

TILA

FDIC Law, Regulations, Related Acts

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6500 - FDIC Consumer Protection

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CONSUMER PROTECTION

CONSUMER CREDIT PROTECTION ACT

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

[Codified to 15 U.S.C. 1601 note]

[Source: Section 1 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 146), effective May 29, 1968]

TITLE I—CONSUMER CREDIT COST DISCLOSURE

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CHAPTER 1—GENERAL PROVISIONS

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§ 101. Short title

This title may be cited as the Truth in Lending Act.

[Codified to 15 U.S.C. 1601 note]

[Source: Section 101 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 146), effective May 29, 1968]

§ 102. Findings and declaration of purpose

(a) 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 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) 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 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 advertisement.

[Codified to 15 U.S.C. 1601]

[Source: Section 102 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 146), effective May 29, 1968, as amended by section 302 of title III of the Act of October 28, 1974 (Pub. L. No. 93--495; 88 Stat. 1511), effective October 28, 1975; section 2 of the Act of March 23, 1976 (Pub. L. No. 94--240; 90 Stat. 257), effective March 23, 1977]

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

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

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

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

(e) 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.

(f) 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 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. 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.

(g) 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.

(h) 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.

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(i) The term "open end credit plan" means 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 which is an open end credit plan within the meaning of the preceding sentence is an open end credit plan even if credit information is verified from time to time.

(j) The term "adequate notice", as used in section 133, 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.

(k) 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.

(l) 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.

(m) 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.

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

(o) The term "unauthorized use", as used in section 133, 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.

(p) The term "discount" as used in section 167 means a reduction made from the regular price. The term "discount" as used in section 167 shall not mean a surcharge.

(q) The term "surcharge" as used in section 103 and section 167 means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.

(r) 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.

(s) 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.

(t) 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.

(u) The term "material disclosures" means the disclosure, as required by this title, 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 and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 129(a).

(v) 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.

(w) 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.

(x) As used in this section and section 167, 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.

(y) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

(z) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

(aa)(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, 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 than 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) (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.

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(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.

(bb) 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.

[Codified to 15 U.S.C. 1602]

[Source: Section 103 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 147), effective May 29, 1968, as amended by section 501 of title V of the Act of October 26, 1970 (Pub. L. No. 91--508; 84 Stat. 1126), effective October 26, 1970; section 303 of title III of the Act of October 28, 1974 (Pub. L. No. 93--495; 88 Stat. 1511), effective October 28, 1975; section 3(a) of the Act of February 27, 1976 (Pub. L. No. 94--222; 90

Stat. 197), effective February 27, 1976; sections 602, 603, 604, and 612 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 168, 169, 175, and 176), effective October 1, 1982; section 102 of title I of the Act of July 27, 1981 (Pub. L. No. 97--25; 95 Stat. 144), effective April 10, 1982; section 702(a) of title VII of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1538), effective October 1, 1982; sections 152(a)--(d) and 154(a) of title I of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2190 and 2196), effective September 23, 1994]

§ 104. Exempted transactions

This title 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, 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 is not necessary to carry out the purposes of this title.

(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.).

[Codified to 15 U.S.C. 1603]

[Source: Section 104 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 147), effective May 29, 1968, as amended by section 402 of title IV of the Act of October 28, 1974 (Pub. L. No. 93--495; 88 Stat. 1517), effective October 28, 1974; section 603 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 169), effective October 1, 1982; and section 701(a) of title VII of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1538), effective October 15, 1982; section 2102(a) of title II of the Act of September 30, 1996 (Pub. L. No. 104-208; 110 Stat 3009-398), effective September 30, 1996]

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§ 105. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. Except of the case of a mortgage referred to in section 103(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, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this title 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 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 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, 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) 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) 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, 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.

(f) EXEMPTION AUTHORITY.--

(1) IN GENERAL.--The Board may exempt, by regulation, from all or part of this title 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 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 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; {{4-30-97 p.6570.01}}
 - (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 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.

[Codified to 15 U.S.C. 1604]

[Source: Section 105 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 148), effective May 29, 1968; as amended by section 605 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 170), effective October 1, 1982; section 152(e)(2)(A) of title I of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2194), effective September 23, 1994; sections 2102(b) and 2104 of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--399 and 3009--401, respectively), effective September 30, 1996]

§ 106. Determination of finance charge

(a) 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) 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
{ {4-30-97 p.6570.02} }

(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) 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) 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) 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 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; and

(2) shall be treated as being accurate for purposes of section 125 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), 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), 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.

[Codified to 15 U.S.C. 1605]

{{4-30-97 p.6570.03}}

[Source: Section 106 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 148), effective May 29, 1968; as amended by section 606 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 170), effective October 1, 1982; sections 2 and 3 of the Act of September 30, 1995 (Pub. L. No. 104--29; 109 Stat. 271 and 272), effective September 30, 1995, except the amendment adding paragraph (a)(6), which is effective 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) of the Act of September 30, 1995; or (B) September 30, 1996]

§ 107. Determination of annual percentage rate

(a) 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) 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) The disclosure of an annual percentage rate is accurate for the purpose of this title 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) 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) 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.

(f) Prior to January 1, 1971, any rate 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.

[Codified to 15 U.S.C. 1606]

[Source: Section 107 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 149), effective May 29, 1968; as amended by section 607 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 170), effective October 1, 1982]

§ 108. Administrative enforcement

- (a) Compliance with the requirements imposed under this title shall be enforced under
- (1) section 8 of the Federal Deposit Insurance Act, 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) of the Federal Reserve Act, 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, 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, by the Director of the Bureau of Federal Credit Unions with respect to any Federal credit union.

(4) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(b) 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 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, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title 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, 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 are available to the 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 in the Federal Trade Commission Act.

{{2-28-93 p.6572}}

(d) The authority of the Board to issue regulations under this title 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.

(e)(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, 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, but in no event a tolerance of less than the tolerances allowed under section 107(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, 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, 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);

(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. {{4-30-97 p.6573}}

(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;

(B) 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, 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 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.

(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)

{{4-30-97 p.6574}} of this title 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.

The terms used in paragraph (1) that are not defined in this title 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).

[Codified to 15 U.S.C. 1607]

[Source: Section 108 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 150), effective May 29, 1968, as amended by section 403 of title IV of the Act of October 28, 1974 (Pub. L. No. 93--495; 88 Stat. 1517), effective October 28, 1974; section 608 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 171), effective March 31, 1980; section 9(n) of the Act of October 4, 1984 (Pub. L. No. 98--443; 98 Stat. 1708), effective October 4, 1984; section 744(k) of title VII of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 439), effective August 9, 1989; section 212(b) of title II of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2299), effective December 19, 1991; section 1604(a)(5) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 4082), effective December 19, 1991; section 2106 of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--402), effective September 30, 1996]

§ 109. Views of other agencies

In the exercise of its functions under this title, 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.

[Codified to 15 U.S.C. 1608]

[Source: Section 109 of title I of the Act of May 28, 1968 (Pub. L. No. 90--321; 82 Stat. 150), effective May 29, 1968]

§ 110. [Repealed]

[Source: Section 110 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 151), effective May 29, 1968, as repealed by section 3(b)(1) of the Act of March 23, 1976 (Pub. L. No. 94--239; 90 Stat. 253), effective March 23, 1976]

§ 111. Effect on other laws

(a)(1) Except as provided in subsection (e), chapters 1, 2, and 3 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, 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, and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 129. If the Board determines that a State-required disclosure is substantially the same in meaning as a disclosure required by this title, then creditors located in that State may make such disclosure in compliance with such {{4-30-97 p.6574.01}} State law in lieu of the disclosure required by this title, except that the annual percentage rate and finance charge shall be disclosed as required by section 122.

(b) Except as provided in section 129, this title 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 elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this title 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 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 from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 103(aa),

except to the extent that those State laws are inconsistent with any provisions of section 129, and then only to the extent of the inconsistency.

(c) 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 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) Except as specified in sections 125, 130, and 166, this title 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 and subsections (c), (d), (e), and (f) of section 127 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) or any renewal notice which is subject to the requirements of section 127(d), except that any State may employ or establish State laws for the purpose of enforcing the requirements of such sections.

[Codified to 15 U.S.C. 1610]

[Source: Section 111 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 151), effective May 29, 1968, as amended by section 307(b) of title III of the Act of October 28, 1974 (Pub. L. No. 93--495; 88 Stat. 1516), effective October 28, 1975; section 609 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 173), effective October 1, 1982; section 4 of the Act of November 3, 1988 (Pub. L. No. 100--583; 102 Stat. 2967), effective November 3, 1988; section 152(e)(2)(B)--(C) of title I of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2194), effective September 23, 1994]

§ 112. Criminal liability for willful and knowing violation

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 or any regulation issued thereunder,

(2) uses any chart or table authorized by the Board under section 107 in such a manner as to consistently understate the annual percentage rate determined under section 107(a)(1)(A), or

(3) otherwise fails to comply with any requirement imposed under this title, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

[Codified to 15 U.S.C. 1611]

[Source: Section 112 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 151), effective May 29, 1968]

§ 113. Effect on governmental agencies

(a) 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 by this title shall, prior to the issuance or continued use of such instruments, consult with the Board to assure that such instruments comply with this title.

(b) No civil or criminal penalty provided under this title 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) 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 in any case in which the violation results from the use of an instrument required by any such department or agency.

(d) 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 to be inconsistent with this title) 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.

[Codified to 15 U.S.C. 1612]

[Source: Section 113 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 151), effective May 29, 1968; as amended by section 622 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 184), effective October 1, 1982]

§ 114. Reports by Board and Attorney General

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. In addition, each report of the Board shall include its assessment

{{ 10-31-95 p.6576 }} of the extent to which compliance with the requirements imposed under this title is being achieved.

[Codified to 15 U.S.C. 1613]

[Source: Section 114 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 151), effective May 29, 1968; as amended by section 610 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 174), effective October 1, 1982; section 209(b) of title II of the Act of December 21, 1982 (P.L. No. 97--375; 96 Stat. 1825), effective December 21, 1982]

§ 115. [Repealed]

[Source: Section 115 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by section 413(a) of title IV of the Act of October 28, 1974 (Pub. L. No. 93--495; 88 Stat. 1520), effective October 28, 1974; as repealed by section 616 of title VI of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 182), effective October 1, 1982]

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