Appendix L  Practical Outline Of The Old TILA For Closed-End Credit (Pre-Simplification)

L.1 Purposes and Scope

L.1.1 Purposes of TILA:

- Provide meaningful information with respect to the cost of credit;
- Allow consumers to compare various credit terms available;
- Allow consumers to avoid the uninformed use of credit;
- Enhance economic stabilization;
- Strengthen competition among creditors.

L.1.2 Regulations. The FRB shall prescribe regulations to carry out the purposes of TILA. The FRB may provide for classifications, differentiations, adjustments, and exceptions which would:

- Effectuate the purposes of TILA;
- Prevent circumvention or evasion of the requirements of TILA;
- Facilitate compliance by creditors with the requirements of TILA.

L.1.3 Interpretations. The regulations provide for three levels of FRB Interpretations:

- Official Board Interpretations;
- Official Staff Interpretations;
- Unofficial Staff Interpretations.


L.1.5 Scope. TILA requires disclosures, in accordance with Reg. Z, to each person to whom consumer credit is extended.

- **Credit** is the right granted by the creditor to:
  - defer payment of a debt or
  - incur debt and defer its payment or
  - purchase property or services and defer payment.

- **Consumer Credit is:**
  - credit for money, property, or services
  - extended or offered
  - to a natural person
  - primarily for personal, family, household or agricultural (see Reg. Z §226.2(e)) purposes
  - a creditor
    - in the ordinary course of business

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102  225.1(a)(2)
105  121(a)
122(a)
226.1(d)
108  226.1(b)
121(a)
103(e)  226.2(a)
103(h)  226.2(p)
103(l)  226.2(s)
— regularly
— extends or arranges for the extension of
— consumer credit
— payable by agreement
— in more than four installments or
— in which a Finance Charge may be required.

- A creditor arranges for the extension of credit when it
  - receives a fee, compensation or other consideration for arranging the extension
    of credit or
  - has knowledge of the credit terms and participates in the preparation of the con-
    tract documents.

L.1.6 Exemptions. The following transactions are exempt from the coverage of TILA:

- Business or governmental credit;
- Non-real property credit over $25,000;
- Certain bills from regulated public utilities;
- Agricultural credit over $25,000;
- Certain lease transactions.
- The FRB may exempt by regulation transactions which are regulated.

L.1.7 Effect of TILA on Other Laws. TILA has no effect on:

- State disclosure laws except to the extent of any inconsistency;
- State consumer credit laws;
- Validity or enforceability of any contract or obligation under state or federal law, except,
  as specified in TILA §§125 and 130.

L.2 Finance Charge

L.2.1 Finance Charge: General Rule.
The Finance Charge is the sum of all charges:

- Payable directly or indirectly by the customer;
- Imposed directly or indirectly by the creditor;
- Incident to or as a condition of the extension of credit;
- Paid or payable by the customer, seller, or third party on behalf of the customer;
- To the creditor or a third party.

- Finance charges include the following types of charges:
  - interest, time price differential;
  - service, transaction, activity or carrying charge;
  - loan fee, points, lender's fee;
  - fee for appraisal, investigation, or credit report;
  - insurance premiums for credit insurance, property insurance, or default insur-
    ance unless excluded under §§226.4(a)(5) and 226.4(a)(6).
L.2.2 Credit Insurance.
Premiums for credit life, accident, health, or loss of income insurance may be excluded from the Finance Charge if:

- Insurance coverage is not required and that is disclosed clearly and conspicuously in writing; and
- The customer desiring such Insurance coverage
  - gives specifically dated and separately signed affirmative written indication of the desire for such insurance
  - after receiving written disclosure of the cost of such insurance.

L.2.3 Credit Property Insurance.
Charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property must be included in the Finance Charge unless the creditor furnishes:

- A clear, conspicuous, and specific statement in writing:
  - setting forth the cost of the insurance if obtained from or through the creditor and
  - stating that the customer may choose the person through which the insurance is to be obtained.

L.2.4 Exclusion of Certain Itemized Charges.
The following charges may be excluded from the Finance Charge if they are itemized and disclosed:

- Official fees for determining, perfecting, releasing, or satisfying security interests;
- Security interest insurance premiums which do not exceed the above official fees;
- Taxes not included in the cash price;
- License, title, registration fees imposed by law.

L.2.5 Exclusions in Real Property Transactions.
In connection with any real property transaction, certain charges may be excluded from the Finance Charge if they are:

- Bona fide;
- Reasonable in amount and;
- Not for the purpose of circumvention or evasion of disclosure requirements.

- These excluded charges are:
  - title examination, title insurance, fees or premiums
  - document preparation fees
  - escrow accounts
  - notary fees
  - appraisal fees
  - credit reports.
L.3 Disclosures

L.3.1 Disclosures: General Rules.

- Disclosures must be made:
  - clearly
  - conspicuously
  - in meaningful sequence
  - at the prescribed time:
  - in the prescribed terminology.

- The APR and Finance Charge must be disclosed more conspicuously than any other prescribed terminology.

- Disclosures must also be made before the transaction is consummated.

- A duplicate copy must be given to the customer.
  - if there is more than one customer, disclosures may be given to any customer other than an endorser, co-maker, guarantor, etc.

- The creditor must be identified.
  - if there is more than one creditor, each creditor must be clearly identified.

- Disclosures must also be made together
  - on the note or contract on the same side of the page and above or adjacent to the customer’s signature OR
  - on one side of a separate statement.

L.3.2 Disclosures: Closed End Credit (Other than Open End Credit).

For every credit sale and loan, the creditor must disclose:

- The date the Finance Charge begins to accrue if it is different from the date of the transaction;

- "Annual Percentage Rate"

  - The Annual Percentage Rate 107 226.5(b) (APR) applicable to any extension of credit shall be determined in accordance with the actuarial method of computation so that it may be disclosed with an accuracy at least to the nearest quarter of 1 per cent;

- Payment schedule

  - number of payments
  - amount of the payments
  - due dates or periods of payments
  - "Total of Payments"

  - "Balloon payments" and the conditions for refinancing balloon payments (balloon payments are any payment more than twice as large as a regular payment)

- Default charges, etc.: amount or method of computing the amount of default, delinquency, or similar charges for late payments.
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- **Security Interests**
  - description or identification of the type of security interest held, retained, or acquired
  - clear identification of the secured property
  - if the identification of the secured property is too long to appear on the disclosure statement reference may be made to another document and a copy of that document must be given to the customer
  - clearly disclose if after-acquired property is subject to the security interest
  - clearly disclose if other or future indebtedness may be secured by the secured property;

- **Prepayment penalty (for interest-bearing obligations)**
  - description of any penalty charge imposed for prepayment
  - explanation of method of computation
  - disclosure of the conditions under which the prepayment penalty charge may be imposed;

- **Rebate of unearned finance charge on prepayment**
  - identification of the method of computing the unearned portion of the Finance Charge if there is prepayment in full of an obligation with a precomputed Finance Charge and
  - statement of any deductions from the rebate or
  - disclosure if there is no rebate upon prepayment.

- See §9.3.3, infra. for additional sale disclosures and §9.3.4, infra., for additional credit loan disclosures.

### L.3.3 Additional Required Disclosures: Credit Sales

If the transaction is a credit sale (a credit sale is any sale in which consumer credit is extended or arranged by the seller) the creditor in addition to disclosures listed at §9.3.2, supra., must also, disclose:

- **“Cash price”**
  - the price a creditor offers to sell for cash in the ordinary course of business
  - this price may include accessories, services, and sales taxes;

- **Itemized downpayment;**
  - “cash downpayment”
  - “trade-in”
  - “total downpayment;”

- **“Unpaid balance of cash price” (which is the cash price less the total downpayment)**

- All other charges individually itemized and included in the amount financed but not part of the Finance Charge

- **“Unpaid balance” (which is the sum of the unpaid balance of cash price plus all other charges)**

- **“Amount Financed” (which is the sum of the unpaid balance and sums in §226.8(c)(6))**
  - amount financed is the amount of credit of which the customer will have actual use.

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• "Finance Charge" and
• "Deferred Payment Price" (which is the sum of the cash price, all other charges, and the Finance Charge).

L.3.4 Additional Required Disclosures: Loans. In any transactions which are not credit sales (and are loans), the creditor, in addition to disclosures listed at §9.3.2 supra., must also disclose:

• "Amount Financed" (credit paid to the customer or for his account or to another person on his behalf, including all individually itemized charges including in the credit extended but not part of the Finance Charge)
  — TILA §129(a)(1) requires disclosure of the amount of credit of which the obligor will have actual use or is or will be paid to him or his account or to another person on his behalf ("proceeds");

• "Finance Charge"

L.3.5 Estimates of Unknown Information. If at the time disclosures must be made:

• An amount or other information is unknown or not available to the creditor and
• The creditor has made a reasonable effort to ascertain it
• The creditor may use an estimated amount or an approximation of the information provided the estimate or approximation is
  — clearly identified as such
  — reasonable
  — based on the best available information
  — not used for circumventing or evading disclosure requirements.

L.3.6 Additional Information. A creditor may disclose additional information if it does not:

• Mislead or confuse the customer;
• Contradict, obscure, or detract attention from the required disclosures;
• See §226.8(b) for rules on inconsistent state disclosures.

L.3.7 Disclosures: Refinancing, Consolidating, or Increasing.

• It is a new transaction and new disclosures are required if there is a:
  — refinancing or
  — two or more extensions of credit are consolidated or
  — an existing obligation is increased.

• The unearned Finance Charge not credited to the existing obligation must be added to the new Finance Charge.

L.3.8 Series of Sales. Under a series of sales pursuant to an agreement for adding the amount financed and Finance Charge for the current sale to the existing outstanding balance, disclosures may be made no later than the date for the first payment if:
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- There is a written agreement regarding
  - the APR(s) and
  - the method of computing unearned Finance Charges;
- The creditor releases security interests in goods as they are paid for.

L.3.9 Deferrals or Extensions. If a creditor imposes a deferral or extension charge, it must disclose:
- the amount deferred or extended;
- the date or time period of deferral or extension;
- the amount of the charge.

L.3.10 Assumption. An assumption is the acceptance of a subsequent customer as an obligor under an existing obligation. In an assumption, any creditor must make the required disclosures to the new customer before the customer becomes obligated.

L.3.11 Multiple Creditors. If there is more than one creditor in a transaction:
- Each creditor shall be responsible for making only those required disclosures which are within
  - his knowledge and
  - the purview of his relationship with the customer;
- The disclosures required under §226.8(b) and §226.8(c) (credit sale disclosures) shall be made by the seller if he extends or arranges for the extension of credit;
- Otherwise, disclosures required under §226.8(b) and §226.8(d) (loan disclosures) shall be made.

L.4 Civil Liability

L.4.1 Civil Liability.
- Damages: any creditor who fails to comply with any disclosure requirement is liable to such person for:
  - actual damages sustained by such person as a result of the failure and
  - twice the amount of any finance charge in connection with the transaction except that liability shall not be less than $100 nor greater than $1,000.
- Costs: in the case of any successful action to enforce liability, the costs of the action shall be awarded.
- Attorney’s Fee: in the case of any successful action to enforce liability for disclosure violations, a reasonable attorney’s fee shall be awarded.

L.4.2 Jurisdiction. Any action for a disclosure violation may be brought in:
- Any United States district court or
- Any other court of competent jurisdiction.

L.4.3 Statute of Limitations. Any action for a disclosure violation must be brought within one year from the date of the occurrence of the violation.
Recoupment. Many courts allow consumers to raise TIL claims defensively by way of recoupment in spite of the running of the TIL one year statute of limitations. See §1.4.1.1 (Supp.), supra. and new TILA §130(e).

Defenses

- Governmental Agencies. No civil or criminal penalty under TILA may be applied to the United States, any state, or any agency thereof.

- Assignees. Any civil action which can be brought against the original creditor may be maintained against any subsequent assignee if the violation is apparent on the face of the instrument assigned unless the assignment is involuntary.
  - Written Acknowledgment. In any action against a subsequent assignee, written acknowledgment of receipt shall be conclusive proof of delivery and of compliance if the assignee has no knowledge to the contrary — unless the violation is apparent on the face of the statement or except as in TILA §125(c).

- Multiple Disclosure. The multiple failure to disclose to any person required information in connection with a single extension of consumer credit shall entitle the person to a single recover.

- Correction of Errors. A creditor has no liability for disclosure violations if
  - within fifteen days after discovering an error and
  - prior to the institution of an action or prior to receipt of written notice of the error
  - the creditor notifies the person concerned of the error and
  - makes whatever adjustments are necessary to insure that the person will not be required to pay a charge in excess of the amount or percentage rate actually disclosed.

- Bona Fide Error. A creditor may not be held liable in any action for disclosure violations if the creditor shows
  - by a preponderance of evidence
  - that the violation was not intentional and
  - resulted from a bona fide error
  - notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

- Good Faith Conformity. No liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the FRB or by an authorized FRB employee under prescribed FRB procedures
  - notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

- Offset. A person may not take any action to offset any amount for which a creditor is potentially liable to such person under TILA against any amount owing to such creditor by such person
  - unless the amount of the creditor's liability has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party.

- Subsequent Occurrence. If information disclosed is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the resulting inaccuracy is not a disclosure violation.

- Overstatement. The disclosure of the amount of the finance charge or a percentage which is greater than the required disclosures does not in itself constitute a violation as long as the overstatement was not made for the purpose of circumvention or evasion of disclosure requirements.
L.5 Rescission

L.5.1 Rescission: General Rule. In any credit transaction in which:

- A security interest is or will be retained or acquired
- In any real property used or expected to be used as the principal residence of the customer,
- The customer shall have the right to rescind the transaction in writing until midnight of the third business day following:
  - consummation or
  - delivery of rescission disclosures and all other required material disclosures.
- Residence is defined as any real property in which the customer resides or expects to reside. The term includes a parcel of land on which the customer resides or expects to reside.
- Real Property Transaction is defined as an extension of credit in connection with which a security interest in real property is or will be retained or acquired.

L.5.2 Rescission: Notice of Rescission.
If the customer has the right to rescind, the creditor must give two copies of a rescission notice to any customer with the right to rescind:

- All of the blanks on both copies of the notice must be filled in;
- Notice must be printed in 12 point bold-faced type;
- The notice must appear on one side of a separate statement which identifies the transaction;
- The notice must set forth the entire paragraph of §226.9(d), "Effect of Rescission."
  - if the paragraph appears on the reverse side of the statement, the face of the statement shall state: "See reverse side for important information about your right of rescission;"
- Both copies of the notice for each customer must include:
  - the name of the creditor;
  - the address of the creditor's place of business
  - the date of consummation of the transaction; and
  - the date, not earlier than the third business day following the date of the transaction, by which the customer may give notice of rescission.
- See §226.9(b) for text of the notice.

L.5.3 Rescission: Effect of Rescission.
When a customer exercises his right to rescind:

- He is not liable for any Finance or other charge;
- Any security interest becomes void upon such a rescission;
- Within ten (10) days after receipt of a notice of rescission the creditor shall:
  - return to the customer any money or property given as earnest money downpayment or otherwise;
  - take any action necessary or appropriate to reflect the termination of any security interest created under the transaction;
- The customer may retain possession of any property delivered by the creditor;
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After the creditor performs its rescission obligations

— the customer shall tender the property to the creditor,

— if return of property would be impracticable or inequitable, the customer shall tender its reasonable value,

— if the creditor does not take possession of the property within ten days after tender, the customer becomes the owner without any obligation to pay for it.

Rescission: Delay of Performance.

In any transaction subject to rescission (except those primarily for agricultural purposes), the creditor shall not perform or cause or permit performance of any of the following actions until:

— After the rescission period has expired and

— He has reasonably satisfied himself that the customer has not exercised his right of rescission.

— Until these conditions have been met, the creditor shall not:

   — disburse any money other than in escrow;
   
   — make any physical changes in the property of the customer;
   
   — perform any work or service for the customer; or

   — make any deliveries to the residence (if the security interest does not arise by operation of law).

Rescission: Written Acknowledgment.

Notwithstanding any rule of evidence, written acknowledgment of receipt of any required disclosures does not do more than create a rebuttable presumption of delivery thereof.

Rescission: Time Periods. If the creditor fails to deliver the required rescission disclosures and other material disclosures, the right to rescind a transaction expires on the earlier of:

— Three years after the date of consummation of the transaction or

— The date the customer transfers all his equitable and legal interests in the property.

Rescission: Waiver. A customer may modify or waive his right to rescind a transaction if:

— The extension of credit is needed in order to meet a bona fide immediate personal financial emergency of the customer;

— A three business day delay in performance will jeopardize the welfare, health, or safety of natural persons or endanger property which the customer owns or for which he is responsible;

— The customer furnishes the creditor with a separate dated and signed personal statement describing the situation and modifying or waiving his right of rescission.

   — use of printed forms is prohibited.
Rescission: Exceptions.

Rescission does not apply to:

- The creation, retention, or assumption of a first lien to finance the acquisition of a dwelling in which the customer resides or expects to reside.
  
  — *Dwelling* is defined as a residential-type structure which is real property and contains one or more family housing units, or a residential condominium unit wherever situated.

- A construction lien.

- Any transaction in which the creditor is an agency of the state.