 1665. Nonliability of advertising media

There is no liability under this chapter [*15 USCS §§ 1661* et seq.] on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 145, 82 Stat. 159.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, P.L. 90-321, which appears as *15 USCS § 1631* note.

**NOTES:**

Research Guide:

Am Jur:
*3 Am Jur 2d, Advertising § 14.*
*17 Am Jur 2d, Consumer and Borrower Protection § 116.*

Corporate and Business Law:

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.17.

Texts:

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.03, 152.08.

9 Banking Law (Matthew Bender), ch 170, Advertising § 170.03.

2 The Law of Advertising (Matthew Bender), ch 15, Federal Remedies Available to Consumers § 15.04.

3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

Law Review Articles:

Thain. Credit Advertising and the Law: Truth in Lending and Related Matters. *1976 Wash U L Q 257,* Spring 1976.

Interpretive Notes and Decisions:

It is clear from legislative history and from inclusion of § 145 in credit advertising provisions of Truth In Lending Act (*15 USCS § 1665*), relieving media from any potential liability thereunder, that term advertisement is meant to include only traditional notice of selling of goods and services designed and generally circulated to attract public attention; under that definition, retail installment contract is not advertisement. *Garza v Chicago Health Clubs, Inc. (1971, ND Ill) 329 F Supp 936.*

56 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1665a*

§ 1665a. Use of annual percentage rate in oral disclosures; exceptions [Caution: See prospective amendment note below.]

In responding orally to any inquiry about the cost of credit, a creditor, regardless of the method used to compute finance charges, shall state rates only in terms of the annual percentage rate, except that in the case of an open end credit plan, the periodic rate also may be stated and, in the case of any other open end credit plan where a major component of the finance charge consists of interest computed at a simple annual rate, the simple annual rate also may be stated. The Board may, by regulation, modify the requirements of this section or provide any exception from this section for a transaction or class of transactions for which the creditor cannot determine in advance the applicable annual percentage rate.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 146, as added Oct. 28, 1974, P.L. 93-495, Title IV, § 401(a), 88 Stat. 1517; March 31, 1980, P.L. 96-221, Title VI, § 623(a), 94 Stat. 185.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective upon enactment, as provided by § 416 of Act Oct. 28, 1974, P.L. 93-495, which appears as a note to this section.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted this section for one which read:

"Any advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit repayable in more than four installments shall, unless a finance charge is imposed, clearly and conspicuously state, in accordance with the regulations of the Board:

'THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES.' ".

Other provisions:

**Effective dates of Act Oct. 28, 1974.** Act Oct. 28, 1974, P.L. 93-495, Title IV, § 416, 88 Stat. 1521, provided "This title [enacting *15 USCS §§ 1614, 1645, 1665a, 1665a* note and amending *15 USCS §§ 1603, 1607, 1631, 1635, 1637, 1640, 1644*] takes effect upon the date of its enactment [enacted Oct. 28, 1974], except that sections 409, [amendment to *15 USCS § 1631*] and 411 [amendment to *15 USCS § 1637*] take effect upon the expiration of one year after the date of its enactment [enacted Oct. 28, 1974].".

**NOTES:**

Research Guide:

Am Jur:

*3 Am Jur 2d, Advertising § 14*.

*17 Am Jur 2d, Consumer and Borrower Protection § 115*.

Texts:

9 Banking Law (Matthew Bender), ch 170, Advertising §§ 170.03, 170.05.

3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.05.

57 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1665b*

§ 1665b. Advertising of open end consumer credit plans secured by the consumer's principal dwelling [Caution: See prospective amendment note below.]

(a) In general. If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount required under such plan, such advertisement shall also clearly and conspicuously set forth the following information, in such form and manner as the Board may require:

(1) Loan fees and opening cost estimates. Any loan fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan and stated as a single amount or as a reasonable range.

(2) Periodic rates. In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate.

(3) Highest annual percentage rate. The highest annual percentage rate which may be imposed under the plan.

(4) Other information. Any other information the Board may by regulation require.

(b) Tax deductibility.

(1) In general. If any advertisement described in subsection (a) contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

(2) Credit in excess of fair market value. Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that--

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(c) Certain terms prohibited. No advertisement described in subsection (a) with respect to any home equity account may refer to such loan as "free money" or use other terms determined by the Board by regulation to be misleading.

(d) Discounted initial rate.

(1) In general. If any advertisement described in subsection (a) includes an initial annual percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have been applied using the index or formula if such initial rate had not been offered.

(2) Quoted rate must be reasonably current. The annual percentage rate required to be disclosed under the paragraph (1) rate must be current as of a reasonable time given the media involved.

(3) Period during which initial rate is in effect. Any advertisement to which paragraph (1) applies shall also state the period of time during which the initial annual percentage rate referred to in such paragraph will be in effect.

(e) Balloon payment. If any advertisement described in subsection (a) contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

(f) "Balloon payment" defined. For purposes of this section and section 127A [*15 USCS § 1637a*], the term "balloon payment" means, with respect to any open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which--

(1) the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

(2) the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 147, as added Nov. 23, 1988, P.L. 100-709, § 2(c), 102 Stat. 4730; April 20, 2005, P.L. 109-8, Title XIII, § 1302(a)(2), 119 Stat. 208; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Amendments:

2005. Act April 20, 2005 (effective 180 days after enactment and inapplicable to cases commenced before the effective date, as provided by § 1501 of such Act, which appears as *11 USCS § 101* note), in subsec. (b), designated the existing

provisions as para. (1), inserted the paragraph heading, and added para. (2).

Other provisions:

**Effective date and application of section; regulations.** For the effective date and application of this section and regulations under this section, see § 7 of Act Nov. 23, 1988, P.L. 100-709, 102 Stat. 4734, which appears as *15 USCS § 1637a* note.

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1637a*.

Research Guide:

Am Jur:

*3 Am Jur 2d, Advertising § 14*.

*17 Am Jur 2d, Consumer and Borrower Protection §§ 67, 114*.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

Texts:

9 Banking Law (Matthew Bender), ch 170, Advertising § 170.06.

9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.

58 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1665c*

§ 1665c. Interest rate reduction on open end consumer credit plans [Caution: See prospective amendment note below.]

(a) In general. If a creditor increases the annual percentage rate applicable to a credit card account under an open end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the annual percentage rate for such obligor.

(b) Requirements. With respect to any credit card account under an open end consumer credit plan, the creditor shall--
(1) maintain reasonable methodologies for assessing the factors described in subsection (a);
(2) not less frequently than once every 6 months, review accounts as to which the annual percentage rate has been increased since January 1, 2009, to assess whether such factors have changed (including whether any risk has declined);
(3) reduce the annual percentage rate previously increased when a reduction is indicated by the review; and
(4) in the event of an increase in the annual percentage rate, provide in the written notice required under section 127(i) [*15 USCS § 1637(i)*] a statement of the reasons for the increase.

(c) Rule of construction. This section shall not be construed to require a reduction in any specific amount.

(d) Rulemaking. The Board shall issue final rules not later than 9 months after the date of enactment of this section [enacted May 22, 2009] to implement the requirements of and evaluate compliance with this section, and subsections (a), (b), and (c) shall become effective 15 months after that date of enactment [enacted May 22, 2009].

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 148, as added May 22, 2009, P.L. 111-24, Title I, § 101(c), 123 Stat. 1737; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

Subsecs. (a), (b), and (c) of this section became effective 15 months after enactment of Act May 22, 2009, P.L. 111-24, as provided by subsec. (d) of this section.

59 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1665d*

§ 1665d. Reasonable penalty fees on open end consumer credit plans [Caution: See prospective amendment note below.]

(a) In general. The amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.

(b) Rulemaking required. The Board, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, shall issue final rules not later than 9 months after the date of enactment of this section [enacted May 22, 2009], to establish standards for assessing whether the amount of any penalty fee or charge described under subsection (a) is reasonable and proportional to the omission or violation to which the fee or charge relates. Subsection (a) shall become effective 15 months after the date of enactment of this section [enacted May 22, 2009].

(c) Considerations. In issuing rules required by this section, the Board shall consider--
(1) the cost incurred by the creditor from such omission or violation;
(2) the deterrence of such omission or violation by the cardholder;
(3) the conduct of the cardholder; and
(4) such other factors as the Board may deem necessary or appropriate.

(d) Differentiation permitted. In issuing rules required by this subsection, the Board may establish different standards for different types of fees and charges, as appropriate.

(e) Safe harbor rule authorized. The Board, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the

National Credit Union Administration Board, may issue rules to provide an amount for any penalty fee or charge described under subsection (a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 149, as added May 22, 2009, P.L. 111-24, Title I, § 102(b)(1), 123 Stat. 1740; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section took effect 9 months after enactment of Act May 22, 2009, P.L. 111-24, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note.

60 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1665e*

§ 1665e. Consideration of ability to repay

A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 3, § 150, as added May 22, 2009, P.L. 111-24, Title I, § 109(a), 123 Stat. 1743.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section took effect 9 months after enactment of Act May 22, 2009, P.L. 111-24, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note.

61 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS prec § 1666*

Preceding § 1666

**NOTES:**

Related Statutes & Rules:
This part is referred to in *15 USCS §§ 1602, 1604, 1632, 1640, 5721*.

62 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666*

§ 1666. Correction of billing errors [Caution: See prospective amendment note below.]

(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor. If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 127(b)(10) [*15 USCS § 1637(b)(10)*] a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 127(a)(7)) [*15 USCS § 1637(a)(7)*]) from the obligor in which the obligor--

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct--

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either--

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the

case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) Billing error. For the purpose of this section, a "billing error" consists of any of the following:
(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.
(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.
(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.
(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.
(5) A computation error or similar error of an accounting nature of the creditor on a statement.
(6) Failure to transmit the statement required under section 127(b) of this Act [*15 USCS § 1637(b)*] to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.
(7) Any other error described in regulations of the Board.

(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error. For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account, which may include finance charges on amounts in dispute, to the obligor following written notice from the obligor as specified under subsection (a), if--
(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a), and
(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Restricting or closing by creditor of account regarded by obligor as containing a billing error. Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

(e) Effect of noncompliance with requirements by creditor. Any creditor who fails to comply with the requirements of this section or section 162 [*15 USCS § 1666a*] forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $ 50.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 161, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1512;

March 31, 1980, P.L. 96-221, Title VI, §§ 613(g), 620, 94 Stat. 177, 184.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, §§ 1087, 1100A(2), 124 Stat. 2086, 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, §§ 1087, 1100A(2), 124 Stat. 2086, 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provide that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

Section 308 of Act Oct. 28, 1974, P.L. 93-495, provided "This *title [15 USCS §§ 1601* note, 1666-1666j and amendments to *15 USCS §§ 1601*, *1602*, *1610*, *1631*, *1632*, *1637*] takes effect upon the expiration of one year after the date of its enactment [enacted Oct. 28, 1974].".

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), in subsec. (a), substituted "127(b)(10)" for "127(b)(11)" and "127(a)(7)" for "127(a)(8)"; in subsec. (b), redesignated former para. (6) as para. 7, and inserted new para. (6); and in subsec. (c), introductory matter, inserted ", which may include finance charges on amounts in dispute,".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1637*, *1666a*; *26 USCS § 6311*.

Research Guide:

Federal Procedure:

32 Fed Proc L Ed, Trade Regulation and Unfair Trade Practices § 75:3.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 117-119, 146.*
*20 Am Jur 2d, Credit Cards and Charge Accounts §§ 5, 42, 46.*
*67 Am Jur 2d, Sales § 283.*
*68A Am Jur 2d, Secured Transactions §§ 174, 217.*

Am Jur Proof of Facts:
81 Am Jur Proof of Facts 3d, Identity Theft and Other Misuses of Credit and Debit Cards, p. 113.

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:70, 162.
5A Am Jur Legal Forms 2d, Consumer Credit Protection Acts § 66:41.
7C Am Jur Pl & Pr Forms (Rev ed), Credit Cards § 72.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending §§ 1.07, 1.09.
1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.02.
1A Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.05.
2A Debtor-Creditor Law (Matthew Bender), ch 21, The Bank-Customer Relationship § 21.13.

Corporate and Business Law:
1 Antitrust Laws and Trade Regulation, 2nd Edition (Matthew Bender), ch 5, Overview and Jurisdictional Elements of the Federal Trade Commission Act § 5.01.
5 Antitrust Laws and Trade Regulation, 2nd Edition (Matthew Bender), ch 76, Enforcement by the Federal Trade Commission: An Overview § 76.02.
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 44, The Federal Trade Commission Organization §§ 44.5, 44.25.
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.1, 62.9.

Annotations:
Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (*15 USCS §§ 1601* et seq.). *160 L Ed 2d 1141*.
Validity of Arbitration Clause Precluding Class Actions. *13 ALR6th 145*.
Right to Private Action Under State Consumer Protection Act--Preconditions to Action. *117 ALR5th 155*.

Texts:
3 Banking Law (Matthew Bender), ch 76, Introduction to the Federal Reserve System § 76.02.
7 Banking Law (Matthew Bender), ch 150, Introduction to Consumer Credit § 150.02.
7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.06, 152.08.
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.
11 Banking Law (Matthew Bender), ch 195, Regulation of Banking Operations of Branches and Agencies of Foreign Banks § 195.06.
4 Computer Law (Matthew Bender), ch 5, General Evidentiary Principles § 5.04.
2 The Law of Advertising (Matthew Bender), ch 17, The Jurisdiction of the Federal Trade Commission in Advertising § 17.02.

Law Review Articles:

Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

Rouen. The Fair Credit Billing Act and Two-Tier Pricing. *14 Harv J Legis 559, 1976-77.*

Griffith. The truth and nothing but the truth: confronting the challenge in the Truth in Lending Act and Regulation Z. *40 Hous L Rev 345,* Summer 2003.

Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303,* Spring 2006.

Interpretive Notes and Decisions:

1. Generally 2. Notices 3. Miscellaneous

**1. Generally**

*15 USCS § 1666* does not apply to disputes over charges to "company account" opened with credit company since company is not covered by definition of "consumer" in predecessor to *15 USCS § 1602(h)*; company account is not opened primarily for personal, family, household, or agricultural purposes and individual transactions cannot be characterized as extensions of consumer credit. *American Express Co. v Koerner (1981) 452 US 233, 68 L Ed 2d 803, 101 S Ct 2281* (criticized in *Kurz v Chase Manhattan Bank (2003, SD NY) 260 F Supp 2d 638)* and (criticized in *Kurz v Chase Manhattan Bank (2003, SD NY) 273 F Supp 2d 474).*

Credit card company is subject to requirements of *15 USCS § 1666* concerning customer who signed statement joining application and assuming joint and several liability for any debts; since customer assumes individual liability, company cannot claim that he is mere representative of business that is not subject to § 1666 protections. *Koerner v American Express Co. (1980, CA5 La) 615 F2d 191,* reh den (1980, CA5 La) *618 F2d 781* and revd on other grounds *(1981) 452 US 233, 68 L Ed 2d 803, 101 S Ct 2281* (criticized in *Kurz v Chase Manhattan Bank (2003, SD NY) 260 F Supp 2d 638)* and (criticized in *Kurz v Chase Manhattan Bank (2003, SD NY) 273 F Supp 2d 474).*

Consequence of cardholder's failure to examine its billing statements was that it may not have been able to take advantage of opportunity Congress provided under *15 USCS § 1666* to correct billing error, not that it forfeited protections against liability for unauthorized use under *15 USCS § 1643. DBI Architects, P.C. v Am. Express Travel-Related Servs. Co. (2004, App DC) 388 F3d 886.*

In action in which credit card holder filed suit against bank claiming that certain terms and conditions for bank's credit card issued to holder and others violated section of Fair Credit Billing Act (FCBA), *15 USCS § 1666(c)* and regulations issued thereunder court found that bank's arbitration provision did not prohibit holder from vindicating his statutory rights under either Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., or FCBA; bank's arbitration clause did not limit any of substantive remedies that would otherwise be available to holder under *15 USCS § 1640. Taylor v Citibank USA, N.A. (2003, MD Ala) 292 F Supp 2d 1333.*

Defendant's arbitration clause did not limit any of substantive remedies that would have otherwise been available to plaintiff under *15 USCS § 1640*; only procedural limitation defendant imposed was ban on class actions, however, Court of Appeals for Eleventh Circuit has held that such prohibition was enforceable even if it precluded plaintiff from utilizing class action procedures in vindicating statutory rights under Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., and, therefore, defendant's arbitration provision did not prohibit plaintiff from vindicating her statutory rights under either TILA or Fair Credit Billing Act, *15 USCS §§ 1666* et seq. *Gipson v Cross Country Bank (2003, MD Ala)*

*294 F Supp 2d 1251,* motion gr, injunction gr, stay gr (2005, MD Ala) *354 F Supp 2d 1278.*

Credit card members' argument in opposition to arbitration of their dispute with credit card company, that if they were required to go to arbitration, provisions in their arbitration agreements barring class arbitration would prevent them from vindicating their rights under Truth in Lending Act (TILA) and Fair Credit Billing Act, failed because contractual provision to arbitrate TILA claims was enforceable even if it, as here, precluded plaintiff from utilizing class action procedures in vindicating statutory rights under *TILA. Lawrence v Household Bank, N.A. (2004, MD Ala) 343 F Supp 2d 1101.*

District court entered order directing plaintiff consumer to limit her claims in arbitration to her personal billing claims against defendant creditor where credit agreement expressly prohibited her from raising any class action claim and was valid and enforceable. *Gipson v Cross Country Bank (2005, MD Ala) 354 F Supp 2d 1278.*

*15 USCS § 1666* is applicable only to transactions under open end credit plans, as defined by *15 USCS § 1602(i). Jacobs v Marine Midland Bank, N. A. (1984, Sup) 124 Misc 2d 162, 475 NYS2d 1003.*

**2. Notices**

To trigger creditor's obligation to reinvestigate and verify billing pursuant to Fair Credit Billing Act (*15 USCS §§ 1666-1666j*), creditor is required under *15 USCS § 1666(a)* to give written notice of specific dispute within 60 days of receipt of statement, and 60 day notice period begins to run when disputed statement is first received. *Pinner v Schmidt (1986, CA5 La) 805 F2d 1258,* reh den, en banc (1987, CA5 La) *812 F2d 1405* and cert den *(1987) 483 US 1022, 97 L Ed 2d 766, 107 S Ct 3267* and cert den *(1987) 483 US 1032, 97 L Ed 2d 780, 107 S Ct 3276.*

Individual's notice of department store's alleged billing error was not inadequate as matter of law under *15 USCS § 1666(a)* where general nature of claim was set forth with reasonable clarity in letter alleging that department store had double-billed individual's maiden name and married name accounts and letter and other information in record indicated that individual disputed entire outstanding amount on maiden name account. *Burnstein v Saks Fifth Ave. & Co. (2002, ED Mich) 208 F Supp 2d 765,* affd (2003, CA6 Mich) *85 Fed Appx 430.*

Where consumer alleged that bank was advised that it was improperly attempting to collect debt for amounts charged to credit card which was fraudulently obtained by someone using consumer's name and information, and bank continued to treat consumer as obligor despite consumer's denial of any debt, consumer's advisement to bank constituted sufficient notice of billing error within meaning of *15 USCS § 1666(b)(1),* and (2). *Stafford v Cross Country Bank (2003, WD Ky) 262 F Supp 2d 776.*

Credit card consumer's Truth in Lending Act claim was untimely pursuant to *15 USCS § 1666(b)(2)* because his letters alleging billing error were not sent within 60 days of first billing statement reflecting errors; only extension of credit to which consumer could object was original extension of consumer credit, and 60-day period had long since passed; further, federal district court rejected argument that finance charges constituted extension of credit. *Cunningham v Bank One (2007, WD Wash) 487 F Supp 2d 1189.*

Where credit card consumer alleged that bank violated Truth in Lending Act, *15 USCS §§ 1601* et seq., by failing to investigate his allegations of billing error, his letters to bank constituted valid written notices of billing error under Fair Credit Billing Act, *15 USCS § 1666,* where they contained his belief, and his reasons for his belief, that two of his statements contained billing errors under § 1666(b)(1), (2), and (5). *Cunningham v Bank One (2007, WD Wash) 487 F Supp 2d 1189.*

Where plaintiff debtor sent billing error "notices" complaining of charges well outside 60-day period without having belief that any errors actually existed, and as part of larger effort to escape his credit card debt and create liability on part of defendant credit card company creditors, debtor's claims under Fair Credit Billing Act, *15 USCS §§ 1666* et seq., failed on summary judgment. *Eicken v USAA Fed. Sav. Bank (2007, SD Tex) 498 F Supp 2d 954.*

Where plaintiff debtor alleged defendant credit card company violated Fair Credit Billing Act, *15 USCS §§ 1666* et seq., Court was unpersuaded by debtor's assertion that § 1666(b)(5) errors appeared for first time on statements referenced specifically in letters, and therefore within 60-day time period because according to debtor, computation errors consisted of inclusion of invalid finance charges and fees in total balance and minimum payment due, and letters disputed all finance charges and other fees charged since account was opened, therefore affecting calculation of monthly balance and minimum payment amount from account's inception; alleged computation errors in each statement could not have been resolved without addressing parallel errors in all previous statements, well outside 60-day window. *Eicken v USAA Fed. Sav. Bank (2007, SD Tex) 498 F Supp 2d 954.*

Credit card holder's notices to bank sufficiently complied with *15 USCS § 1666(a)*, part of Fair Credit Billing Act and *12 CFR § 226.13*, and her letters satisfactorily acknowledged billing errors as defined under *15 USCS § 1666(b)*; therefore, bank violated Act by failed to respond to notices, and its counterclaim for payment and breach of contract could be maintained only pursuant to time limits set by court. *Gengo v Target Nat'l Bank (2007, SD Tex) 513 F Supp 2d 842.*

Billing error notices submitted by cardholder to credit card issuers were not invalid on basis that they were filed in bad faith because there was no good-faith requirement in *Fair Credit Billing Act. Langenfeld v Chase Bank United States, N.A. (2008, ND Okla) 537 F Supp 2d 1181.*

Billing error notices submitted by cardholder to credit card issuers, alleging erroneous finance charges, failed to satisfy 60-day timeliness requirement because first periodic statements containing finance charges that were allegedly erroneous due to disclosure violations were first statements containing finance charges, which had been sent years earlier. *Langenfeld v Chase Bank United States, N.A. (2008, ND Okla) 537 F Supp 2d 1181.*

**Unpublished Opinions**

Unpublished: Bank's duty to respond under Fair Credit Billing Act (FCBA), *15 USCS § 1666(a)*, to consumer's letters complaining of billing errors on her credit card bill was not triggered because consumer complained solely about transaction fees and late fees that were referred to as "finance charges" on her bills. Because finance charge was not extension of credit for purposes of FCBA, complained-of fees did not constitute billing errors under *15 USCS § 1666(b)(2). Esquibel v Chase Manhattan Bank USA, N.A. (2008, CA5 Tex) 2008 US App LEXIS 9273.*

**3. Miscellaneous**

Under *12 CFR § 226.12(e)(1)*, when creditor other than credit card issuer accepts return of property or forgives debt for services that is to be reflected as credit to consumer's credit card account, creditor must, within 7 business days thereafter, transmit credit statement to card issuer through normal channels, and failure of such creditor to do so constitutes violation of *15 USCS § 1666(e)*, and Federal Trade Commission, in suit for preliminary injunction to require creditor to comply with this provision, met requirement of showing likelihood of success on merits by virtue of evidence that processing of credits was routinely delayed to allow crosschecking against charge back records and for reasons relating to cash flow and economic condition of creditor. *FTC v World Travel Vacation Brokers, Inc. (1988, CA7 Ill) 861 F2d 1020, 1988-2 CCH Trade Cases P 68333, 12 FR Serv 3d 1034.*

Credit cardholder's claims against bank under *15 USCS §§ 1643* and *1666* were barred because cardholder's personal assistant, who allegedly used card to misappropriate over $ 1 million, had apparent authority to use card. cardholder did not review bank statements or exercise oversight over employee. *Azur v Chase Bank, USA (2010, CA3 Pa) 601 F3d 212.*

Summary judgment in favor of bank with regard to plaintiffs claims under *15 USCS 1640* was affirmed because even though plaintiff, authorized user of card, was "consumer" in ordinary sense of word, and even though it would make sense for bank to discuss disputes with him and no practical sense to discuss it with credit card account holders

who did not buy items and would not likely know much about them, plaintiff was not "consumer" in bizarre usage of *Regulation Z. Edwards v Wells Fargo & Co. (2010, CA9 Nev) 606 F3d 555.*

Credit card issuer properly informed credit applicant of reasons for denial under *15 USCS § 1691(d)(2),* where statement of reasons given to applicant (1) listed 4 specific reasons and (2) was substantially similar to Federal Reserve Board guidelines under *15 USCS § 1691e(e)*; alleged billing error on earlier account with issuer--which led to delinquency and was partial basis for denial--is not violation of *15 USCS § 1666(a)* where applicant never informed issuer of alleged error. *Payne v Diner's Club International (1988, SD Ohio) 696 F Supp 1153.*

Federal Maritime Commission bond issued by insurers covered only claims of failed cruise line's passengers, not claims of credit card processing subcontractor for chargebacks that subcontractor had to issue to its merchant bank under *15 USCS § 1666,* part of *Fair Credit Billing Act. Nova Info. Sys. v Greenwich Ins. Co. (2002, MD Fla) 2003 AMC 231,* affd (2004, CA11 Fla) *365 F3d 996, 2004 AMC 969, 17 FLW Fed C 412.*

Bank's summary judgment motion on pro se attorney's claims that it failed to respond to billing inquiries in manner required by *15 USCS § 1666* and 26 C.F.R. § 226.113 was denied where only basis for bank's motion appeared to be that attorney was not acting in good faith in submitting inquiries and pertinent precedent indicated that if bank failed to comply with applicable statutory deadlines, there was no basis for avoiding liability for even technical violations. *Kurz v Chase Manhattan Bank (2003, SD NY) 260 F Supp 2d 638,* reprinted as amd (2003, SD NY) *273 F Supp 2d 474.*

Credit card processing subcontractor holding "assignments" from bankruptcy debtor's customers for pre-paid cruise chargebacks was subrogee for purposes of *11 USCS § 507(d),* and was not entitled to priority status that customers would have had under *11 USCS § 507(a)(6)* in debtor's bankruptcy; creditor did not reimburse customers voluntarily; it was legally obligated to do so because of some combination of Fair Credit Billing Act, *15 USCS §§ 1666* et seq., credit card regulations, and processing contract, and thus, creditor was "unwilling creditor" that did not have protections of *11 USCS § 507(a)(6). Nova Info. Sys. v Premier Operations, Ltd. (In re Premier Operations) (2003, SD NY) 294 BR 213, 50 CBC2d 1068.*

Because definition of "creditor" as used in *15 USCS § 1666* only applies to creditors offering open end credit plans and debtors did not allege that transaction underlying their claim was based on open end credit plan, their claim was dismissed with leave to amend. *Roybal v Equifax, Transunion, Experian Rickenbacker, Medamerica, City Towing Body Shop, Inc. (2005, ED Cal) 405 F Supp 2d 1177.*

Essential element of Fair Credit Billing Act claim is debtor's belief that his account statements actually contains errors because under *15 USCS § 1666(a)(2)*-(3), notice of billing error must indicate obligor's belief that statement contains billing error and amount of such billing error, and set forth reasons for obligor's belief (to extent applicable) that statement contains billing error; this language plainly requires obligor actually to possess belief, even if that belief is ultimately shown to be incorrect, that particular billing statement contains error. *Eicken v USAA Fed. Sav. Bank (2007, SD Tex) 498 F Supp 2d 954.*

Credit card issuer was entitled to summary judgment on cardholder's claim under Truth-in-Lending Act, *15 USCS §§ 1601* et seq.; issuer did not violate *15 USCS § 1666(c)* in failing to respond to "billing inquiry" and in initiating arbitration because cardholder's billing inquiry did not meet requirement under *15 USCS § 1666(a)* to set forth reasons for belief that credit card statement contained billing error. *Millan v Chase Bank USA, N.A. (2008, CD Cal) 533 F Supp 2d 1061.*

Allegedly erroneous finance charges imposed by credit card issuers from inception of card accounts did not qualify as billing errors pursuant to *15 USCS § 1666(b)(1)* or (2), because, in order to qualify as billing error pursuant to § 1666(b)(1) or (2), alleged error had to be reflection of extension of credit appearing on obligor's statement, and finance charges did not qualify as extensions of credit pursuant to § 1666(b)(1) and (2) because they were instead merely incident to extensions of credit. *Langenfeld v Chase Bank United States, N.A. (2008, ND Okla) 537 F Supp 2d 1181.*

Allegedly erroneous finance charges imposed by credit card issuers from inception of accounts did not qualify as billing errors pursuant to *15 USCS § 1666(b)(5)* because cardholder was not alleging type of computation or accounting error that was contemplated by Congress when it enacted § 1666(b)(5); rather, cardholder was disputing whether finance charges were ever properly imposed in light of credit card issuers' alleged failures to provide proper disclosure. *Langenfeld v Chase Bank United States, N.A. (2008, ND Okla) 537 F Supp 2d 1181.*

Credit card company was granted summary judgment on consumer's claim brought under Truth in Lending Act, *15 USCS § 1643*, arising out of alleged unauthorized use of his credit card, because (1) consumer did not file action until more than one year after he discovered unauthorized uses, as defined by *15 USCS § 1602(o)*, so claim was time-barred under *15 USCS § 1640(e)*; (2) consumer's argument that no contractual obligation existed between consumer and company because underlying charges were fraudulent, and thus, statute of limitations did not begin to run at time of alleged unauthorized uses, was inconsistent with language of *15 USCS § 1643*, which presupposed some type of contractual relationship between cardholder and card issuer, and record, which contained allegations of existence of contractual relationship and breach of cardholder agreement; and (3) statute of limitations was not tolled in light of *15 USCS § 1666* and its enacting regulation because § 1666 set forth different cause of action, complaint was devoid of allegations that would state claim under § 1666, and even if properly pled, there was no evidence in record that contradicted company's claim that consumer failed to comply with notice requirements of § 1666. *Asher v Bank One (2008, ND Ill) 538 F Supp 2d 1037.*

Plaintiffs did not raise actually disputed and substantial federal issue where their breach of contract and negligence claims were state law-based claims, and their attempt to directly implicate federal law under Fair Credit Billing Act (FCBA) failed because defendant moving company was not "creditor" and thus, neither FCBA nor any other section of Truth in Lending Act, *15 USCS §§ 1601* et seq., applied. *Rotblut v Ben Hur Moving & Storage, Inc. (2008, SD NY) 585 F Supp 2d 557.*

**Unpublished Opinions**

Unpublished: Bank's duty to respond under Fair Credit Billing Act, *15 USCS § 1666(a)*, to consumer's letters complaining of billing errors on her credit card bills was not triggered because consumer complained solely about transaction fees and late fees that were referred to as "finance charges" on her bills. Because complained-of fees were not computational errors, *15 USCS § 1666(b)(5)* did not apply. *Esquibel v Chase Manhattan Bank USA, N.A. (2008, CA5 Tex) 2008 US App LEXIS 9273.*

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666a*

§ 1666a. Regulation of credit reports

(a) Reports by creditor on obligor's failure to pay amount regarded as billing error. After receiving a notice from an obligor as provided in section 161(a) [*15 USCS § 1666(a)*], a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 161(a)(2) [*15 USCS § 1666(a)(2)*], and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 161 [*15 USCS § 1666*] and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency. If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 161(a)(2) [*15 USCS § 1666(a)(2)*], unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(c) Reports by creditor of subsequent resolution of delinquent amounts. A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially reported.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 162, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1513.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

**NOTES:**

Related Statutes & Rules:
This section is referred to in *15 USCS §§ 1637, 1666*.

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 119*.

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ 14:70, 165, 169.
24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection § 116.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.
1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.02.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.19.

Texts:
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

Law Review Articles:
Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

Interpretive Notes and Decisions:
1. Generally 2. Notice of billing error

**1. Generally**

Cause of action was stated against creditor who allegedly reported to credit bureau that debtor's account was delinquent after debtor had paid account in full, and who failed to send debtor a periodic statement. *Saunders v Ameritrust of Cincinnati (1984, SD Ohio) 587 F Supp 896.*

Creditor is entitled to summary judgment on debtor's claim under Federal Consumer Credit Protection Act (*15 USCS §§ 1601* et seq.), even though creditor erroneously issued monthly reports to credit reporting agencies that debtor had filed for bankruptcy when in fact filing had been by man with similar name, because creditor's error was not type of "billing error" contemplated by *15 USCS § 1666a*. *Doyle v Household Credit Servs. (1994, DC Me) 844 F Supp 13.*

**Unpublished Opinions**

Unpublished: District court properly awarded debtor his attorneys' fees and costs under *15 USCS § 1640(a)(3)* as prevailing party on his claim against creditor pursuant to *15 USCS § 1666a(b)* because (1) debtor was considered prevailing party under parties' settlement agreement; (2) district court properly applied "lodestar" method to evaluate debtor's fees claim, by multiplying number of hours reasonably expended on litigation by reasonable hourly rate, and then addressing parties' arguments about whether that figure should be adjusted further, and in doing so, district court properly explained its analysis; (3) with regard to debtor's degree of success, district court properly considered $ 1000 award debtor received in settlement as more than de minimis or nominal award and did not abuse its discretion in concluding that award was maximum available under *15 USCS § 1640(a)*; (4) even if award had been de minimis, it was not error to award fees because district court also considered non-monetary relief that debtor received, described by expert as according "substantial" public and private benefit; and (5) comparison between damages requested and received did not indicate that district court abused its discretion in determining fee award. *Moore v Bank of Am. N.A. (USA) (2007, CA9 Cal) 2007 US App LEXIS 19597.*

**2. Notice of billing error**

Consumer protection provisions of Fair Credit Billing Act (*15 USCS § 1666a*) are triggered by letter from credit card holder concerning prepayment miscredits, where letter enabled card issuer to identify name and account number, indicated that cardholder believed error existed in particular amount, and set forth cardholder's reasons for such belief; provisions of Act are not waived by contractual provision allowing credit card issuer to revoke card at any time without cause. *Gray v American Express Co. (1984, App DC) 240 US App DC 10, 743 F2d 10.*

Action on credit card account containing disputed debt is not subject to provisions of Federal Fair Credit Billing Act *(15 USCS §§ 1966* et seq.), since oral notice by customer did not trigger Act, and credit card company's voluntary compliance with Act's provisions has no effect on statute of limitations. *Himelfarb v American Express Co. (1984) 301 Md 698, 484 A2d 1013.*

Bank is not entitled to summary judgment where evidence, viewed in light most favorable to cardholder, shows that first statement from cardholder reflecting billing error was received within 60 days of receipt of account statement reflecting such error. *Lincoln First Bank, N.A. v Carlson (1980) 103 Misc 2d 467, 426 NYS2d 433.*

64 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666b*

§ 1666b. Timing of payments

(a) Time to make payments. A creditor may not treat a payment on a credit card account under an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement including the information required by section 127(b) [*15 USCS § 1637(b)*] is mailed or delivered to the consumer not later than 21 days before the payment due date.

(b) Grace period. If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part, unless a statement which includes the amount upon which the finance charge for the period is based was mailed or delivered to the consumer not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 163, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1514.)
(As amended May 22, 2009, P.L. 111-24, Title I, § 106(b)(1), 123 Stat. 1742; Nov. 6, 2009, P.L. 111-93, § 2, 123 Stat. 2998.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

Amendments:

2009. Act May 22, 2009 (effective 90 days after enactment, as provided by § 106(b)(2) of such Act, which appears as a note to this section), substituted the section heading and text for one which read:

"§ 1666B. Length of billing period in credit statement for imposition of finance charge; effect of failure of timely mailing or delivery of statement

"(a) Additional finance charge. If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

"(b) Excusable cause. Subsection (a) does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board.".

Act Nov. 6, 2009, in subsec. (a), inserted "a credit card account under".

Other provisions:

**Effective date of May 22, 2009 amendments.** Act May 22, 2009, P.L. 111-24, Title I, § 106(b)(2), 123 Stat. 1742, provides: "Notwithstanding section 3 [*15 USCS § 1602* note], section 163 of the Truth in Lending Act [this section], as amended by this subsection, shall become effective 90 days after the date of enactment of this Act.".

**NOTES:**

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 120.*

Forms:

6 Fed Procedural Forms L Ed, Consumer Credit Protection § 14:166.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

Law Review Articles:

Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

Interpretive Notes and Decisions:

Because alleged violations of Truth in Lending Act (TILA) and Fair Credit Billing Act occurred in connection with single account, and plaintiff borrower had never been granted recovery under TILA, she was limited to single recovery for those violations. *Tweedy v RCAM Title Loans, LLC (2009, WD Va) 611 F Supp 2d 603.*

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666c*

§ 1666c. Prompt and fair crediting of payments [Caution: See prospective amendment note below.]

(a) In general. Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form, by 5:00 p.m. on the date on which such payment is due, in the amount, manner, and location indicated by the creditor to avoid the imposition thereof.

(b) Application of payments.
(1) In general. Upon receipt of a payment from a cardholder, the card issuer shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.
(2) Clarification relating to certain deferred interest arrangements. A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.

(c) Changes by card issuer. If a card issuer makes a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account to which such payment was credited.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 164, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1514.)
(As amended May 22, 2009, P.L. 111-24, Title I, § 104, 123 Stat. 1741; July 21, 2010, P.L. 111-203, Title X, Subtitle H, §§ 1087, 1100A(2), 124 Stat. 2086, 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, §§ 1087, 1100A(2), 124 Stat. 2086, 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provide that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

Amendments:

2009. Act May 22, 2009 (effective 9 months after enactment, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note), substituted the heading for one which read: "Prompt crediting of payments; imposition of finance charge"; inserted "(a). In general.", inserted ", by 5:00 p.m. on the date on which such payment is due,", and substituted "manner, and location" for "manner, location, and time"; and added subsecs. (b) and (c).

**NOTES:**

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 120.*

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.05.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

Law Review Articles:

Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981,* Feb 1978.

Interpretive Notes and Decisions:

In credit card holders' suit for violation of Fair Credit Billing Act, *15 USCS §§ 1666-1666j*, district court was required to stay litigation and compel arbitration under Federal Arbitration Act, *9 USCS §§ 1-16*, because relevant cardmember agreements included valid, written agreements to arbitrate that clearly encompassed holders' claims. *Battels v Sears Nat'l Bank (2005, MD Ala) 365 F Supp 2d 1205.*

In credit card holders' suit for violation of Fair Credit Billing Act (FCBA), *15 USCS §§ 1666c*, provisions in relevant cardmember agreements barring class arbitration were enforceable, even if they precluded holders from utilizing class action procedures to vindicate their rights under *FCBA. Battels v Sears Nat'l Bank (2005, MD Ala) 365 F Supp 2d 1205.*

State class action settlement against bank and credit company was res judicata under Cal. Code Civ. Proc. § 1908 to credit card holder's claims under *15 USCS § 1666c* because holder was member of class, she did not opt out, and settlement involved same primary right; under Full Faith and Credit Act, *28 USCS § 1738*, preclusive effect was given to settlement and associated judgment. *Lawrence v Household Bank (SB), N.A. (2007, MD Ala) 505 F Supp 2d 1279.*

66 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666d*

§ 1666d. Treatment of credit balances

Whenever a credit balance in excess of $ 1 is created in connection with a consumer credit transaction through (1) transmittal of funds to a creditor in excess of the total balance due on an account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor, the creditor shall--

(A) credit the amount of the credit balance to the consumer's account;

(B) refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(C) make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, except that no further action is required in any case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 165, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1514; March 31, 1980, P.L. 96-221, Title VI, § 621(a), 94 Stat. 184.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:

This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted this section for one which read: "Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account.".

**NOTES:**

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 120.*

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.
1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.06.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

Law Review Articles:
Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

Interpretive Notes and Decisions:

Discovery on consumer's claim that mortgage corporation improperly charged him fees in violation of Truth in Lending Act (TILA), *15 USCS § 1601* et seq., had not yet occurred; therefore, corporation's motion for summary judgment on plaintiff's TILA claim was premature and was denied without prejudice, subject to renewal upon completion of discovery. *Mazzei v Money Store (2004, SD NY) 349 F Supp 2d 651.*

Summary judgment was denied to creditor on claim under Truth-in-Lending Act (TILA), *15 USCS § 1666d*, because debtors' claim that creditor's failure to credit debtors for excess charges amounted to violation of *15 USCS § 1666d* and *12 CFR § 226.21* implicitly contained allegation that there was credit balance over $ 1 in their accounts and thus debtors stated valid claim under *TILA. Vincent v Money Store (2005, SD NY) 402 F Supp 2d 501.*

67 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666e*

§ 1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 166, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1514.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

**NOTES:**

Related Statutes & Rules:
This section is referred to in *15 USCS § 1610*.

Research Guide:

Am Jur:
*20 Am Jur 2d, Credit Cards and Charge Accounts §§ 5, 11*.

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection § 14:167.

Commercial Law:
1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.11.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

Law Review Articles:
Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

Interpretive Notes and Decisions:

Plaintiff fails to state claim for relief against card issuer in alleging that it failed to credit him with insurance charge upon cancellation or change of flight ticket in absence of allegation that seller accepted return of insurance and transmitted credit statement to card issuer. *Lifschitz v American Express Co. (1983, ED Pa) 560 F Supp 458.*

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666f*

§ 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; credit card surcharge prohibition; finance charge for sales transactions involving cash discounts

(a) Cash discounts. With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(b) Finance charge. With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 106 [*15 USCS § 1605*] if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 167, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1515; Feb. 27, 1976, P.L. 94-222, § 3(c)(1), 90 Stat. 197; July 27, 1981, P.L. 97-25, Title I, § 101, 95 Stat. 144.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

Amendments:

1976. Act Feb. 27, 1976 (for termination, see Other provisions note), in subsec. (a) added designator "(1)", and added para. (2), which read: "No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.".

1981. Act July 27, 1981 substituted subsec. (b) for one which read: "With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board.".

Other provisions:

**Termination of 1976 amendments to subsec. (a).** Act Feb. 27, 1976, P.L. 94-222, § 3(c)(2), 90 Stat. 197; Nov. 10, 1978, P.L. 96-630, Title XV, § 1501, 92 Stat. 3713 (effective 11/10/78, as provided by § 1505 of such Act); July 27, 1981, P.L. 97-25, Title II, § 201, 95 Stat. 144, provides: "The amendments made by paragraph (1) [amending subsec. (a) of this section] shall cease to be effective on February 27, 1984.".

**Nullification of rules and regulations in effect on July 27, 1981.** Act July 27, 1981, P.L. 97-25, Title I, § 103, 95 Stat. 144, provides: "Any rule or regulation of the Board of Governors of the Federal Reserve System pursuant to section 167(b) of the Truth in Lending Act [subsec. (b) of this section], as such section was in effect on the day before the date of enactment of this Act [enacted July 27, 1981], is null and void.".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1602*, *1607*, *1666j*.

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 121*.

*20 Am Jur 2d, Credit Cards and Charge Accounts § 5*.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.11.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.19.

Texts:
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.03.

Law Review Articles:
Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981,* Feb 1978.

Interpretive Notes and Decisions:
1. Generally 2. Disclosure of discount

**1. Generally**

Provisions of *15 USCS § 1666f* were intended by Congress to prevent credit card issuers from prohibiting retailers from offering discounts to consumers who elect to pay for goods or services with cash; states are not prohibited from preventing credit card issuers from imposing processing charges on retailers; state law which forbids major oil company from imposing surcharge for credit sales upon retailers is not contrary to *15 USCS § 1666f*. *Texaco, Inc. v Hughes (1982, DC Md) 572 F Supp 1*.

Discount qualifying for special treatment afforded by *15 USCS §§ 1666f* and *1666j* may be limited by merchant to cash paying customers, that is, it need not be made available to customers tendering checks or to credit card purchasers. FC-01015, *42 Fed Reg 45896.*

**2. Disclosure of discount**

Due to unique open air nature of gasoline service stations, dealer wishing to offer discounts for purchase of gasoline by cash may indicate availability of such discount by sign anywhere on premises which is clearly visible to any customer entering service station area; credit card price clearly disclosed on pump is "regular price." Board of Governors of Federal Reserve System Official Staff Interpretation FC-0140, *43 Fed Reg 3899.*

69 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666g*

§ 1666g. Tie-in services prohibited for issuance of credit card

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 168, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1515.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

**NOTES:**

Research Guide:

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection § 121.*
*20 Am Jur 2d, Credit Cards and Charge Accounts § 5.*

Commercial Law:

1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.11.

Corporate and Business Law:

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

Law Review Articles:

Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666h*

§ 1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected

(a) Offset against consumer's funds. A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless--

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section [see Effective date of section note], the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

(b) Attachments and levies. This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 169, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1515.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:

This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

**NOTES:**

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 121*.

*20 Am Jur 2d, Credit Cards and Charge Accounts § 5*.

Forms:

6 Fed Procedural Forms L Ed, Consumer Credit Protection § 14:168.

24 Am Jur Pl & Pr Forms (Rev ed), Truth in Lending and Consumer Credit Protection § 115.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.

1A Debtor-Creditor Law (Matthew Bender), ch 9, Garnishment and Exemptions § 9.05.

1A Debtor-Creditor Law (Matthew Bender), ch 15, Credit Cards § 15.09.

Corporate and Business Law:

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.19.

Law Review Articles:

Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

71 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666i*

§ 1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses

(a) Claims and defenses assertable. Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $ 50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) Amount of claims and defenses assertable. The amount of claims for defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 170, as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1515.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

**NOTES:**

Related Statutes & Rules:
This section is referred to in *15 USCS § 1637*; *26 USCS § 6311*.

Research Guide:

Am Jur:
*20 Am Jur 2d, Credit Cards and Charge Accounts §§ 5, 48.*

Forms:
6 Fed Procedural Forms L Ed, Consumer Credit Protection §§ :14:70, 170.
7 Am Jur Legal Forms 2d (2006), Credit Cards §§ 78:28, 29.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.
1A Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.05.
2A Debtor-Creditor Law (Matthew Bender), ch 21, The Bank-Customer Relationship § 21.13.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.

Annotations:
Credit card issuer's liability for wrongfully refusing to honor card. *46 ALR3d 1380.*

Texts:
9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

Law Review Articles:

Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981,* Feb 1978.

Dobson. Credit Cards. *1979 J Bus L 331,* Oct 1979.

Interpretive Notes and Decisions:

Bank is not entitled to summary judgment since *15 USCS § 1666i* does not appear to require that cardholder give up all his defenses should transaction take place at distance greater than 100 miles from mailing address and, if so, cardholder can clearly assert defense which arose due to alleged failure of card issuer itself to comply with statutory requirements of § 1666 to correct obvious billing error. *Lincoln First Bank, N.A. v Carlson (1980) 103 Misc 2d 467, 426 NYS2d 433.*

Geographical limitation of *15 USCS § 1666i* is subject to determination, under state law, of where transaction occurred; state law permitting customers to assert claims and defenses against card issuer are not pre-empted, regardless of whether place of transaction is at issue; customer's ability to assert claims and defenses against bank issuing credit card is only as good as ability to claim against merchant. *Izraelewitz v Manufacturers Hanover Trust Co. (1983, Civ Ct) 120 Misc 2d 125, 465 NYS2d 486.*

72 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666i-1*

§ 1666i-1. Limits on interest rate, fee, and finance charge increases applicable to outstanding balances

(a) In general. In the case of any credit card account under an open end consumer credit plan, no creditor may increase any annual percentage rate, fee, or finance charge applicable to any outstanding balance, except as permitted under subsection (b).

(b) Exceptions. The prohibition under subsection (a) shall not apply to--

(1) an increase in an annual percentage rate upon the expiration of a specified period of time, provided that--

(A) prior to commencement of that period, the creditor disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period;

(B) the increased annual percentage rate does not exceed the rate disclosed pursuant to subparagraph (A); and

(C) the increased annual percentage rate is not applied to transactions that occurred prior to commencement of the period;

(2) an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public;

(3) an increase due to the completion of a workout or temporary hardship arrangement by the obligor or the failure of the obligor to comply with the terms of a workout or temporary hardship arrangement, provided that--

(A) the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that category of transactions prior to commencement of the arrangement; and

(B) the creditor has provided the obligor, prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure); or

(4) an increase due solely to the fact that a minimum payment by the obligor has not been received by the creditor within 60 days after the due date for such payment, provided that the creditor shall--

(A) include, together with the notice of such increase required under section 127(i) [*15 USCS § 1637(i)*], a clear and

conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time from the obligor during that period; and

(B) terminate such increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period.

(c) Repayment of outstanding balance.

(1) In general. The creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the obligor with one of the methods described in paragraph (2) of repaying any outstanding balance, or a method that is no less beneficial to the obligor than one of those methods.

(2) Methods. The methods described in this paragraph are--

(A) an amortization period of not less than 5 years, beginning on the effective date of the increase set forth in the notice required under section 127(i) [*15 USCS § 1637(i)*]; or

(B) a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the notice required under section 127(i) [*15 USCS § 1637(i)*].

(d) Outstanding balance defined. For purposes of this section, the term "outstanding balance" means the amount owed on a credit card account under an open end consumer credit plan as of the end of the 14th day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with section 127(i) [*15 USCS § 1637(i)*].

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 171, as added May 22, 2009, P.L. 111-24, Title I, § 101(b)(2), 123 Stat. 1736.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

A prior § 171 of Act May 29, 1968, P.L. 90-321, was redesignated § 173 of such Act, and appears as *15 USCS § 1666j*.

Effective date of section:

This section took effect 9 months after enactment of Act May 22, 2009, P.L. 111-24, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note.

**NOTES:**

Research Guide:

Texts:

9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

73 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666i-2*

§ 1666i-2. Additional limits on interest rate increases [Caution: See prospective amendment note below.]

(a) Limitation on increases within first year. Except in the case of an increase described in paragraph (1), (2), (3), or (4) of section 171(b) [*15 USCS § 1666i-1(b)*], no increase in any annual percentage rate, fee, or finance charge on any credit card account under an open end consumer credit plan shall be effective before the end of the 1-year period beginning on the date on which the account is opened.

(b) Promotional rate minimum term. No increase in any annual percentage rate applicable to a credit card account under an open end consumer credit plan that is a promotional rate (as that term is defined by the Board) shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect, subject to such reasonable exceptions as the Board may establish, by rule.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 172, as added May 22, 2009, P.L. 111-24, Title I, § 101(d), 123 Stat. 1738; July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), 124 Stat. 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section took effect 9 months after enactment of Act May 22, 2009, P.L. 111-24, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note.

**NOTES:**

Research Guide:

Texts:

9 Banking Law (Matthew Bender), ch 171, Application Process § 171.04.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.14.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.05.

74 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CREDIT BILLING

**Go to the United States Code Service Archive Directory**

*15 USCS § 1666j*

§ 1666j. Applicability of State laws [Caution: See prospective amendment note below.]

(a) Consistency of provisions. This chapter [*15 USCS §§ 1666* et seq.] does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter [*15 USCS §§ 1666* et seq.] from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this chapter [*15 USCS §§ 1666* et seq.], and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent wit any provision of this chapter [*15 USCS §§ 1666* et seq.] if the Board determines that such law gives greater protection to the consumer.

(b) Exemptions by Board from credit billing requirements. The Board shall by regulation exempt from the requirements of this chapter [*15 USCS §§ 1666* et seq.] any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter [*15 USCS §§ 1666* et seq.] or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(c) Finance charge or other charge for credit for sales transactions involving cash discounts. Notwithstanding any other provisions of this *title [15 USCS §§ 1601* et seq.], any discount offered under section 167(b) of this *title [15 USCS § 1666f(b)*] shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 4, § 173 [171], as added Oct. 28, 1974, P.L. 93-495, Title III, § 306, 88 Stat. 1516; Feb. 27, 1976, P.L. 94-222, § 3(d), 90 Stat. 198; May 22, 2009, P.L. 111-24, Title I, § 101(b)(1), 123 Stat. 1736;

July 21, 2010, P.L. 111-203, Title X, Subtitle H, §§ 1087, 1100A(2), 124 Stat. 2086, 2107.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, §§ 1087, 1100A(2), 124 Stat. 2086, 2107 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective one year after Oct. 28, 1974, as provided by § 308 of Act Oct. 28, 1974, P.L. 93-495, which appears as *15 USCS § 1666* note.

Amendments:

1976. Act Feb. 27, 1976, added subsec. (c).

Redesignation:

This section, enacted as § 171 of Act May 29, 1968, P.L. 90-321, was redesignated § 173 of such Act by May 22, 2009, P.L. 111-24, Title I, § 101(b)(1), 123 Stat. 1736, effective 9 months after enactment, as provided by § 3 of such Act, which appears as *15 USCS § 1602* note.

**NOTES:**

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 245, 246, 248.*

Law Review Articles:

Klasky; Le Valley; Taylor. Truth in Lending, Fair Credit Billing and Fair Credit Reporting. *33 Bus Law 981*, Feb 1978.

Interpretive Notes and Decisions:

1. Generally 2. Discounts

**1. Generally**

Bank was granted summary judgment on bank customers' negligence claim to extent it was based on Electronic Funds Transfer Act because that statute did not apply to transaction at issue and to extent it was based on Fair Credit Reporting Act duties or bank's credit reporting practices because customer could not use negligence claim to end-run statutory caps on liability under *15 USCS §§ 1681n, 1681o, 1681h(e)*; bank was denied summary judgment to extent customers argued that bank was negligent in violating Truth in Lending Act (TILA) because pursuant to *15 USCS §§ 1610(a)(1), 1666j(a)*, TILA did not preempt state laws except to extent that they were inconsistent with it. *Shames-Yeakel v Citizens Fin. Bank (2009, ND Ill) 677 F Supp 2d 994.*

Purpose of Congress in adopting *15 USCS § 1666j(c)* was to facilitate implementation of discount programs under *15 USCS § 1666f* and in light of fact that many credit cards are issued for both business and consumer transactions, pre-emptive provisions of *15 USCS § 1666j(c)* apply to State laws regarding consumer credit as well as business credit, which is excluded from Truth in Lending Act (*15 USCS § 1603*). Board of Governors of the Federal Reserve System official Staff Interpretation FC-0139, *43 Fed Reg 3898.*

**2. Discounts**

Provisions of *15 USCS § 1666f* were intended by Congress to prevent credit card issuers from prohibiting retailers from offering discounts to consumers who elect to pay for goods or services with cash; states are not prohibited from preventing credit card issuers from imposing processing charges on retailers; state law which forbids major oil company from imposing surcharge for credit sales upon retailers is not contrary to *15 USCS § 1666f*. *Texaco, Inc. v Hughes (1982, DC Md) 572 F Supp 1*.

Discount qualifying for special treatment afforded by *15 USCS §§ 1666f* and *1666j* may be limited by merchant to cash paying customers only, that is, it need not be made available to customers tendering checks or to credit card purchasers. FC-01015, *42 Fed Reg 45896.*

75 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS prec § 1667*

Preceding § 1667

**NOTES:**

Related Statutes & Rules:
This part is referred to in *15 USCS §§ 1604, 1632, 1640*.

76 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1667*

§ 1667. Definitions [Caution: See prospective amendment note below.]

For purposes of this chapter [*15 USCS §§ 1667* et seq.]--

(1) The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $ 25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 103(g) [*15 USCS § 1602(g)*]. Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term "lessee" means a natural person who leases or is offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term "personal property" means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The terms "security" and "security interest" mean any interest in property which secures payment or performance of an obligation.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 5, § 181, as added March 23, 1976, P.L. 94-240, § 3, 90 Stat. 257.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100E(a)(2), 124 Stat. 2111.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of para. (1), effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle

H, § 1100E(a)(2), 124 Stat. 2111 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides: "Section 181(1) of the Truth in Lending Act (*15 U.S.C. 1667(1)*) is amended by striking '$ 25,000' and inserting '$ 50,000'.".

Effective date of section:

This section took effect March 23, 1977, as provided by § 6 of Act March 23, 1976, P.L. 94-240, which appears as a note to this section.

Other provisions:

**Effective date of Act March 23, 1976.** Act March 23, 1976, P.L. 94-240, § 6, 90 Stat. 261, provided: "This Act [enacting *15 USCS §§ 1667-1667e* and amending *15 USCS §§ 1601* and *1640*] takes effect one year after the date of its enactment [enacted March 23, 1976].".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1631*.

Research Guide:

Federal Procedure:

3 Moore's Federal Practice (Matthew Bender 3d ed.), ch 13, Counterclaim and Crossclaim § 13.110.
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:72, 73.

Am Jur:

*8A Am Jur 2d, Bailments §§ 6, 271.*
*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 122, 123, 146, 163.*
*63A Am Jur 2d, Product Liability § 1173.*
*67 Am Jur 2d, Sales § 283.*
*68A Am Jur 2d, Secured Transactions §§ 174, 217.*

Forms:

5 *Rabkin & Johnson, Current Legal Forms, § 4.38*, Sale of Goods.
6 *Rabkin & Johnson, Current Legal Forms, Form 4A.11*, Equipment Leasing.
11B Am Jur Legal Forms 2d, Leases of Real Property § 161:1087.
18A Am Jur Legal Forms 2d, Article 2A Leases § 253:1134.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 3, The Consumer Leasing Act and Automobile Leases § 3.02.
1 Debtor-Creditor Law (Matthew Bender), ch 7, Rent-to-Own Transactions § 7.07.
1A Debtor-Creditor Law (Matthew Bender), ch 10, Repossessions § 10.01.

Corporate and Business Law:

1 Antitrust Laws and Trade Regulation, 2nd Edition (Matthew Bender), ch 5, Overview and Jurisdictional Elements of the Federal Trade Commission Act § 5.01.

5 Antitrust Laws and Trade Regulation, 2nd Edition (Matthew Bender), ch 76, Enforcement by the Federal Trade Commission: An Overview § 76.02.

6 Kintner, Federal Antitrust Law (Matthew Bender), ch 44, The Federal Trade Commission Organization § 44.25.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.1, 62.9, 62.12, 62.16.

Annotations:

Lease with option to purchase agreement as credit sale or consumer lease under definitions in Truth in Lending Act (*15 USCS §§ 1602(g), 1667(1)*) and applicable regulations. *58 ALR Fed 929.*

Construction and application of Consumer Leasing Act (*15 USCS §§ 1667-1667e*). *129 ALR Fed 587.*

Right to Private Action Under State Consumer Protection Act--Preconditions to Action. *117 ALR5th 155.*

Texts:

3 Banking Law (Matthew Bender), ch 76, Introduction to the Federal Reserve System § 76.02.

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.02, 152.06.

7 Banking Law (Matthew Bender), ch 154, Equal Credit Opportunity Act § 154.02.

8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act §§ 163.02, 163.03, 163.11.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.17.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.06.

11 Banking Law (Matthew Bender), ch 195, Regulation of Banking Operations of Branches and Agencies of Foreign Banks § 195.06.

2 The Law of Advertising (Matthew Bender), ch 17, The Jurisdiction of the Federal Trade Commission in Advertising §§ 17.02, 17.03.

3 The Law of Advertising (Matthew Bender), ch 52, Advertising by Financial Institutions § 52.06.

Law Review Articles:

Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377*, May 1994.

Goodman. Introduction to Truth in Leasing, *52 Conn BJ 101*, April 1978.

Griffith. The truth and nothing but the truth: confronting the challenge in the Truth in Lending Act and Regulation Z. *40 Hous L Rev 345*, Summer 2003.

Interpretive Notes and Decisions:

1. Generally 2. Relationship with other laws 3. Consumer lease 4.--Jurisdictional ceiling

**1. Generally**

Compliance with Consumer Leasing Act (*15 USCS §§ 1667* et seq.) and its pertinent regulations is determined ex ante, rather than ex post. *Channell v Citicorp Nat'l Servs. (1996, CA7 Ill) 89 F3d 379,* reh, en banc, den (1996, CA7 Ill) *1996 US App LEXIS 20256,* on remand, complaint dismd sub nom *Channell v Citicorp Nat'l Servs. (1996, ND Ill) 1996 US Dist LEXIS 14506* and (criticized in *Applebaum v Nissan Motor Acceptance Corp. (2000, CA3 Pa) 226 F3d 214)* and (criticized in *Clement v Am. Honda Fin. Corp. (2001, DC Conn) 145 F Supp 2d 206).*

Consumer Leasing Act (*15 USCS §§ 1667* et seq.) is disclosure, rather than regulatory, statute. *Turner v GMAC (1999, CA2 NY) 180 F3d 451.*

**2. Relationship with other laws**

Consumer lease of automobile, governed by Consumer Leasing Act (*15 USCS §§ 1667* et seq.) is subject to nondiscrimination provisions of Equal Credit Opportunity Act (*15 USCS § 1691* et seq.). *Brothers v First Leasing (1984, CA9 Cal) 724 F2d 789,* cert den *(1984) 469 US 832, 83 L Ed 2d 63, 105 S Ct 121* and (criticized in *Laramore v Ritchie Realty Mgmt. Co. (2005, CA7 Ill) 397 F3d 544).*

Equal Credit Opportunity Act (*15 USCS §§ 1691* et seq.) applies to both Truth in Lending Act (*15 USCS §§ 1601* et seq.) and Consumer Leasing Act (*15 USCS §§ 1667* et seq.); although Congress did not explicitly include specific reference to leases in amendments to Equal Credit Opportunity Act (*15 USCS §§ 1691* et seq.), failure does not indicate congressional intent not to include leases within its scope. *Brothers v First Leasing (1984, CA9 Cal) 724 F2d 789,* cert den *(1984) 469 US 832, 83 L Ed 2d 63, 105 S Ct 121* and (criticized in *Laramore v Ritchie Realty Mgmt. Co. (2005, CA7 Ill) 397 F3d 544).*

**3. Consumer lease**

Agreement for rental of television set, labeled as "rental agreement", providing that it was rental agreement only, that it was week-to-week agreement, that it was terminable by either party at any time, and that title at all times remained in lessor, is not "consumer lease". *Smith v ABC Rental Systems, Inc. (1978, ED La) 491 F Supp 127.*

Rental of color television is neither "credit sale" under *15 USCS § 1602(g)* nor "consumer lease" under *15 USCS § 1667(1)* where agreement provided for rental periods of one week with renter's right to terminate thereafter, and rental payment of $ 21 per week was not substantially equivalent to or in excess of aggregate value of television; fact that renter had right to renew lease on week-to-week basis does not convert lease into consumer lease under § 1667(1), which requires lease terms to exceed 4 months. *Stewart v Remco Enterprises, Inc. (1980, DC Neb) 487 F Supp 361.*

Rental agreement for television set which clearly stated that it was month-to-month rental agreement with option to purchase and that "renter" was required to rent television set for period of one month was not "consumer lease" within meaning of *15 USCS § 1667* or *12 CFR § 226.2(mm)* [now *12 CFR § 226.2(a)(16)*], where renter understood that she had right to terminate contract after initial rental period and that she was under no obligation to make payments for any period of time other than for each additional month she chose to use television set. *Dodson v Remco Enterprises, Inc. (1980, ED Va) 504 F Supp 540.*

Lease with option to purchase agreement which provided for lease of television set for period of 78 consecutive weeks, obligated lessee to pay only first week, and was terminable by either party under certain circumstances was not consumer lease. *Lemay v Stroman's, Inc. (1981, ED Ark) 510 F Supp 921.*

Consumer action fails under *15 USCS § 1667,* where action involves week-to-week or month-to-month rental of bar and entertainment center at consumer's ongoing option, because agreement is rental agreement and not "consumer lease," notwithstanding argument that advance payment for each rental period creates new agreement each time. *Givens v Rent-A-Center, Inc. (1988, SD Ala) 720 F Supp 160,* affd without op (1989, CA11 Ala) *885 F2d 879.*

**4.--Jurisdictional ceiling**

Automobile lease exceeded jurisdictional requirements of *15 USCS § 1667(1)*, where lessee alleged that lease violated requirements for print size, disclosure provisions, and termination penalties rendering lease void and unenforceable under state law, and lessor contended that value of lease including total of monthly payments and nonrefundable down payment exceeded $ 25,000 jurisdictional ceiling, because down payment was includable in total lease amount. *Easterwood v General Elec. Capital Auto Lease, Inc. (1993, ND Ga) 825 F Supp 306.*

Claim of automobile lessee against lessor's assignee and credit corporation, alleging violation of *15 USCS §§ 1601* et seq. by failure to disclose in lease agreement that interest earned on refundable security deposit constituted finance charge, is dismissed, where lessee had to pay 48 payments of $ 460.45, totaling $ 22,101.60, plus capitalized cost reduction payment of $ 2,926, plus disposition fee of $ 275 at end of lease if she did not elect to purchase vehicle, because total contractual obligation exceeds $ 25,000, so lease is not covered by *15 USCS § 1667(1)*. *Sanders v Gold Key Lease (1995, SD NY) 906 F Supp 197*, complaint dismd, motion den, motion to strike den (1997, NY Sup) *1997 NY Misc LEXIS 627*.

77 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1667a*

§ 1667a. Consumer lease disclosures [Caution: See prospective amendment notes below.]

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

(1) A brief description or identification of the leased property;

(2) The amount of any payment by the lessee required at the inception of the lease;

(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 5, § 182, as added March 23, 1976, P.L. 94-240, § 3, 90 Stat. 258.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10)(B), 124 Stat. 2107, 2109.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10)(B), 124 Stat. 2107, 2109 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau", and by striking "The Board" each place that term appears and inserting "The Bureau".

Effective date of section:

This section took effect March 23, 1977, as provided by § 6 of Act March 23, 1976, P.L. 94-240, which appears as *15 USCS § 1667* note.

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1667d*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:72, 73.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 122, 124, 125, 129, 146, 163.*

Forms:

25 *Rabkin & Johnson, Current Legal Forms, Forms 21.109, 21.110,* Sales and Exchanges.
11B Am Jur Legal Forms 2d, Leases of Real Property § 161:1087.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 3, The Consumer Leasing Act and Automobile Leases § 3.03.

Corporate and Business Law:
6 Kintner, Federal Antitrust Law (Matthew Bender), ch 45, The Federal Trade Commission Investigation and Enforcement Procedures § 45.119.
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.16.

Texts:
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act §§ 163.03, 163.05, 163.06.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.17.

Law Review Articles:
Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377*, May 1994.
Goodman. Introduction to Truth in Leasing. *52 Conn BJ 101*, April 1978.

Interpretive Notes and Decisions:
1. Generally 2. "Clear and conspicuous" 3. Warranties and guarantees 4. Security deposits 5. Early termination 6. Late payments 7. Miscellaneous

**1. Generally**

Consumer Leasing Act (*15 USCS §§ 1667* et seq.) is disclosure, rather than regulatory, statute. *Turner v GMAC (1999, CA2 NY) 180 F3d 451.*

Duty to disclose is breached, if at all, at time of lease consummation. *Applebaum v Nissan Motor Acceptance Corp. (2000, CA3 Pa) 226 F3d 214*, cert den *(2001) 533 US 929, 150 L Ed 2d 717, 121 S Ct 2549.*

**2. "Clear and conspicuous"**

Phrase "clear and conspicuous manner" in *15 USCS § 1667a* means visible, not simple; "manner" refers to mode of presentation, not degree of comprehension. *Channell v Citicorp Nat'l Servs. (1996, CA7 Ill) 89 F3d 379*, reh, en banc, den (1996, CA7 Ill) *1996 US App LEXIS 20256*, on remand, complaint dismd sub nom *Channell v Citicorp Nat'l Servs. (1996, ND Ill) 1996 US Dist LEXIS 14506* and (criticized in *Applebaum v Nissan Motor Acceptance Corp. (2000, CA3 Pa) 226 F3d 214)* and (criticized in *Clement v Am. Honda Fin. Corp. (2001, DC Conn) 145 F Supp 2d 206).*

Word "clearly" refers to meaning, not just appearance; thus, disclosure of method of calculating early termination penalty must be legible as well as reasonably understandable. *Applebaum v Nissan Motor Acceptance Corp. (2000, CA3 Pa) 226 F3d 214*, cert den *(2001) 533 US 929, 150 L Ed 2d 717, 121 S Ct 2549.*

Conclusory allegation that disposition fee being charged was not "clearly and conspicuously" disclosed in automobile lease agreement was sufficient to state claim for violation of "clear and conspicuous manner" requirement of *15 USCS § 1667a*. *Schmidt v Nissan Motor Acceptance Corp. (2000, ND Ill) 104 F Supp 2d 955.*

**3. Warranties and guarantees**

Statement in automobile lease that vehicle may be subject to separate written warranty from manufacturer, as matter of law, is insufficient to satisfy mandate of *15 USCS § 1667a(6). Highsmith v Chrysler Credit Corp. (1994, CA7 Ill) 18 F3d 434, 129 ALR Fed 767,* dismd (1995, ND Ill) *1995 US Dist LEXIS 21831.*

Car lessee is entitled to summary judgment on claims against lessor, where lease failed to disclose early termination penalties in "clear and conspicuous manner" and failed to disclose adequately available express warranties, because lease provisions violate Consumer Leasing Act (*15 USCS §§ 1667* et seq.). *Clement v Am. Honda Fin. Corp. (2001, DC Conn) 145 F Supp 2d 206.*

**4. Security deposits**

Claim of automobile lessee against lessor, alleging that lessor's practice of not disclosing that it retains interest earned on security deposits under leases violates *15 USCS § 1667a*, is not dismissed, where, under state's Commercial Code, lessees are entitled to remittance of security deposit funds and retention of interest imposes liability on lessees and amounts to additional security held in connection with lease, because § 1667a requires disclosure of practice of retaining interest. *Demitropoulos v Bank One Milwaukee, N.A. (1996, ND Ill) 924 F Supp 894, 30 UCCRS2d 337.*

Car lessees' federal claim against bank lessor must fail, even though bank did not disclose its practice of retaining interest on lessees' security deposit, where bank used model lease form found in Federal Regulations, which makes no mention of such interest, because court finds that Consumer Leasing Act (*15 USCS §§ 1667* et seq.) does not require bank to disclose its practice of keeping profits earned on lessees' security deposits. *Lawson v Bank One, Lexington, N.A. (1997, ED Ky) 35 F Supp 2d 961, 38 UCCRS2d 599.*

Claim based on credit company's failure to disclose any profits derived from maintenance of car lease security deposits must fail, even though cause of action may be maintained based on failure to disclose interest which accrues on security deposits, where company is not required to remit any profits under New York law, because disclosure of those profits is not required under *15 USCS § 1667a* or regulation promulgated thereunder. *Steinmetz v Toyota Motor Credit Corp. (1997, ED NY) 963 F Supp 1294, 35 UCCRS2d 660.*

Car lessee's claim against lessor under Consumer Leasing Act (*15 USCS §§ 1667* et seq.) must fail, even if lessor fails to disclose receipt of "earnings credits"--usable only to offset fees bank charges to maintain escrow accounts--on security deposits of lessees, because such credits are not "any security interest held or to be retained by lessor" within meaning of § 1667a(8). *Turner v GMAC (1997, SD NY) 980 F Supp 737,* affd (1999, CA2 NY) *180 F3d 451.*

Assignee of vehicle leases is entitled to summary judgment on lessees' claim under *15 USCS § 1667a*, where lessees charge assignee with failing to disclose its earning and retention of profits derived from their security deposits, because assignee was under no obligation to earn or report any interest or profits on lessees' security deposits. *Martin v Gold Key Lease (1997, ND Ill) 988 F Supp 1101, 35 UCCRS2d 1011.*

**5. Early termination**

Word "clearly" refers to meaning, not just appearance; thus, disclosure of method of calculating early termination penalty must be legible as well as reasonably understandable. *Applebaum v Nissan Motor Acceptance Corp. (2000, CA3 Pa) 226 F3d 214,* cert den *(2001) 533 US 929, 150 L Ed 2d 717, 121 S Ct 2549.*

Reference by name in lease to "constant-yield-method" of calculating early termination charge satisfies TILA, even

if average consumer has no clue what such method entails. *Jordan v Toyota Motor Credit Corp. (2001, CA7 Ill) 236 F3d 866,* cert den *(2001) 533 US 902, 150 L Ed 2d 231, 121 S Ct 2242.*

District court's grant of summary judgment in favor of lessees of motor vehicles was affirmed where early termination fees lessees paid under leases violated disclosure requirements of federal law; however, early termination fees actually paid were reasonable and court's finding on that issue in favor of lessor was affirmed. *Miller v Nissan Motor Acceptance Corp. (2004, CA3 Pa) 362 F3d 209.*

Car lessee's claim under Consumer Leasing Act (*15 USCS §§ 1667* et seq.) must fail, where she alleges, inter alia, that early termination clause was somehow deficient, because description of conditions and consequences of early termination are stated fully and accurately in lease, as required by *15 USCS § 1667a(11). Hildabrand v Difeo Pshp. (2000, DC Conn) 89 F Supp 2d 202.*

Car lessee is entitled to summary judgment on claims against lessor, where lease failed to disclose early termination penalties in "clear and conspicuous manner" and failed to disclose adequately available express warranties, because lease provisions violate Consumer Leasing Act (*15 USCS §§ 1667* et seq.). *Clement v Am. Honda Fin. Corp. (2001, DC Conn) 145 F Supp 2d 206.*

**6. Late payments**

Disclosure of amount of late charge in motor vehicle lease does not violate *15 USCS § 1667a* even though substantive provisions of late payment clause are apparent violations of state law; violation of state law does not itself constitute violation of *15 USCS § 1667a* unless Truth in Lending Act (*15 USCS §§ 1601* et seq.) independently proscribes activity. *Parry v Ford Motor Credit Co. (1983, SD Ohio) 575 F Supp 204.*

Consumer Leasing Act does not require that penalties for late monthly payment by lessee under lease be reasonable, even though *15 USCS § 1667a(11)* does require disclosure of late penalties on lease agreement, since *15 USCS § 1667b(b),* which specifically prohibits unreasonable penalties, omits any mention of late penalties. *Deusner v Firstar Corp. (2001, WD Ky) 186 F Supp 2d 766* (criticized in *Corum v Fifth Third Bancorp (2003, WD Ky) 2003 US Dist LEXIS 12247).*

**7. Miscellaneous**

Lender's failure to itemize "rent charge"--which included administrative fee--when disclosing to consumer amounts upon which consumer's lease payments were based did not violate Consumer Leasing Act, *15 USCS §§ 1667* et seq., since Act did not require that rent charge be itemized. *Schlenk v Ford Motor Credit Co. (2002, CA6 Ky) 308 F3d 619, 2002 FED App 370P,* reh, en banc, den (2003, CA6) *2003 US App LEXIS 3338* and cert den *(2003) 540 US 877, 157 L Ed 2d 141, 124 S Ct 288.*

Claim of automobile lessees against automobile dealers, alleging violation of *15 USCS § 1667a,* is not denied summarily, where dealership sold vehicle to financing company which in turn leased it to customer, because although dealer did not receive separate fee from financing company for referrals of customers, it is reasonable to infer that price customers paid to dealers reflected amount which may be characterized as fee, because genuine issue of material fact existed as to whether dealers were lessors or "arrangers" of loans and thus liable under § 1667a. *Dwyer v Barco Auto Leasing Corp. (1995, DC Mass) 903 F Supp 205.*

Consumer is granted summary judgment on claim under Consumer Leasing Act (*15 USCS §§ 1667* et seq.), even though question of fact remains regarding whether trade-in occurred or sale of her Corvette, because required disclosures are not accurate, clear, and conspicuous since (1) if trade-in occurred, documents do not indicate trade-in, and (2) if sale occurred, total cash amount from sale is not listed. *Taylor v United Mgmt. (1999, DC NM) 51 F Supp 2d 1212.*

Automobile financing company was granted summary judgment on individual's claim that it violated *15 USCS § 1667a* where original lease provided individual notice that he was subject to overage charges for exceeding his mileage allowance and clearly stated how those charges would be calculated. *Kennedy v BMW Fin. Servs., N.A. (2005, DC Conn) 363 F Supp 2d 110.*

78 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1667b*

§ 1667b. Lessee's liability on expiration or termination of lease

(a) Estimated residual value of property as basis; presumptions; action by lessor for excess liability; mutually agreeable final adjustment. Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(b) Penalties and charges for delinquency, default, or early termination. Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(c) Independent professional appraisal of residual value of property at termination of lease; finality. If a lease has a residual value provision at the termination of the lease, the lessee may obtain[,] at his expense, a professional appraisal

of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 5, § 183, as added March 23, 1976, P.L. 94-240, § 3, 90 Stat. 259.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The bracketed comma has been inserted in subsec. (c) as the punctuation probably intended by Congress.

Effective date of section:

This section took effect March 23, 1977, as provided by § 6 of Act March 23, 1976, P.L. 94-240, which appears as *15 USCS § 1667* note.

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1667d*.

Research Guide:

Federal Procedure:

10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 54, Judgment; Costs § 54.171.
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:72, 73.
8 Fed Proc L Ed, Courts and Judicial System § 20:444.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 122, 126, 127, 129, 146, 163.*

Forms:

11B Am Jur Legal Forms 2d, Leases of Real Property § 161:1087.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 3, The Consumer Leasing Act and Automobile Leases § 3.03.

Texts:

8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.06.
10 Banking Law (Matthew Bender), ch 174, Consummation § 174.17.
10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.06.

Law Review Articles:
Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377*, May 1994.
Goodman. Introduction to Truth in Leasing. *52 Conn BJ 101*, April 1978.

Interpretive Notes and Decisions:
1. Generally 2. Attorney's fees 3. Early termination

**1. Generally**

District court's grant of summary judgment in favor of lessees of motor vehicles was affirmed where early termination fees lessees paid under leases violated disclosure requirements of federal law; however, early termination fees actually paid were reasonable and court's finding on that issue in favor of lessor was affirmed. *Miller v Nissan Motor Acceptance Corp. (2004, CA3 Pa) 362 F3d 209.*

Automobile lessees' inadequate disclosure claims under Consumer Leasing Act (*15 USCS §§ 1667* et seq.) must be dismissed, where lessees challenge disclosures as to early termination liability, express warranties, and end-of-lease purchase option price, because (1) use of cross-referencing, formulas, and summaries in 2-page explanation of early termination liability is reasonable and even better than longer version with more technical, legal, and mathematical detail would be, (2) use of shorthand "manufacturer's standard warranty" is adequate since average consumer would understand that it covers numerous, more specific warranties, and (3) use of "fair market value at wholesale as determined by lessor" to describe purchase option price is adequately fleshed out by subsequent information concerning methodology for calculating fair market value as well as estimate of end-of-lease value. *Kedziora v Citicorp Nat'l Servs. (1991, ND Ill) 780 F Supp 516.*

**2. Attorney's fees**

Under provisions for award of attorneys' fees to counsel for prevailing plaintiffs under Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n, 1681o*), and Fair Debt Collection Practices Act (*15 USCS § 1692k(a)*), there is no requirement that District Courts identify and justify each disallowed hour, nor is there any requirement that District Courts announce what hours are permitted for each legal task, since such rule would lead to disagreement of most odious sort between court and counsel, and District Court's general reduction of hours claimed in order to achieve what court determines to be reasonable number is not erroneous method, so long as there is sufficient reason for its use. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

Under provisions for award of attorneys' fees in Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n, 1681o*), and Fair Debt Collection Practices Act (*15 USCS § 1692k(a)*), fees should be based on current rates in effect at time fee is being established in usual case where award is made promptly at conclusion of phase of litigation to which award relates, but United States District Court does not abuse its discretion in determining that reasonable hourly rate for counsel's work is rate in effect during time work was performed in case where fee award is determined by court several years after conclusion of trial to which fee award related. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

Under provisions for award of attorneys' fees to counsel for prevailing plaintiffs under Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n*, 16810), and Fair Debt Collection Practices Act (*15 USCS § 1692(a)*), award of reasonable attorneys' fees may include compensation for work performed in preparing and presenting fee application, but counsel whose efforts were unnecessary to pretrial and trial phases of case and whose efforts were primarily devoted to issue of attorneys' fees is not entitled to compensation since labor invested in fee application must be joined with and ancillary to compensation for necessary professional representation on merits of case; counsel's efforts in preparing fee application for attorney who primarily handled pretrial and trial phases of case are also not compensable since fees are not authorized for attorney to represent attorney seeking fees, appeal of denial of attorneys' fees was essentially unsuccessful, and time devoted solely to disputing fee award may be deemed noncompensable in any event. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

Under provisions for award of attorneys' fees in Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n, 1681o*), and Fair Debt Collection Practices Act (*15 USCS § 1692k(a)*), trial courts are justified in denying compensation for costs and expenses in addition to attorneys' hourly rate where affidavits and time records and fee submission fail to differentiate adequately between costs attributable to billable and nonbillable items, but properly segregated amounts should be allowed. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

**3. Early termination**

Lessee of automobile who claimed that early termination provision in his lease violated *15 USCS § 1667b(b)* failed to state valid claim for relief under statute, since lessee had not yet terminated his lease agreement. *Highsmith v Chrysler Credit Corp. (1994, CA7 Ill) 18 F3d 434, 129 ALR Fed 767,* dismd (1995, ND Ill) *1995 US Dist LEXIS 21831.*

Grant of summary judgment to company on original complaint was affirmed where: 1) early termination provision in deceased's auto lease was reasonable in light of anticipated or actual harm caused by delinquency, default, or early termination, or by difficulties of proof of loss and inconvenience or nonfeasibility of otherwise obtaining adequate remedy, as required by *15 USCS § 1667b(b)*; 2) early termination provision was reasonable under state law; and 3) there was no error in district court's conclusion that deceased's right to reimbursement for unused warranty payments was immaterial to his claim that early termination provision was unreasonable under federal and state law. *Baez v Banc One Leasing Corp. (2003, CA11 Ga) 348 F3d 972, 51 UCCRS2d 1144, 16 FLW Fed C 1231.*

Bank is not entitled to summary judgment in consumer's action under Consumer Leasing Act, *15 USCS §§ 1667-1667e*, where consumer leased car from dealer, dealer assigned lease to bank, consumer paid rent including depreciation component and interest component, consumers had accident, accident triggered early termination clause in lease, because while most components of penalty are correctly and fairly calculated, question of fact remains as to present discounted value of estimated residual value of car, which bank is entitled to receive as part of early termination penalty. *Kedziora v Citicorp Nat'l Servs. (1994, ND Ill) 844 F Supp 1289.*

In action by lessees of automobile against lessors, alleging violation of *15 USCS §§ 1667-1667e*, lessees are liable for amount of termination charge which remains due and owing, because lessor's regular use of actuarial method, rather than Rule of 78s, to calculate early termination charge in cases of default is reasonable under *15 USCS § 1667b(b). Kedziora v Citicorp Nat'l Servs. (1995, ND Ill) 883 F Supp 1155, 32 FR Serv 3d 905.*

Automobile lessee stated claim for unreasonable penalties under *15 USCS § 1667b(b)*, where lessee brought action against lessor concerning use of auto lease forms, alleging that 5 percent early termination charge provided for in lease was not reasonably related to any costs of early termination imposed on lessor, and that he was harmed by this charge. *Wiskup v Liberty Buick Co. (1997, ND Ill) 953 F Supp 958, 34 UCCRS2d 215* (criticized in *Demitropoulos v Bank One Milwaukee, N.A. (1997, ND Ill) 953 F Supp 974, 33 UCCRS2d 1205).*

**Unpublished Opinions**

Unpublished: Summary judgment in favor of defendant in plaintiff's Consumer Leasing Act action based on plaintiff's lack of standing was not proper because, once defendant applied early termination charge, *15 USCS § 1667b(b)*, to plaintiff and failed to take requisite corrective actions under *15 USCS § 1640(b)*, plaintiff incurred injury for which statutory damages were recoverable. *Higginbotham v Ford Motor Credit Co. (2008, CA11 Fla) 2008 US App LEXIS 6431*.

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1667c*

§ 1667c. Consumer lease advertising; liability of advertising media [Caution: See prospective amendment notes below.]

(a) In general. If an advertisement for a consumer lease includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement shall clearly and conspicuously state, as applicable--

(1) the transaction advertised is a lease;

(2) the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;

(3) that a security deposit is required;

(4) the number, amount, and timing of scheduled payments; and

(5) with respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

(b) Advertising medium not liable. No owner or employee of any entity that serves as a medium in which an advertisement appears or through which an advertisement is disseminated, shall be liable under this section.

(c) Radio advertisements.

(1) In general. An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any consumer lease shall be deemed to be in compliance with the requirements of subsection (a) if such advertisement clearly and conspicuously--

(A) states the information required by paragraphs (1) and (2) of subsection (a);

(B) states the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(C) includes--

(i) a referral to--

(I) a toll-free telephone number established in accordance with paragraph (2) that may be used by consumers to obtain the information required under subsection (a); or

(II) a written advertisement that--

(aa) appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast; and

(bb) includes the information required to be disclosed under subsection (a); and

(ii) the name and dates of any publication referred to in clause (i)(II); and

(D) includes any other information which the Board determines necessary to carry out this chapter [*15 USCS §§ 1667* et seq.].

(2) Establishment of toll-free number.

(A) In general. In the case of a radio broadcast advertisement described in paragraph (1) that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall--

(i) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;

(ii) maintain such telephone number for a period of not less than 10 days, beginning on the date of any such broadcast; and

(iii) provide the information required under subsection (a) with respect to the lease to any person who calls such number.

(B) Form of information. The information required to be provided under subparagraph (A)(iii) shall be provided verbally or, if requested by the consumer, in written form.

(3) No effect on other law. Nothing in this subsection shall affect the requirements of Federal law as such requirements apply to advertisement by any medium other than radio broadcast.

**HISTORY:**

(May 29, 1968, P.L. 90-321, Title I, Ch 5, § 184, as added March 23, 1976, P.L. 94-240, § 3, 90 Stat. 259; Sept. 23, 1994, P.L. 103-325, Title III, § 336(a), 108 Stat. 2234; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle F, § 2605(c), 110 Stat. 3009-473.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10)(A), 124 Stat. 2107, 2109.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10)(A), 124 Stat. 2107, 2109 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau", and by striking "the Board" each place that term appears and inserting "the Bureau".

Effective date of section:

This section took effect March 23, 1977, as provided by § 6 of Act March 23, 1976, P.L. 94-240, which appears as *15 USCS § 1667* note.

Amendments:

1994. Act Sept. 23, 1994 redesignated subsec. (b) as subsec. (c); and added new subsec. (b).

1996. Act Sept. 30, 1996 deleted subsec. (a), which read:

"(a) Contents of lease advertisements. No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

"(1) That the transaction advertised is a lease.

"(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

"(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

"(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

"(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.";

deleted subsec. (c), which read: "(c) Liability of advertising media. There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated."; redesignated subsec. (b) as subsec. (c); and added new subsecs. (a) and (b).

Other provisions:

**Study of advertising rules.** Act Sept. 23, 1994, P.L. 103-325, Title III, § 336(b), 108 Stat. 2235, provides: "Not later than 365 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall submit a report to the Congress on--

"(1) the current rules applicable to credit advertising;

"(2) how such rules could be modified to increase consumer benefit and decrease creditor costs; and

"(3) how such rules could be modified, if at all, for radio advertisements without diminishing consumer protection.".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 1667d*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:72, 73.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 122, 128, 129, 146, 163.*

Forms:
11B Am Jur Legal Forms 2d, Leases of Real Property § 161:1087.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 3, The Consumer Leasing Act and Automobile Leases § 3.04.

Corporate and Business Law:
8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices § 62.16.

Texts:
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.02.
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act §§ 163.07, 163.09.
9 Banking Law (Matthew Bender), ch 170, Advertising §§ 170.03, 170.07.

Law Review Articles:
Greenfield. Consumer Credit and Lease Advertising: The Requirements of TILA and Reg Z. *97 Banking LJ 692*, Sept 1980.
Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377*, May 1994.
Goodman. Introduction to Truth in Leasing. *52 Conn BJ 101*, April 1978.

80 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1667d*

§ 1667d. Civil liability of lessors

(a) Grounds for maintenance of action. Any lessor who fails to comply with any requirement imposed under section 182 or 183 [*15 USCS §§ 1667a* or *1667b*] of this chapter with respect to any person is liable to such person as provided in section 130 [*15 USCS § 1640*].

(b) Additional grounds for maintenance of action; "creditor" defined. Any lessor who fails to comply with any requirement imposed under section 184 of this chapter [*15 USCS § 1667c*] with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 130 [*15 USCS § 1640*]. For the purposes of this section, the term "creditor" as used in sections 130 and 131 [*15 USCS §§ 1640* and *1641*] shall include a lessor as defined in this chapter [*15 USCS §§ 1667* et seq.].

(c) Jurisdiction of courts; time limitation. Notwithstanding section 130(e) [*15 USCS § 1640(e)*], any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this chapter [*15 USCS §§ 1667* et seq.] shall be brought within one year of the termination of the lease agreement.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 5, § 185, as added March 23, 1976, P.L. 94-240, § 3, 90 Stat. 260; March 31, 1980, P.L. 96-221, Title VI, § 624, 94 Stat. 185.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Effective date of section:
This section took effect March 23, 1977, as provided by § 6 of Act March 23, 1976, P.L. 94-240, which appears as *15*

*USCS § 1667* note.

Amendments:

1980. Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), in subsec. (b), substituted "section 130 and 131" for "sections 115, 130, and 131".

**NOTES:**

Research Guide:

Federal Procedure:
7 Fed Proc L Ed, Consumer Credit Protection §§ 15:72-74.

Am Jur:
*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 122, 129, 146, 163.*

Forms:
11B Am Jur Legal Forms 2d, Leases of Real Property § 161:1087.

Commercial Law:
1 Debtor-Creditor Law (Matthew Bender), ch 3, The Consumer Leasing Act and Automobile Leases §§ 3.03-3.05, 3.07.

Texts:
8 Banking Law (Matthew Bender), ch 159, Preservation of Consumers' Claims and Defenses--FTC Trade Regulation Rule § 159.02.
8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.09.
9 Banking Law (Matthew Bender), ch 170, Advertising §§ 170.03, 170.07.

Law Review Articles:
Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377*, May 1994.
Goodman. Introduction to Truth in Leasing. *52 Conn BJ 101*, April 1978.

Interpretive Notes and Decisions:
1. Generally 2. Pleadings 3. Statute of limitations 4. Attorney's fees 5. Miscellaneous

**1. Generally**

Compliance with Consumer Leasing Act (*15 USCS §§ 1667* et seq.) and its pertinent regulations is determined ex ante, rather than ex post. *Channell v Citicorp Nat'l Servs. (1996, CA7 Ill) 89 F3d 379,* reh, en banc, den (1996, CA7 Ill) *1996 US App LEXIS 20256,* on remand, complaint dismd sub nom *Channell v Citicorp Nat'l Servs. (1996, ND Ill) 1996 US Dist LEXIS 14506* and (criticized in *Applebaum v Nissan Motor Acceptance Corp. (2000, CA3 Pa) 226 F3d 214)* and (criticized in *Clement v Am. Honda Fin. Corp. (2001, DC Conn) 145 F Supp 2d 206).*

**2. Pleadings**

Lessee states claim as to whether delinquency disclosure in automobile lease violates Consumer Leasing Act (*15 USCS §§ 1667* et seq.) and regulation implementing it, where he contends that late-payment charge paragraph fails to disclose how 5% delinquency charge is computed when partial payment is made on time, even though lessor contends that it need not disclose method for determining late partial payments, because there is at least argument that late-payment disclosure is ambiguous. *Demitropoulos v Bank One Milwaukee, N.A. (1996, ND Ill) 915 F Supp 1399.*

Consumers' claims against car dealer under Consumer Leasing Act failed since consumers had not identified any specific harm arising from fact that $ 3,045.15 charge was disclosed, but consumers had only paid $ 3,000. *Dauti v Hartford Auto Plaza, Ltd. (2002, DC Conn) 213 F Supp 2d 116.*

**3. Statute of limitations**

Voluntary or involuntary repossession of a leased automobile constitutes "termination of the lease agreement" when such repossession occurs prior to the actual date of lease termination, and the limitations period begins to run under *15 USCS § 1667d(c). Carmichael v Nissan Motor Acceptance Corp. Union City Nissan (2002, CA11 Ga) 291 F3d 1278, 15 FLW Fed C 583.*

Car lessee's claims under Consumer Leasing Act (*15 USCS §§ 1667* et seq.) are time-barred, where she terminated lease on July 14, 1997 and did not file this action until October 29, 1998, even though applicable one-year statute of limitations in § 1667d(c) may be subject to equitable tolling, because lessee failed to show that lessor did anything to fraudulently conceal this claim from her. *Pettola v Nissan Motor Acceptance Corp. (1999, DC Conn) 44 F Supp 2d 442.*

**4. Attorney's fees**

Under provisions for award of attorneys' fees to counsel for prevailing plaintiffs under Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n, 1681o*), and Fair Debt Collection Practices Act (*15 USCS § 1692k(a)*), there is no requirement that District Courts identify and justify each disallowed hour, nor is there any requirement that District Courts announce what hours are permitted for each legal task, since such rule would lead to disagreement of most odious sort between court and counsel, and District Court's general reduction of hours claimed in order to achieve what court determines to be reasonable number is not erroneous method, so long as there is sufficient reason for its use. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

Under provisions for award of attorneys' fees to counsel for prevailing plaintiffs under Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n,* 16810), and Fair Debt Collection Practices Act (*15 USCS § 1692(a)*), award of reasonable attorneys' fees may include compensation for work performed in preparing and presenting fee application, but counsel whose efforts were unnecessary to pretrial and trial phases of case and whose efforts were primarily devoted to issue of attorneys' fees is not entitled to compensation since labor invested in fee application must be joined with and ancillary to compensation for necessary professional

representation on merits of case; counsel's efforts in preparing fee application for attorney who primarily handled pretrial and trial phases of case are also not compensable since fees are not authorized for attorney to represent attorney seeking fees, appeal of denial of attorneys' fees was essentially unsuccessful, and time devoted solely to disputing fee award may be deemed noncompensable in any event. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

Under provisions for award of attorneys' fees in Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n, 1681o*), and Fair Debt Collection Practices Act (*15 USCS § 1692k(a)*), trial courts are justified in denying compensation for costs and expenses in addition to attorneys' hourly rate where affidavits and time records and fee submission fail to differentiate adequately between costs attributable to billable and nonbillable items, but properly segregated amounts should be allowed. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

Under provisions for award of attorneys' fees in Truth in Lending Act (*15 USCS §§ 1640(a), 1667b(a), 1667d(a)*), Fair Credit Reporting Act (*15 USCS §§ 1681n, 1681o*), and Fair Debt Collection Practices Act (*15 USCS § 1692k(a)*), fees should be based on current rates in effect at time fee is being established in usual case where award is made promptly at conclusion of phase of litigation to which award relates, but United States District Court does not abuse its discretion in determining that reasonable hourly rate for counsel's work is rate in effect during time work was performed in case where fee award is determined by court several years after conclusion of trial to which fee award related. *Mares v Credit Bureau of Raton (1986, CA10 NM) 801 F2d 1197.*

Contrary to automobile lessee's claims, settlement entered into between lessee and credit corporation, import company, and insurer included attorney fees, which were properly awarded by federal district court. *Basha v Mitsubishi Motor Credit of Am., Inc. (2003, CA5 La) 336 F3d 451, 55 FR Serv 3d 1043.*

**5. Miscellaneous**

Since detrimental reliance is element of claim for actual damages, it must be proven to recover such damages for disclosure violations. *Perrone v GMAC (2000, CA5 La) 232 F3d 433* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299)* and cert den *(2001) 532 US 971, 149 L Ed 2d 468, 121 S Ct 1601.*

Since individual reliance is necessary to prove actual damages, class action may not be certified on that issue. *Perrone v GMAC (2000, CA5 La) 232 F3d 433* (criticized in *Turner v Beneficial Corp. (2000, CA11 Ala) 236 F3d 643, RICO Bus Disp Guide (CCH) P 10025, 14 FLW Fed C 299)* and cert den *(2001) 532 US 971, 149 L Ed 2d 468, 121 S Ct 1601.*

Consumers' action against lessor of programming equipment, including remote control, under Consumer Leasing Act, was dismissed under Federal Reserve Board's exemption for television programming receiving equipment. *Ysasi v Nucentrix Broadband Networks, Inc. (2002, SD Tex) 205 F Supp 2d 683.*

81 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1667e*

§ 1667e. Applicability of State laws; exemptions by Board from leasing requirements [Caution: See prospective amendment notes below.]

(a) This chapter [*15 USCS §§ 1667* et seq.] does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter [*15 USCS §§ 1667* et seq.] from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this chapter [*15 USCS §§ 1667* et seq.], and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter [*15 USCS §§ 1667* et seq.] if the Board determines that such law gives greater protection and benefit to the consumer.

(b) The Board shall by regulation exempt from the requirements of this chapter [*15 USCS §§ 1667* et seq.] any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter [*15 USCS §§ 1667* et seq.] or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

**HISTORY:**
(May 29, 1968, P.L. 90-321, Title I, Ch 5, § 186, as added March 23, 1976, P.L. 94-240, § 3, 90 Stat. 260.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10), 124 Stat. 2107, 2109.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:
**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10), 124 Stat. 2107, 2109 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a*

note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau", by striking "the Board" each place that term appears and inserting "the Bureau", and by striking "The Board" each place that term appears and inserting "The Bureau".

Effective date of section:

This section took effect March 23, 1977, as provided by § 6 of Act March 23, 1976, P.L. 94-240, which appears as *15 USCS § 1667* note.

**NOTES:**

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:72, 73.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 122, 146, 163, 245, 248.*

Forms:

11B Am Jur Legal Forms 2d, Leases of Real Property § 161:1087.

Texts:

8 Banking Law (Matthew Bender), ch 163, Consumer Leasing Act § 163.10.

Law Review Articles:

Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377*, May 1994.

Goodman. Introduction to Truth in Leasing. *52 Conn BJ 101*, April 1978.

82 of 82 DOCUMENTS

UNITED STATES CODE SERVICE
Copyright © 2010 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CONSUMER CREDIT COST DISCLOSURE
CONSUMER LEASES

**Go to the United States Code Service Archive Directory**

*15 USCS § 1667f*

§ 1667f. Regulations [Caution: See prospective amendment notes below.]

(a) Regulations authorized.

(1) In general. The Board shall prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent that the Board determines such action to be necessary

(A) to carry out this chapter [*15 USCS §§ 1667* et seq.];

(B) to prevent any circumvention of this chapter [*15 USCS §§ 1667* et seq.]; or

(C) to facilitate compliance with the requirements of the chapter [*15 USCS §§ 1667* et seq.].

(2) Classifications, adjustments. Any regulations prescribed under paragraph (1) may contain classifications and differentiations, and may provide for adjustments and exceptions for any class of transactions, as the Board considers appropriate.

(b) Model disclosure.

(1) Publication. The Board shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this chapter [*15 USCS §§ 1667* et seq.] and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

(2) Use of automated equipment. In establishing model forms under this subsection, the Board shall consider the use by lessors of data processing or similar automated equipment.

(3) Use optional. A lessor may utilize a model disclosure form established by the Board under this subsection for purposes of compliance with this chapter [*15 USCS §§ 1667* et seq.], at the discretion of the lessor.

(4) Effect of use. Any lessor who properly uses the material aspects of any model disclosure form established by the Board under this subsection shall be deemed to be in compliance with the disclosure requirements to which the form relates.

**HISTORY:**

(May 29, 1968, P.L. 90=321, Title I, Ch 5, § 167, as added Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle F, § 2605(b)(1), 110 Stat. 3009-472.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10), 124 Stat. 2107, 2109.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Amendment of section, effective on designated transfer date.** Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1100A(2), (10), 124 Stat. 2107, 2109 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Board" each place that term appears and inserting "Bureau", by striking "the Board" each place that term appears and inserting "the Bureau", and by striking "The Board" each place that term appears and inserting "The Bureau".

Other provisions:

**Congressional findings and declaration of purposes.** Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle F, § 2604(a), 110 Stat. 3009-471, provides:

"(1) Findings. The Congress finds that--

"(A) competition among the various financial institutions and other firms engaged in the business of consumer leasing is greatest when there is informed use of leasing;

"(B) the informed use of leasing results from an awareness of the cost of leasing by consumers; and

"(C) there has been a continued trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that leasing product advances have occurred such that lessors have been unable to provide consistent industry-wide disclosures to fully account for the competitive progress that has occurred.

"(2) Purposes. The purposes of this section are--

"(A) to assure a simple, meaningful disclosure of leasing terms so that the consumer will be able to compare more readily the various leasing terms available to the consumer and avoid the uninformed use of leasing, and to protect the consumer against inaccurate and unfair leasing practices;

"(B) to provide for adequate cost disclosures that reflect the marketplace without impairing competition and the development of new leasing products; and

"(C) to provide the Board with the regulatory authority to assure a simplified, meaningful definition and disclosure of the terms of certain leases of personal property for personal, family, or household purposes so as to

"(i) enable the lessee to compare more readily the various lease terms available to the lessee;

"(ii) enable comparison of lease terms with credit terms, as appropriate; and

"(iii) assure meaningful and accurate disclosures of lease terms in advertisements.".

**Effective date of regulations or amendments of regulations.** Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle F, § 2605(b)(2), 110 Stat. 3009-472, provides:

"(A) In general. Any regulation of the Board, or any amendment or interpretation of any regulation of the Board issued pursuant to section 187 of the Truth in Lending Act [*15 USCS § 1667f*] (as added by paragraph (1) of this subsection), shall become effective on the first October 1 that follows the date of promulgation of that regulation, amendment, or interpretation by not less than 6 months.

"(B) Longer period. The Board may, at the discretion of the Board, extend the time period referred to in subparagraph (A) in accordance with subparagraph (C), to permit lessors to adjust their disclosure forms to accommodate the requirements of section 127 [187] of the Truth in Lending Act [*15 USCS § 1667f*] (as added by paragraph (1) of this subsection).

"(C) Shorter period. The Board may shorten the time period referred to in subparagraph (A), if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent an unfair or deceptive

practice.

"(D) Compliance before effective date. Any lessor may comply with any means of disclosure provided for in section 127 [187] of the Truth in Lending Act [*15 USCS § 1667f*] (as added by paragraph (1) of this subsection) before the effective date of such requirement.

"(E) Definitions. For purposes of this subsection, the term 'lessor' has the same meaning as in section 181 of the Truth in Lending Act [*15 USCS § 1667*].".

**NOTES:**

Code of Federal Regulations:

Federal Reserve System--Consumer leasing (Regulation M), *12 CFR 213.1* et seq.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:72, 73.

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection §§ 1, 122, 146, 163.*

Forms:

11B Am Jur Legal Forms 2d, Leases of Real Property § 161:1087.

Law Review Articles:

Hudson. Consumer leasing and personal property financing developments: early termination provisions in automobile leasing contracts. *49 Bus Law 1377,* May 1994.

Interpretive Notes and Decisions:

Summary judgment was granted in favor of defendants, leasing corporation and bank, on plaintiff's, car lessee, challenge to legality of early termination charge formula used by bank under Consumer Leasing Act, *15 USCS §§ 1667* et seq., because early termination charge formula in automobile lease that was applied when lessee terminated lease early was reasonable because it was based on difference in residual value and realized value. *Torres v Banc One Leasing Corp. (2002, ND Ga) 226 F Supp 2d 1345, 51 UCCRS2d 1139,* affd in part and vacated in part on other grounds, remanded (2003, CA11 Ga) *348 F3d 972, 51 UCCRS2d 1144, 16 FLW Fed C 1231.*