Both legal services attorneys on behalf of low-income consumers and a segment of the private bar developed significant TILA practices. Creditors who did not comply with the Act found themselves defendants in thousands of lawsuits filed on the basis of TILA noncompliance and found themselves losing what had previously been routine collection actions because of TILA counterclaims.

This use of TILA aroused the lending industry, and in 1978 Congress began a complete revision of TILA. Some of the Act’s original legislative proponents were leaders in the movement for change. Ultimately, on March 31, 1980, President Jimmy Carter signed the Depository Institutions Deregulation and Monetary Control Act of 1980, which included the Truth in Lending Simplification and Reform Act. This Act was not merely a technical clarification of terms, as was the case with previous amendments; the changes were more than substantial enough to justify the Federal Reserve Board’s characterization of the legislation as a “new Truth-in-Lending Act.” The first two editions of this treatise differentiated between post-Simplification law, which we called the “New Act,” and pre-Simplification law, which we called the “Old Act.” To a large extent, the discussion of pre-Simplification law has been eliminated in subsequent revisions, except where relevant to current law. Any reference to the Act is now to the post-Simplification law.

Strongly influenced by the FRB and its staff, Congress changed the basic philosophy of the Act. The revised Act takes a much leaner approach to almost every significant disclosure required by the legislation. Congress and the FRB have decided that only certain information is useful and, therefore, necessary to a consumer’s credit decision. For example, the legal right of acceleration is not directly related to the financial cost of credit, even though the exercise of that right can significantly affect the financial condition of the consumer; therefore the right of acceleration was eliminated as a necessary disclosure. Perhaps of greater importance, an itemization of the finance charge was no longer required, and an itemization of the amount financed was not automatically required, which can make it more difficult to detect inaccurate disclosures. This new philosophy firmly rejected the “concept of full disclosure of everything as a Federal Truth-in-Lending matter.”

The legislative history of Simplification recognizes the successes of the Act in the ten years it had been in effect. Given its primary original goal of promoting the informed use of credit and encouraging comparison shopping by prescribing a uniform standard for disclosing the true cost of credit, it seemed to have had the intended impact. The FRB had found that consumer awareness of prevailing APRs rose from less than 15% in 1969 to almost 55% in 1977. The substantial reduction after 1969 of the market share for creditors charging the highest rates was certainly beneficial to consumers, and was probably attributable to the positive effect the Act had on competition.

Despite these successes, there was a major effort to make substantial changes. The Simplification effort was traced to a growing belief among consumers and creditors alike that the act could be substantially improved. There is considerable evidence, for example, that disclosure forms given consumers are too lengthy and difficult to understand. Creditors, on the other hand, have encountered increasing difficulty in keeping current with a steady stream of administrative interpretations and amendments, as well as highly technical judicial decisions. There is also evidence that many creditors have sincerely tried to comply with the act but, due to its increasing complexity and frequent changes, have nonetheless found themselves in violation and subject to litigation. In addition, this committee and other congressional and government sources have found the level of administrative enforcement by the Federal bank agencies seriously inadequate. In short, the committee believes that the interests of both consumers and creditors would be furthered by simplification and reform of the act.

Congressional concern for consumers thus focused on two points—strengthening administrative agencies’ authority to order restitution when a creditor understates the finance charge or APR, and simplifying disclosures. The TILA disclosures were disparaged as “informational overload,” and burdensome to the consumer in that they allegedly were “lengthy,” “difficult to understand,” riddled with “scattered,” “legalistic fine print,” thus becoming “just another legal document.”

Consumers did not play a driving role in the effort to change TILA. The much-vaunted “information overload” was a product of creditors’ belts-and-suspenders efforts to make sure they were well protected in the event of dispute or default rather than a result of TILA mandates. As consumer advocates argued, the use of such alternatives as “Plain English” disclosures and segregation of the critical information were preferable to deleting important and useful information from TILA disclosure requirements.
Those concerned with the creditors’ difficulty in complying pointed to the more than 1500 interpretations and letters on TILA published by the FRB and its staff from 1968 to 1980. The FRB itself characterized these documents as complicating, rather than facilitating, compliance in their cumulative effect. They also pointed to the volume of litigation under the Truth in Lending Act, which constituted about two percent of the federal civil caseload by mid-1979. Though consumers won many of these cases, creditors complained that they were being forced to defend lawsuits for not complying with “hypertechnical” requirements. The volume of litigation, however, was declining as issues became settled and more than half of the litigation challenged the accuracy of the finance charges—not a “technicality,” but one of the two most fundamental disclosures mandated by TILA.

In the end, Congress changed TILA to make creditor compliance easier, limit creditor liability for statutory penalties to “significant” violations only, and provide the consumer with clearer credit information. Congress hoped that the revised Act would mean fewer lawsuits and an improved ability to shop for credit on the part of consumers.

Quantifying the effect of “Simplification” on the average consumer credit decision is difficult. Many of the eliminated disclosures may have been ignored by borrowers. Yet, for every consumer who wishes to consider supposedly superfluous issues such as security interests or prepayment rebates, Simplification was clearly a loss. The elimination of statutory damages for inaccuracies in such disclosures as the itemization of the amount financed has enabled creditors to avoid liability for widespread and even intentional misstatements.

Despite the changes brought by Simplification, TILA still demands strict compliance, and deviation beyond designated tolerances results in creditor liability. TILA remains a significant source of borrower rights—including the right to rescind certain home-secured transactions—in a world where credit transactions are still far from an agreement between two parties with equal information and bargaining power.

Footnotes


33 [33] TILA was amended in 1970, 1974, twice in 1976, and in 1978. See also additional legislative history [2] available online as companion material to this treatise.


35 [35] This issue was the bone of contention in several cases. See Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 100 S. Ct. 790, 63 L. Ed. 2d 22 (1980) and its predecessors.

36 [36] This was a particularly ironic shift, given Sen. Douglas’s original concern with the problem of camouflaging the cost of credit by loading on extraneous fees, see § 1.1.1 [4], supra. Without an itemization requirement, the second purpose of TILA—to stop fraud and deception—is less effective. See Oversight Hearings Before the Subcomm. on Consumer Affairs of the House Comm. on Banking, Finance and Urban Affairs, 95th Cong., 2d Sess., 365–366, 370 (1978) (statement of James Boyle, Texas Consumers Association). Further, without itemization it is impossible to verify the accuracy of the disclosed finance charge, amount financed, or APR. See also Oversight Hearings, supra, at 384–385 (statement of Ellen Broadman, Consumers Union); Truth in Lending Simplification and Reform Act, Hearing on S. 108 Before the Sen. Comm. on Banking Housing, and Urban Affairs, 96th Cong., 1st Sess. 51 (1979) 14 (statement of Ellen Broadman, Consumers Union). See generally Chs. 3 [5], 5 [6], infra.


39 [39] Id.

40 [40] 15 U.S.C. § 1607(e). See § 11.5.5.3 [7], infra.


42 [42] “In these 10 years, and in particular in the nearly 4 years that I have been chairman of the Consumer Affairs subcommittee, I have never received a letter from a consumer requesting simplification of this law. No consumers have informed me that they are victims of that so-called dreaded social disease ‘information overload.’” Oversight Hearings Before the Subcomm. on Consumer Affairs of the House Comm. on Banking, Financing and Urban Affairs, 95th Cong., 2d Sess. 1 1978 (opening statement of Chairman Annunzio).

43 [43] One practitioner noted that indeed consumer credit contracts can be two feet long—but not as a result of Truth in Lending. Rather it is more often the result of creditors using arcane boilerplate jargon in an effort to give themselves a security interest in everything the consumer may ever get and every conceivable advantage in the event of default; in “most retail installment contracts, there are about forty clauses which could be eliminated with very little disadvantage to the creditor.” Truth in Lending Simplification and Reform Act, Hearing on S.108 Before the Sen. Comm. on Banking, Housing, and Urban Affairs, 96th Cong., 1st Sess. 51 (1979) (statement of James Boyle, Texas Consumer Association). See also Elizabeth Renuart, Toward One Competitive and Fair Mortgage Market: Suggested Reforms in “A Tale of Three Markets” Point in the Right Direction, 82 Tex. L. Rev. 421, 431–432 (2003) (indicating that only a few of the voluminous documents in a mortgage loan transaction can be traced to TILA requirements).

44 [44] Those recommendations are reflected to some extent in the “federal box” segregated disclosure requirement, § 4.2.6 [8], infra, and the explanatory phrases required for the four principal disclosure items. See Reg. Z, 12 C.F.R. § 1026.18(b), (d), (e), and (h).


48 [48] Some of the cases were won on technical grounds. See, e.g., Powers v. Sims & Levin Realtors, 396 F. Supp. 12 (E.D. Va. 1975), aff’d in part and rev’d in part on other grounds, 542 F.2d 1216 (4th Cir. 1976) (use of the term “total finance charge” instead of “finance charge” was held to violate the Act).
1.2.2 Truth in Lending Simplification

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50 [50] Id. at 30–31 (statement of Robert Hobbs, National Consumer Law Center). The finance charge and the APR are required to be disclosed more conspicuously than any others, 15 U.S.C. § 1632(a). See § 4.2.4.6 [9], infra. But see § 5.11.2 [10], infra (describing new forms issued by the CFPB that eliminate finance charge disclosure and make the APR one of the least conspicuous disclosures).


52 [52] See § 12.5.1 [12], infra (discussing creditor defenses based on “substantial compliance,” Simplification, and the “Rodash fix”).

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