Truth in Lending Act — “Regulation z”

The Truth in Lending Act (TILA), Title I of the Consumer Credit Protection Act, is aimed at promoting the informed use of consumer credit by requiring disclosures about its terms and costs. In general, this regulation applies to each individual or business that offers or extends credit when the credit is offered or extended to consumers; the credit is subject to a finance charge or is payable by a written agreement in more than four installments; the credit is primarily for personal, family or household purposes; and the loan balance equals or exceeds $25,000.00 or is secured by an interest in real property or a dwelling. TILA is intended to enable the customer to compare the cost of a cash versus credit transaction and the difference in the cost of credit among different lenders. The regulation also requires a maximum interest rate to be stated in variable rate contracts secured by the borrower’s dwelling, imposes limitations on home equity plans that are subject to the requirements of certain sections of the Act and requires a maximum interest that may apply during the term of a mortgage loan. TILA also establishes disclosure standards for advertisements that refer to certain credit terms.

In addition to financial disclosure, TILA provides consumers with substantive rights in connection with certain types of credit transactions to which it relates, including a right of rescission in certain real estate lending transactions, regulation of certain credit card practices and a means for fair and timely resolution of credit billing disputes. This discussion will be limited to those provisions of TILA that relate specifically to the mortgage lending process, including:

- Early and Final Regulation Z Disclosure Requirements
- Disclosure Requirements for ARM Loans
- Right of Rescission
- Advertising Disclosure Requirements

Early and Final Regulation Z Disclosure Requirements:
TILA requires lenders to make certain disclosures on loans subject to the Real Estate Settlement Procedures Act (RESPA) within three business days after their receipt of a written application. This early disclosure statement is partially based on the initial information provided by the consumer. A final disclosure statement is provided at the time of loan closing. The disclosure is required to be in a specific format and include the following information:

- Name and address of creditor
- Amount financed
- Itemization of amount financed (optional, if Good Faith Estimate is provided)
- Finance charge
- Annual percentage rate (APR)
- Variable rate information
- Payment schedule
- Total of payments
- Demand feature
- Total sales price
- Prepayment policy
- Late payment policy
- Security interest
- Insurance requirements
- Certain security interest charges
- Contact reference
- Assumption policy
- Required deposit information

Disclosure Requirements for ARM Loans:
If the annual percentage rate on a loan secured by the consumer’s principal dwelling may increase after consummation and the term of the loan exceeds one year, TILA requires additional adjustable rate mortgage disclosures to be provided, including:

The booklet titled Consumer Handbook on Adjustable Rate Mortgages, published by the Board and the Federal Home Loan Bank Board or a suitable substitute.

A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The loan program disclosure shall contain the necessary information as prescribed by Regulation Z. TILA requires servicers to provide subsequent disclosure to consumers on variable rate transactions in each month an interest rate adjustment takes place.

Right of Rescission:

In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership is or will be subject to the security interest has the right to rescind the transaction. Lenders are required to deliver two copies of the notice of the right to rescind and one copy of the disclosure statement to each consumer entitled to rescind. The notice must be on a separate document that identifies the rescission period on the transaction and must clearly and conspicuously disclose the retention or acquisition of a security interest in the consumer's principal dwelling; the consumer's right to rescind the transaction; and how the consumer may exercise the right to rescind with a form for that purpose, designating the address of the lender's place of business. In order to exercise the right to rescind, the consumer must notify the creditor of the rescission by mail, telegram or other means of communication. Notice is considered given when mailed, filed for telegraphic transmission or sent by other means, when delivered to the lender's designated place of business. The consumer may exercise the right to rescind until midnight of the third business day following consummation of the transaction; delivery of the notice of right to rescind; or delivery of all material disclosures, whichever occurs last. When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective for all consumers.

When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer will no longer be liable for any amount, including any finance charge. Within 20 calendar days after receipt of a notice of rescission, the lender is required to return any money or property that was given to anyone in connection with the transaction and must take any action necessary to reflect the termination of the security interest. If the lender has delivered any money or property, the consumer may retain possession until the lender has complied with the above.

The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer must give the lender a dated written statement that describes the emergency, specifically modifies or waives the right to rescind and bears the signature of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

Advertising Disclosure Requirements:

If a lender advertises directly to a consumer, TILA requires the advertisement to disclose the credit terms and rate in a certain manner. If an advertisement for credit states specific credit terms, it may state only those terms that actually are or will be arranged or offered by the lender. If an advertiser states a rate of finance charge, it may state the rate as an "annual percentage rate" (APR) using that term. If the annual percentage rate may be increased after consummation the advertisement must state that fact. The advertisement may not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.