There is a widespread belief that regulation of consumer credit is minimal—that federal law offers few protections, that state limits have been deregulated, and that those state limits that do exist can be avoided through federal preemption, rate exportation, or other means. The true picture today is far more complex. Federal restrictions are now in place concerning credit cards; significant federal protections including a 36% interest rate cap apply to most credit involving military servicemembers and their dependents; and a 6% interest rate applies to credit consummated prior to military service when the individual enters the service. Federal law regulates the rebate of unearned interest and an Federal Trade Commission rule restricts a number of terms found in credit agreements. Federal rate ceilings apply to federal credit union loans. The Consumer Financial Protection Bureau has the authority to establish rules consumer unfair, deceptive, or abusive conduct by creditors. Federal banking agencies have been active in limiting tax refund anticipation loans.

The extent of state regulation of consumer credit today also is extremely varied, differing not only by state but by type of consumer credit. For example, automobile installment sales in a state may have meaningful interest rate ceilings while direct loans in the same state may not. For loans originated by banks and savings associations, federal law allows these entities to utilize interest rates allowed by their home state, instead of the applicable law where the loan is made. But the bank must still comply with all material restrictions of that particular state law, and non-banks cannot take advantage of this ability to export rates. The ability to export rates does not apply to the non-interest aspects of state credit regulation, and federal preemption of those non-interest aspects is now limited by the Dodd-Frank Consumer Protection and Wall Street Reform Act and only to national banks and federal savings associations.

This treatise seeks to sort out the interplay of federal preemption and federal and state restrictions on consumer credit. Every attempt is made to ensure the discussion is relevant to a particular form of credit and to a particular state where the loan is made or the creditor resides. This is a challenging undertaking because of the complexities and uncertainties of federal preemption and the extremely varied forms of state credit regulation, not only among the states but even within a state. We know of no other treatise that seeks to meet this challenge, which is reason enough to produce this publication intended to help attorneys sort through the intricacies of consumer credit regulation.

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