
Truth In Lending

Regulation Z

An Introduction to the Truth In Lending Act's Impact on Mortgage Lending.

Truth In Lending Act (Reg Z)

- Consumer Credit Protection Act (1968)
 - Truth In Lending Act (Title I)
 - Regulation Z (Implements TILA – 1969)
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The Purpose of TILA

- To eliminate the confusion and disclose the *True Cost of Credit*.
 - As a Percentage (*Annual Percentage Rate*)
 - As a Dollar Amount (*Finance Charge*)
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Annual Percentage Rate (APR)

- Modifies the rate of interest applicable to a loan, considering the effect of non-interest Finance Charges paid by the consumer.
 - TILA requires the disclosure of an APR whenever an Interest Rate is referenced, either orally or in writing.
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Finance Charges

- Section 226.4 – Finance Charge
 - (a) Definition
 - (b) Examples of F/C
 - (c) Exclusions from F/C
 - (c) (7) Real Estate Exclusions
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Finance Charges

- *Definition*

The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

Finance Charges

- *Exclusions*

It is essential to know why some fees are or will be excluded from the Finance Charge.

Some exclusions make perfect sense. Some don't.

226.4 (c)7 identifies those Real Estate related fees that are excluded.

Finance Charge (2)

- *Prepaid Finance Charges* are those which are paid by the consumer at or before closing.
 - *Prepaid Finance Charges* are a primary factor in the variance between the APR and the Interest Rate.
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Finance Charges

- Example of Finance Charges

Interest

Origination Fees

Broker Fees

Processing Fees

Courier Fees

Flood Cert Fees

Carrying Fees

Private Mortgage Insurance

Discount Points

Underwriting Fees

Third Party Settlement Fee

Service Fees

Tax Service Fees

etc., etc., etc.

Finance Charge

- Bottom Line –
 - *Any Fee not specifically excluded from the Finance Charge in 226.4(c)(7) is, in fact, a Finance Charge.*
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Accuracy Requirements

- Annual Percentage Rate (APR)
 - Accurate within .00125 for Regular Transactions.
 - Accurate within .0025 for Irregular Transactions.
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Accuracy Requirements

■ Finance Charges

- Lender is open to civil liability if F/C is understated by more than \$100.00
 - Lender may have Rescission liability if F/C is understated by more than \$35.00.
 - No Liability for Overstatement of F/C.
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Accuracy of Finance Charge

Your Actual Finance Charge is \$10,000

Your TIL Discloses \$9,950
Underdisclosed
Rescission !

Your TIL Discloses \$9,875
Underdisclosed
Rescission &
Civil Liability

Your TIL Discloses \$10,150
Overdisclosed
Not a Violation

Accuracy Requirements

- Finance Charge trumps APR.
 - TILA Amendments of 1995 established that if Finance Charge was “within tolerance”, then the APR will be considered accurate as well.
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Truth In Lending Disclosure

- *A Treasure Trove of Information*
 - Material Disclosures
 - APR
 - Finance Charge
 - Amt Financed
 - Payment Schedule
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Truth In Lending Disclosure

- Calculate the Amt Financed by Hand

□ Loan Amt	\$100,000
□ (less) Total Prepaid F/C	5,000
□ (equals) Amount Financed	95,000

A good check up on Finance Charge Accuracy.

Truth In Lending Disclosure

- Other Information on TILA Disclosure
 - Variable Rate box
 - Prepayment Penalty info
 - Late Fee info
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Adjustable Rate Mortgages & TILA

■ Disclosures

- CHARMS Booklet - an introduction to ARMs for the consumer
 - ARM Disclosure - discloses information about the particular ARM program being considered.
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Adjustable Rate Mortgages & TILA

- Index + Margin = Fully Indexed Rate
 - Rate Caps - Periodic & Lifetime
 - The ARM Payment Schedule
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ARM Payment Schedule

EXAMPLE

One Year Libor ARM

Index 4.50% Margin 2.75%

Rate Caps 2/6

Start Rate 5.875%

ARM Payment Schedule

The Way It Might Actually Happen:

2007	12 pmts @ 5.875%	
2008	12 pmts @ 5.75%	Index = 3.00
2009	12 pmts @ 6.375%	Index = 3.625
2010	12 pmts @ 8.00%	Index = 5.25
2011	12 pmts @ 8.75%	Index = 6.00
2012	12 pmts @ 7.125%	Index = 4.375
2013	12 pmts @ 9.00%	Index = 6.25
2014	12 pmts @ 10.875	Index = 8.125

etc, etc, etc.

ARM Payment Schedule

- The Way it Gets Disclosed on the TILA

12 pmts @ 5.875%

348 pmts @ 6.25%

The max rate to be disclosed on the TILA, and around which the payment schedule is built is the Fully Indexed Rate (Index + Margin), as of the date when the Rate for the Loan is set.

Payment Schedule

- Mortgage Insurance will also create variations of the Pmt Schedule in accordance with changes in the MI amounts.
 - FHA MI changes annually and results in a very long Payment Schedule.
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Borrower's Right to Cancel

- Rescission Applies to:
 - Refinance & Second Mortgage Transactions
 - Owner Occupied Primary Residences
 - Offering Rescission When Not Required.
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Borrower's Right to Cancel

- All borrowers / owners have three (business) days to reconsider the terms of the loan, and change their minds.
 - For Rescission purposes, a Business Day does not include Sundays or Federal Holidays.
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Borrower's Right to Cancel

- The 3 day period begins once:
 - The Transaction has occurred;
 - The Borrower has received the Final TILA disclosure;
 - The Borrower has received an Accurate Notice of their Right to Cancel.
 - Proceeds may not be disbursed until the 3 day rescission period has concluded.
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Borrower's Right to Cancel

- A borrower can ask the lender to waive the 3 day period for Rescission.
 - A Lender need not, and should not allow any borrower to waive that right.
 - The “Blood & Guts” Rule.
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Borrower's Right to Cancel

- Violations can extend the Rescission period from 3 days to 3 years.
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Borrower's Right to Cancel

- Right to Cancel is Exercised. Now What.
 - Borrower gives back any proceeds received.
 - Lender releases any liens and obligations.
 - Lender refunds any fees paid by borrower during the loan process.

20 Days to correct situation.

Other TILA Stuff

- Advertising Credit Terms
 - Fed Trade Commission's *"How to Advertise Consumer Credit & Lease Terms"*

<http://www.ftc.gov/bcp/online/pubs/buspubs/creditad.htm>

Read The Regulation

- <http://www.fdic.gov/regulations/laws/rules/6500-1400.html>
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