The Truth in Lending Act (TILA)\(^1\) is a cornerstone of consumer credit legislation. The statute is Congress’s effort to guarantee the accurate and meaningful disclosure of the costs of consumer credit and thereby to enable consumers to make informed choices in the credit marketplace and avoid abusive lending.\(^2\) More recently TILA has been amended to include a variety of substantive protections that seek to protect credit card and mortgage consumers from abuses directly.\(^3\)

Prior to its enactment, consumers had no easy way to determine how much credit would really cost or how to compare among various creditors. Creditors did not use a uniform way of calculating interest or a single system for defining what additional charges would be included in the interest rate. Thus, a consumer had no way of knowing, for example, that a $6,000 car financed through the dealer at 6% might well have been more expensive than financing it at 10% through a credit union.

If the dealer’s 6% was an add-on rate, the car buyer would pay $1,080.00 in interest for a three-year car loan. If the credit union’s 10% rate was a simple interest rate, the buyer would pay only $969.72 in interest for a three-year car loan. (And if the dealer happened to use a 6% discount rate, the interest over three years would be $1,317.06—almost $350 more than the credit union’s 10% rate.)

Or, to take a more striking example, consider a $100 loan repayable in twelve monthly installments of $10.83, with a total of payments of almost $130. Prior to the Truth in Lending Act, a lender could legally have quoted this as a 30% loan. In reality, the annual percentage rate on this transaction is 51.4%.

The Truth in Lending Act is intended to remedy this confusion. As Illinois Senator Paul Douglas,\(^4\) an economist and the progenitor of the Truth in Lending Act, well knew, using add-on or discount rates to tell consumers what credit costs enables creditors to understate the real cost of installment credit: only a simple, or actuarial annual percentage rate (APR, as it is called in TILA) takes into account that a borrower does not have use of the full amount borrowed for the entire loan term. Major statutory expansion of TILA beyond disclosure into substantive regulation occurred for credit cards in 2009 and for mortgage lending in 2010.

To return to our car buyer, for her to have adequate information on which to base her choice of financing arrangements, each creditor should translate its rate to the actuarial rate, so that the interest rate she is given is both an accurate reflection of the cost, and has a uniform meaning for all creditors. Then she could compare the cost of her $6,000, three-year car loan as follows:

- Dealer with 6% add-on rate = 11.08% APR
- Dealer with 6% discount rate = 13.38% APR
- Credit union with 10% actuarial rate = 10.00% APR

This example demonstrates the capacity of the pre-TILA installment credit market to deceive and confuse consumers about the interest rates they were paying.

The legislative record shows that consumers were indeed confused. In a 1964 survey in which families were asked to estimate the average interest rate on their consumer debt, the average response was 8%; the actual average cost was three times higher—24%.\(^5\)

Some creditors would, as Senator Douglas noted, “compound the camouflaging of credit by loading on all sorts of extraneous fees, such as exorbitant fees for credit life insurance, excessive fees for credit investigation, and all sorts of loan processing fees that rightfully should be included in the percentage rate statement so that any percentage rate quoted is completely meaningless and deceptive.”\(^6\) While the Truth in Lending Act has not been a complete cure for this problem, as will become evident later,\(^7\) the Act took a major step toward eliminating this deception by prescribing a uniform definition of what kinds of credit-related charges should be included when calculating the annual percentage rate and requiring that the total cost of these charges be disclosed by dollar amount as the “finance charge.” It also required that borrowers be clearly informed of other important information, such as late fees and security interests.

Prior to the passage of the Truth in Lending Act, consumer confusion was further compounded by the fact that information given to borrowers was usually buried in fine print and couched in legalese.

This combination of factors meant that few consumers had the means by which they could make well-informed decisions about their use of credit. From the perspective of many creditors, these same facts of industry life discouraged honest competition.
How many customers for the cheaper 10% loan might the credit union have lost to the more expensive “6%” creditor?

Against this backdrop the Truth in Lending Act was passed. It was both consumer protection legislation, recognizing “the right to be informed—to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, or other practices, and to be given the facts [the consumer] needs to make an informed choice,” and legislation designed to protect the “ethical and efficient lender or credit extender,” thus “invigorat[ing]” competition. Congress believed that an informed consumer credit market would help stabilize the economy, by encouraging consumer restraint when interest rates increase, and consumer activity when rates drop “as economic activity recedes.”

Given the complexity of credit, achieving these goals is not a simple task, and TILA is not a simple statute. Since its original adoption in 1968, the Act has been amended, expanded, interpreted, unceasingly litigated, and, in 1980, almost completely rewritten. In 1994, some protections against high-cost home equity loans were grafted onto it, and in 1995 Congress clarified some rules and added a set of immunities and tolerances. Regulatory and statutory amendments in 2008–2010, followed by several years of rulemaking, have brought further dramatic changes, with some of the details still in flux.

The Truth in Lending Simplification and Reform Act in 1980 substantially streamlined TILA requirements, often at the consumer’s expense. It is this “simplified” version of the Act, and subsequent amendments, that are the subject of this treatise. Cases under the prior law will be covered, where they remain useful under post-Simplification law. Readers can refer to earlier editions of this treatise for more complete coverage of pre-Simplification law and can refer to the online companion materials to this treatise for the legislative history.

Footnotes


2 {2} 15 U.S.C. § 1601(a) (congressional findings and declaration of purpose). See, e.g., Cappuccio v. Prime Capital Funding L.L.C., 649 F.3d 180 (3d Cir. 2011) (“Congress enacted TILA to guard against the danger of unscrupulous lenders taking advantage of consumers through fraudulent or otherwise confusing practices.”); Hauk v. JP Morgan Chase Bank USA, 552 F.3d 1114 (9th Cir. 2009) (“Congress enacted TILA ‘to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available . . . and avoid the uninformed use of credit. . . .’”) (citing 15 U.S.C. § 1601); Williams v. Chartwell Fin. Servs., Ltd., 204 F.3d 748 (7th Cir. 2000) (“Congress enacted TILA to ensure that consumers receive accurate information from creditors in a precise and uniform manner that allows them to compare the cost of credit.”); Rodash v. AIB Mortgage Co., 16 F.3d 1142 (11th Cir. 1994) (TILA intended to promote informed use and awareness of cost of credit; ensure meaningful disclosure to enable ready comparison of credit terms); First Nat’l Bank v. Office of the Comptroller, 956 F.2d 1456 (8th Cir. 1992) (fundamental purpose of the Act is to require disclosure of true cost of credit so consumers can make informed choice); Taylor v. Countrywide Home Loans, 2010 WL 750215 (E.D. Mich. Mar. 3, 2010) (“TILA’s purpose is twofold: to facilitate the consumer’s acquisition of the best credit terms available and to protect the consumer from divergent and at times fraudulent practices stemming from the uninformed use of credit.”) (citing Mourning Family Publication Serv., 411 U.S. 356 (1973)). See also Matthew A. Edwards, Empirical and Behavioral Critiques of Mandatory Disclosure: Socio-Economics and the Question of Truth in Lending, 14 Cornell J.L. & Pub. Pol’y 199, 209–210 (2005) (discussing the goals listed in the Act and the goals ascribed to TILA); Kathleen E. Keest, Wither Now? Truth in Lending in Transition—Again, 49 Consumer Fin. L.Q. Rep. 360 (Fall 1995).

3 {3} See generally Ch. 7 [2], infra (discussing substantive protections for open-end non-mortgage credit); Ch. 9 [3], infra (discussing substantive mortgage protections).

4 {4} Senator Douglas first introduced a version of TILA in 1960, S. 2755, 86th Cong. 2d Sess., and continued to champion it during the remainder of his Senate career. As if to reinforce the legitimacy of the legislation, it had a mother, too—Rep. Leonor Sullivan, the primary House sponsor. For a brief overview of the legislative history, see § 1.2 [4], infra, and Ralph J. Rohner and Fred H. Miller, Truth in Lending ¶ 1.02 (2000).
1.1.1 The Purpose of the Truth in Lending Act

The Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., was enacted to provide the American consumer with the complete truth about the cost of credit. The Act was aimed at eliminating consumer confusion by requiring full disclosure of the cost of credit so that consumers can make intelligent choices in the marketplace.

The first principle of the bill is to ensure that the American consumer is given the whole truth about the price he is asked to pay for credit. The bill would not regulate interest charges, but would rather aim at a full disclosure of the cost of credit so that the consumer can make intelligent choices in the marketplace.

The second principle is that the whole truth about the cost of credit really is not meaningfully available unless it is stated in terms that consumers in our society can understand. Just as the consumer is told the price of milk per quart and the price of gasoline per gallon, so must the buyer of credit be told the “unit price.” Historically, in our society that unit price for credit has been the annual rate of interest or finance charge applied to the unpaid balance of the debt. Without easy knowledge of this unit price for credit, it is virtually impossible for the ordinary person to shop for the best credit buy.

A third principle is that the definition of finance charge, upon which an annual percentage rate is calculated, needs to be comprehensive and uniform. It needs to be uniform to permit a meaningful comparison between alternative sources of credit. The 12-percent loans are not identical in cost if one requires additional charges for credit investigation, processing fees, and the like. The definition of finance charge also needs to be comprehensive in order to convey the true cost of credit. A 6-percent loan which requires a lot of additional charges is really not six percent, but is something higher.


12 TILA’s legislative history is archived in the companion materials accompanying the online version of this treatise under the heading “Primary Sources.”

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