The Act is designed to protect borrowers who are not on an equal footing with creditors either in bargaining power or with respect to knowledge of credit terms. An additional goal is “to deter generally illegalities which are only rarely uncovered and punished.” The Act’s relevant substance is truth.

The Act is remedial and must be “liberally construed in favor of borrowers.” This rule of liberal construction applies not just to the Act’s substantive provisions but also to its scope, e.g., the question whether a transaction is for a consumer purpose.

Except where Congress has explicitly relieved lenders of liability for noncompliance, TILA is a strict liability statute. Although some courts have misconstrued the legislative history as indicating an intent to retreat from strict compliance, the Simplification Act and the 1995 amendments actually strengthen the support for a strict compliance standard. Since the Simplification amendments reduced the technical burdens of disclosure on creditors, they were presumably all that Congress considered necessary to remedy any inequities in favor of consumers arising from litigation under TILA as originally enacted.

This point is strengthened by the 1995 amendments, which created immunity only for certain specific, narrow areas of noncompliance.

The narrow substance of the 1995 changes and the sweeping expansions of consumer rights added to TILA by Congress in that same year and several times since then, only underline the primary role of the statute as a consumer remediation law. Both the Simplification amendments and the 1995 amendments providing tolerances and retroactive immunity reduce technical burdens on creditors. Courts should continue to accord consumers the full remedies available under the Act for violations found, even if they might seem technical. This issue is discussed in detail at §§ 10.4.4, 12.5.1 infra.

Footnotes


1.5.2.3 Statutory Construction Principles: Liberal Construction and Strict Liability


205 [205] See §12.5.1 [2], infra (citing cases and discussing technical violations as a defense to TILA claims generally).

“Strict liability” has been defined as “Liability that does not depend on actual negligence or intent to harm, but that is based on the breach of an absolute duty to make something safe.” Black’s Law Dictionary (9th ed. 2009).

206 [206] See, e.g., Melfi v. WMC Mortgage Corp., 568 F.3d 309 (1st Cir. 2009). See generally §10.4.4.7 [1], infra (discussing Melfi); §12.5.1 [2], infra (discussing technical violations generally).

207 [207] See §§10.4.4.7 [1], 12.5.1 [2], infra.

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