# *Truth in Lending Act*

## Overview

Congress passed legislation increasing the amount and type of credit information disclosed to the consumer through Title I of the Consumer Credit Protection Act of 1968, known as the Truth in Lending Act (TILA). TILA requires that lenders disclose specific information to the borrower entering into a contractual relationship with that lender and is designed to allow consumers to compare credit (loan) costs among lending sources. The applicant must be shown the amount of monies paid in order to obtain the credit, known as the finance charge. The applicant must also be shown the total cost of credit when all finance charges have been included, expressed as a percentage, known as the annual percentage rate (APR).

As directed by Congress, the board of Governors of the Federal Reserve ("the Fed") issued Regulation Z (Reg. Z), which became effective on the same date. Among other provisions, Reg. Z gives consumers, within specified time limits, the right to cancel certain loan transactions that involve a lien on a consumer's principal dwelling, and to receive accurate disclosures.

## General Requirements

TILA requires creditors to inform their consumers of the costs, terms and conditions of their credit (loan) arrangements. The credit (loan) terms and conditions must be disclosed in terminology specified in Reg. Z and must be clear, conspicuous, and in writing.

- If a residential mortgage transaction is subject to the Real Estate Settlement Procedures Act (RESPA), an **initial Truth in Lending Disclosure (early TIL)** must be given to the borrowers within three business days of receipts of the application, unless the lender has determined to decline the loan within 3 day period and sends the Notice of Action Taken (adverse action notice). For home equity lines of credit, the **Important Terms Disclosure** replaces the initial TIL Disclosure. **It is Allied Lending's (ALC) policy to always issue an initial TIL Disclosure on all loans.**

- If a residential mortgage transaction is subject to RESPA, and certain stated tolerances pertaining to the APR are exceeded between the information provided on the initial TIL Disclosure and the loan closing, a **final TIL Disclosure** must be given to the borrowers. It must be signed and dated in the borrowers own handwriting. **It is ALC's policy to always issue final TIL Disclosure on all loans.**

- Potential problems with the TIL are considered a major risk for lenders, because if it is not properly executed, it **can result in both civil and criminal liability**, and inability for the loan to be sold to any investor, regardless of the credit worthiness of the borrower or property.

- **Closing or settlement fees charged to the borrower in connection with the services provided by the closing agents are included in the finance charge and therefore in the Annual Percentage Rate (APR) calculation, and must be accurately and consistently disclosed on the documents.**

  **Note: It is not appropriate or acceptable to estimate the closing/settlement fees when preparing the final TIL/Itemization of Amount Financed.**

If an estimated HUD-1 is not provided by the closing agent prior to drawing documents, you must contact the closing agent to obtain the amount of the closing/settlement charges prior to preparing the final TIL. This includes the following fees: closing, sub-escrow (if any), escrow, sub-title, settlement, attorney, "tie-in," and closing agent courier fees. If fees increase after loan documents are drawn, they must be redrawn with the correct amounts.

For all ARM loans (except home equity lines of credit), a special set of **Adjustable Rate Program Disclosures** and a booklet titled the **Consumer Handbook on Adjustable Rate Mortgages** must be given when the application form is provided to the applicant or before a non-refundable fee is paid, whichever is earlier.

- For home equity lines of credit, the booklet "**When Your Home is on the Line**" is also required.

If there is more than one consumer, the disclosures may be made to only the primary applicant. However, if the transaction is rescindable (subject to the Right of Rescission), the disclosures must be made to each applicant who has the right to rescind.

**To determine which transactions are rescindable, see the topic "Right of Rescission".**

## Disclosures

For each loan transaction, the following disclosures must be made as applicable under the TILA:

Initial (early) TIL Disclosure (or the important Terms Disclosure for home equity lines of credit)

Adjustable Rate Product Disclosures (ARM loans only and for each of the ARM programs discussed with the applicant), the Consumer Handbook on Adjustable Rate Mortgages (CHARM booklet), and for home equity lines of credit, the booklet "When Your Home is on the Line".

### ***TIL Disclosure***

The TIL Disclosure displays the terms and cost of credit associated with particular loan on a federally mandated form. Reg. Z specifies that 14 individual items should be shown on this disclosure.

The following five items, called material disclosures, must be displayed in a certain way to allow consumers ease of comparison:

APR

The APR is the cost of credit expressed as a yearly rate. The APR is usually higher than the note rate, but it is the same as the note rate when there are no prepaid finance charges or PMI. The APR represents the true cost of the credit to the consumer over the life of the loan.

The types of fees (prepaid finance charges and mortgage insurance) paid by the borrower included in the APR calculation include, but are not limited to the following:

- Administration Fee
- Amortization Schedule Fee
- Application Fee
- Appraisal Desk Review
- Assignment Recording Fee (i.e., concurrent to the investor)
- Assumption Fee
- Attorney Fee
- Broker Fee
- Buydown Fee Paid by Borrower
- Closing Agent Courier Fee
- Closing Fee (if paid to settlement agent)
- Closing Fee (if paid to lender or broker)
- Commitment Fee
- Condo/Homeowner Association Approval Fee
- Construction Administration Fee
- Courier/Express Mail/Messenger Fee (if paid to lender or broker)
- Desktop Underwriter Fee
- Discount Fee
- Escrow Fee
- Escrow Holdback Administration Fee
- Escrow Waiver Fee
- FHA MIP
- FHA MIP Impounds
- FHLMC REO Delivery Fee
- Flood Check/Flood Certification Fee (exclude separate up front-certification, if applicable)
- Funding Fee
- GA Residential Mortgage per Loan Fee
- Interest (Prepaid)
- Jumbo Pool Fee
- Loan Fee
- Lock-In Fee
- Master Service Administration Fee
- MCC Application Fee
- MCC Fee to Agency
- MCC Fee to Lender
- Mortgage Insurance Premium/PMI Premium
- Mortgage Insurance Impounds/PMI Impounds
- MRB Compliance Fee
- NCHFA Processing Fee
- Origination Fee
- Plan Review Fee
- Processing Fee paid to third party
- Processing Fee
- Processing Fee to Bond Authority
- RHS Guarantee Fee
- Statement Fee (if paid to lender or broker – do not include if paid to former lender.)
- Streamline Valuation Fee

- Sub-Escrow Fee
- Sub-Title Fee
- Subordination Fee
- Supplemental Origination Fee
- Tax Service or Tax Contract Fee
- Transfer Fee (if paid to lender or broker)
- Underwriting Fee
- VA Funding Fee
- Verification of Deposit (VOD) Fee
- Verification of Employment (VOE) Fee
- VHDA Bond Loan Fee
- Warehouse Fee
- Wire Fee to Lender
- Miscellaneous Broker/Lender Fees (not including the Yield Spread Premium)

Typical fees and costs which are excluded from the APR are as follows:

- Appraisal Fee
- Appraiser Re-inspection Fee
- Business Credit Report Fee
- Courier/Express Mail/Messenger Fee (paid to closing agent)
- Credit Report Fee
- Document Redraw Fee
- Document Preparation Fee
- FHA/VA Inspector Fee
- Name Search Fee
- Notary Fee
- Property Inspection Fee
- Review Appraisal Fee
- Termite/Pest Inspection Fee
- Title Charges

***Finance Charge***

The finance charge is the cost of credit expressed as a dollar amount. It includes any charge payable directly or indirectly by the applicant and imposed directly or indirectly by the lender as a condition of receiving credit.

**Amount Financed**

The amount financed is the amount of credit provided to the borrower on their behalf. The amount financed is the loan amount, less any prepaid finance charges that are paid by the borrower.

**Total of Payments**

The total of payment is the total dollar amount the borrower will have paid when they have made all scheduled payments. This includes all principal and interest payments and mortgage insurance, if applicable.

**Schedule of Payments**
The schedule of payments includes the number, dollar amount, and timing of payments scheduled to repay the loan, excluding any down payment. The payment amount must include any required mortgage insurance premium.

**The other nine items displayed on the Truth in Lending Form are:**

**Creditor** – The identity of the lender making the disclosures. If the loan is closed in the name of the broker, the broker should be reflected. If the loan is closed by ALC. Allied Lending should be reflected.

**Variable Rate** – An indication as to whether the loan has a variable/adjustable rate feature.

**Demand Feature** – An indication as to whether the loan has a demand feature, where the lender can choose whether or not to demand payment in full under certain conditions.

**Prepayment** – An indication as to whether a prepayment penalty will be imposed if the loan is paid off prior to the maturity date.

**Late Payment** – Any dollar or percentage charge that may be imposed due to a late payment.

**Security Interest** – The fact that the will acquire a security interest in the property.

**Contract Reference** – A statement referring the borrower to appropriate documents for contract information.

**Assumption Policy** – An indication as to whether a subsequent purchaser of the property may assume the loan under its original terms.

**Insurance** – A statement that hazard insurance is required and may be obtained from an insurance company of the borrower's choice.

***Adjustable/Variable Rate Product Disclosures***

TILA requires disclosures for adjustable/variable rate transaction if:

The APR may increase after consummation of the transaction; and
The loan is secured by a consumer's principal dwelling; and
The loan has a term greater than one year.

The adjustable/variable rate product disclosures must be given at the time of application by the broker for loans that close in the broker's name, or within three business days after we receive the written application from the broker for loans closed in the name of Allied Lending Corporation.

***Loans Closed in the Broker's Name***

For loans closed in the broker's name, the broker is responsible for providing initial (early) TIL and Adjustable Rate Disclosures to the applicant(s), as well as any booklets. If the loan is closed in the broker's name, the final TIL disclosure must show the broker as the lender.

Note: Regardless of whether the loan is closed in the broker's name or ALC's name, it is ALC's policy to always send the initial TIL upon receipt of the loan file in the branch. This will be in addition to the TIL sent by the broker when the loan is closed in the broker's name.

While there are cases where a final TIL is not required, **it is ALC's policy to always send the final TIL to ensure accuracy.**

***<u>Loans Closed in Allied Lending's Name or Processed by ExpressLine Processing for the Broker</u>***

For loans closed in Allied Lending's name or ExpressLine Processing for the broker, the branch is responsible for providing the disclosures indicated in the matrix below:

| | | | Required for Purchase? | | Required for Refinance? | |
|---|---|---|---|---|---|---|
| Disclosure | Loan Type | Timing | Prim Res. | Not Prim Res. | Prim. Res. | Not Prim. Res. |
| ARM Program Disclosure* | ARM | Within 3 days of application or immediately upon request. | Yes | Yes | Yes | Yes |
| CHARM Booklet* | ARM | Within 3 days of application or immediately upon request. | Yes | Yes | Yes | Yes |
| Initial TIL | ARM And Fixed Rate | Within 3 days of application | Yes | No | No | No |
| Final TIL** | ARM And Fixed Rate | With other final documents / at closing | Yes | Yes | Yes | Yes |
| "Understanding the Role of Your Broker and Broker Compensation Brochure" | ARM And Fixed Rate | Immediately upon receipt of the file in the branch. | Yes | Yes | Yes | Yes |
| Notice of Right to Cancel | ARM And Fixed Rate | With other Final Documents/ At closing | No | No | Yes | No |

*Must be sent within 3 days of receiving the application from the broker. If the applicant inquiries about a different ARM program, a new disclosure must be sent immediately (and a CHARM booklet if one was not provided previously).

** A final TIL is not required if APR on the initial TIL is within certain stated tolerance; however, it is ALC's policy to always send the final TIL to ensure accuracy.

**Right of Rescission**

TILA stipulates that the borrower has a right to cancel certain types of loans when a security interest is taken on real property used as the principal residence of the borrower. The borrower's right of rescission lasts for 3 full business days after the later of:

The date the documents are signed
The date the borrower receives the Notice of Right to Cancel
The date the borrower receives the final TIL

During the 3-day rescission period, you can prepare for funding; however, before funding, the **closing agent** must confirm that the borrowers have not rescinded.

***Note:*** It only takes one borrower in a transaction to rescind the loan.

***Loans Covered by Rescission***

Principal residence refinances by other than original creditor

Principal residence non-purchase money subordinate liens, for example:
- HELOCs
- Seconds
- FHA Title One

Principal residence non-purchase money subordinate liens, for example:

***Loans Exempt from Rescission***

Principal residence refinances by original creditor, with no cash out

Purchase money piggy-back HELOC (only if full line amount is used toward purchase)

Permanent financing of a construction loan

Purchase transactions

**Reg. Z's definition of "original creditor" is the lender named on the note.**

***Rescission Procedures***

Following are highlights of the proper procedures to follow on loans where the right of rescission applies.

Each borrower and consumer who has an interest in the security property must receive 2 copies of the Notice of Right to Cancel and 1 copy of the final TIL Disclosure.

Each borrower and consumer who has an interest in the security property must hand-write the date of receipt on the final TIL Disclosure and Notice of Right to Cancel.

The closing agent must write in the “midnight date” in the How to Cancel section of the Notice to Right to Cancel. The date must be accurate.

It is the responsibility of the closing agent to verbally confirm non-rescission with the borrowers. The borrowers are no longer required to sign a non-rescission statement (except for Texas A6 loans, where the Election Not to Rescind is required to be signed by the borrowers).

A borrower may rescind by mailing or delivering a written notice to the lender. A telegram or fax would be considered a written notice as well.

- If delivered, the notice must be delivered to the lender prior to the end of the rescission period.

- If mailed, it must be placed in the mail prior to the end of the rescission period (although it may not be actually delivered to the lender until after the rescission period has ended).

The rescission period restarts when the legal contract or loan terms change.

The rescission period remains the same for changes not affecting the loan terms or legal contract.

***Requests for a Waiver of the Rescission Period***

ALC does not allow borrowers to waive rescission, except in the case of a bona fide personal emergency where the funds are needed before the end of the rescission period. A financial hardship (e.g., having to pay additional fees due to expiration of rate lock) does not qualify as a personal financial emergency.

**For more information on Right of Rescission, see the Policy Document, “Right of Rescission”.**

**Home Ownership and Equity Protection Act (HOEPA)**

The Home Ownership and Equity Protection Act (HOEPA) is described under Section 32 of the TILA. Loans with the following attributes are HOEPA loans:

The APR is more than 10.000 points over the comparable treasury security yield.

Total and fees paid by the borrower exceed the greater of **$441** or 8.000 points of the total loan amount.

It is ALC’s policy not to accept loans that fall under HOEPA, due to disclosure requirements and product restrictions.

## Enforcement

Any lender who fails to comply with the requirements of TILA or Reg. Z faces civil liability for such failures. A lender is not liable if within 60 days after discovering an error and prior to receiving a written notice of the error in a way that assures the customer of paying no more than was disclosed. A second defense is provided for unintentional violations that result from bona fide errors despite reasonable procedures made t prevent those errors.

A person who knowingly gives false information or fails to give required disclosures, uses charts or tables consistently to understate the APR, or otherwise fails to comply with any requirement of TILA may be found criminally liable and subject to fines of up to $5,000, imprisonment of up to one year, or both.