Joint Center for Housing Studies
Harvard University

Should Consumer Disclosures Be Updated?

Thomas A. Durkin

February 2008
UCC08-10

© by Thomas A. Durkin. All rights reserved. Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission provided that full credit, including © notice, is given to the source.

Any opinions expressed are those of the author and not those of the Joint Center for Housing Studies of Harvard University or of any of the persons or organizations providing support to the Joint Center for Housing Studies.

Introduction

In May 2008, the Truth in Lending Act (TIL), Title I of the Consumer Protection Act of 1968 (Public Law 90-321, May 29, 1968), reaches its fortieth birthday. Like many forty year olds, TIL is active and vigorous, if a bit paunchy and cranky, although it is mostly a bit mellower and more settled than in its wilder youth. Nonetheless, upcoming round number birthdays frequently provoke reminiscences, and sometimes calls for reflections or even a roast. In TIL's case there is no shortage of roast-worthy background material, but an answer to the question what highly visible central feature provides a useful caricature for roasting actually is quite simple. Nothing better typifies TIL, or provokes more discussion and gnashing of teeth, than its requirement for disclosing the "Annual Percentage Rate," widely known and loved as the "APR."

In good roast tradition, this paper discusses a bit of TIL lore: what it is and where it came from (along with a bit of what it is not and where it did not come from), before turning to what it has become and is. As is the case with backgrounds of many forty year olds, some of TIL's family traditions have become overlooked or lost over the decades since the its first days (maybe for good reason). Nonetheless, looking back has its uses, or at least provides some limited insights, even when we know the roastee particularly well in later life.

The paper begins with some TIL background and history, as requested by the conference organizers. It then turns to discussion of why TIL requirements go so far beyond the key APR shopping disclosure, including brief examination of how lawyers have ultimately had much more impact on TIL's life and reputation than its parental economist. The paper then turns to some illustrations of TIL's impact, along with short review of some recent suggestions for reform.

Origins and Legends

TIL is old enough now that its conception and birth occurred well before the experience of most of its current set of friends (or enemies). While the passage of time is not problematic for a good idea like TIL, it seems that this law's lifetime is now long enough that some elements of origin have misted into mythology and urban legend. Are they also true? For instance, there is a popular view in Washington and elsewhere that TIL was a necessary step before credit institutions would disclose any useful pricing information at all. Is this right? Certainly decades of hearings on disclosure issues have taken place, academic theories about institutional "shrouding" of information from irrational potential recipients have been debated at conferences

like this one, and policy changes have sometimes taken place (even progress), albeit slowly and haltingly. How do they relate to prior and current information conditions?

While this author finds all of these elements of TIL history and legend interesting, even fascinating (believe it or not!), he has no intention of taking the time or expending the effort here to develop (or knock down) a straw man of "conventional wisdom" about the insufficiency (or otherwise) of credit disclosures at the time of TIL passage in order to stimulate debate today on that point. That said, there does seem today to be a reasonably widespread conventional view that before the advent of TIL, credit pricing disclosures were sufficiently few as to be close to nonexistent and that there was little institutional or legal support for their expansion without federal action. Since then, so the TIL legend continues, there have been many disclosures, but they are not yet perfect and we can get there if we have the will to drag institutions kicking and screaming toward improvement. If only we can find and provide for the right mandatory disclosures, then maybe institutions cannot any longer shroud information, consumers will act in less uninformed (or irrational) manner, and policy can chalk up another success. Would that policy making were so straightforward and simple.

Actually, mandatory disclosures for credit-using consumers were hardly a new idea at the time of passage of the Truth in Lending Act in 1968. Many state laws for various kinds of credit already included diverse disclosure provisions at the time. What was new back then was the mandate for disclosure to consumers one particular mathematical conception of credit pricing calculated similarly for all kinds of credit, the now ubiquitous APR, along with a plethora of related details. Further, federal TIL, as we have come to know it with inclusion of this mathematical construct and the accompanying details, did not arise from general public or Congressional concern over the nondisclosing behavior of unregulated capitalism. Rather, federal TIL grew ultimately from the wisdom (and stubbornness in not giving up the idea) of one man: economics professor Paul H. Douglas (1892-1976) of the University of Chicago. Since his time, armies of lawyers have carried his initial idea onward, with all the associated advances in clarity that the legal profession has brought also to so many other aspects of modern life.

The Coming of Federal TIL

By his own report in 1967, Professor Douglas first came to believe that some form of truth in lending and disclosure of an APR was a good idea as early as the World War I period,

well before development of the branch of microeconomic theory currently known as the "economics of information."[1] Although the economics of information as a mainstream branch of that profession was not fully developed in Professor Douglas's time, economists have always maintained that information availability is a good thing, and it seems that such thinking was simply an important element of Professor Douglas's economic worldview. Elected to the United States Senate in 1948, Paul Douglas became likely the only individual who ever was or will be able to claim presidency of the American Economic Association in the year before undertaking a successful US Senate campaign (1947).[2]

The economics of information, which developed more fully in the years after Professor Douglas's election to the Senate, as well as good common sense, suggests the usefulness of a consistent price tag for making comparisons and undertaking shopping efforts. The theory that developed under this name postulated that obtaining information, like obtaining virtually everything else, is not free. Rather, consumers must assemble information, which is costly to do, and rational consumers will collect information only as long as the expected personal gain from collecting more of it exceeds the cost. This might be less than the optimal amount necessary to ensure competitive and efficient markets.[3]

But because these economic models demonstrated that information availability is very significant in promoting competitive conditions and the efficient functioning of markets, they stimulated government policy makers to seek ways to make the technology of information production and diffusion itself more efficient. This included encouraging removal of barriers to information flows, such as by ending bans on advertising by professionals like physicians and attorneys, but also by encouraging specific disclosures as a way to reduce consumers' search costs. Consequently, as concern for information availability increased, so did calls for required disclosures as a central element of government consumer protection policy, including need for "truth in lending."

---

[1]In Senate questioning that year he said he had held this view for "over fifty years" (see United States Senate 1967, p. 44).

[2]It is interesting to note how, somewhat later, the same economics department fostered many of the intellectual accomplishments of the individual frequently receiving credit as the father of the economics of information, Professor George J. Stigler (1911-1991), although he was more of a kindred academic visionary than political ally of Professor Douglas.

[3]Durkin and Eliehausen (2008, Chapter 2) discuss the ideas of the economics of information in the Truth in Lending context in considerably more detail.

For consumer and mortgage credit, the key disclosure under TIL was and is the new mathematical summary construct, the APR. To define this measure, Section 107 of the Truth in Lending Act, unchanged since passage in 1968, requires disclosure of the Annual Percentage Rate ("in the case of any extension of credit other than under an open end credit plan") as:

> (T)hat nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the amount financed; ....

Concerning content and construction, this exciting definition stops short of suggesting that the APR is used to calculate the finance charge, but rather that it "will yield a sum equal to the finance charge....," under the described circumstances. In fact, the APR has not generally been used to calculate the finance charge, even if this is the APR's life reputation. Actually, the APR is most often only a residual calculation after the credit cost is applied to the loan principal.[4] The corresponding paragraph 226.22(a)(1) of implementing Federal Reserve Regulation Z (12 CFR Part 226) is a bit simpler, if not much clearer, before directing the reader to Appendix J of the regulation for formal mathematical statement:

> The Annual Percentage Rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made.

---

[4]Strictly speaking, under the laws of most states purchasing and financing specific goods using closed end consumer credit is not a loan but is a "retail installment sale" and often regulated differently from loans of money, especially historically. Direct loans of money by financial institutions and indirect consumer credit through retail stores and dealers developed separately in the United States and, consequently, they have different histories that give rise to different sorts of regulation in some areas. See Rogers (1974) and Calder (1999) for historical discussion of the institutions and Curran (1965) for development of the law.

Because of this legal difference, in many cases it is not strictly correct to refer to an installment sale contract (for example, an automobile installment sale contract) as a "loan." Rather, such an arrangement often is an installment sale of goods on a time contract rather than a loan, which in most jurisdictions in the United States has referred legally to loan of money. Consequently, installment *loans* are part of installment *credit*, but not all installment credit is a loan. Because this historical legal distinction is not important to most observers of consumer credit, including even most legal practitioners who are not specialists in this area, the common rhetorical approach of using the terms "consumer credit" and "consumer loan" or "installment credit" and "installment loan" interchangeably is adopted for the purposes here.

These definitions in the official legal sources have not prevented a variety of views from developing over time, however, about what the APR is and what it represents. Actually, some urban legends about TIL have grown that the APR is, in fact, a rate applied to a balance to produce a cost, and even that the APR is the cost of credit itself. Like many other urban legends, both of these characterizations are partial or half truths; the whole is both a bit more and a bit less.

The Cost of Credit

First of all, the cost of anything, including credit, is what must be given up to get it. In modern credit markets, as in markets for other goods and services, cost is normally measured in monetary units, specifically in dollars and cents in the United States. In TIL terms, these amounts are disclosed for credit as the "finance charge" for TIL purposes, not the APR.[5] The percentage rate concept just takes this monetary cost into account relative to the amount of the credit advance and the timing of both in a way that enables and simplifies comparisons.[6]

Whatever is the cost, and however it is disclosed to consumers, by necessity there must be some way creditors go about calculating this cost. There actually has been a variety of methods used over the years, including application of percentages that are not APRs. This means

---

[5]In economics, the cost is not even the dollars and cents but rather the alternative use for the dollars and cents that must be given up, a concept known as the "opportunity cost." Theory, as well again as common sense, suggests that the alternate use given up in favor of some new proposed resource use (i.e. the opportunity cost) must be less satisfying, at least before the fact, than the newly contemplated proposed use, or exchange of the dollars and cents in favor of the new proposal will not happen. Recently, some analysts, particularly policy-oriented lawyers, have contended that, for a variety of reasons, some consumers cannot undertake this calculus, actually an old idea (for extended discussion see Durkin, Elliehausen, and Staten 2008, especially Chapter 4).

Beyond this idea of opportunity costs and any surrounding controversies, it certainly is also true that familiar monetary units like dollars and cents are not a requirement for expression of credit costs or for developing APRs. For almost two centuries in colonial Virginia, for example, costs of almost everything were measured in pounds of tobacco, which took on the functions of money. Credit amounts and credit costs could have been and were expressed in pounds of tobacco, which could also be expressed in percentage terms relative to time units. Further, for poor persons at the time in southern England, cost of passage to Virginia was given not in pounds sterling or even in pounds of tobacco, but in years to be spent as an indentured servant/slave. Such cost could also have been specified in percentage terms relative to the individual's remaining life expectation, although this would not have been typical and it is not possible to reproduce today's APR calculation this way. But twenty or twenty five percent of remaining life was not the cost, which was number of years as a servant. The percentage would have been the cost expressed relative to a measurement of time.

Strictly speaking, the APR is a time discount rate, as discussed briefly later. For further discussion of time discounting, see, generally, any textbook on corporate finance, and also Frederick, Loewenstein, and O'Donoghue (2002).

[6]More specifically, it is a discount rate or internal rate of return that discounts the stream of cash flows to its present value, as discussed a bit more later.

there can be two (or more) percentages associated with specific credit transactions, one (or more) for calculating and another for disclosing. Two percentages is how calculating and disclosing credit costs is done, for example, for one very familiar kind of credit transactions today: mortgage loans for home purchase or refinancing. (Mortgage credit is the only area of credit for consumers where it is actually legally permissible to disclose two percentage rates, one the calculating rate and the other the APR.) But there is absolutely no TIL requirement that any percentage rate at all be involved in any aspect of developing a charge for extending credit (that is, before considering the governing TIL legal requirements for disclosure), or why any percentage used for calculating be the same one applied in the same way to satisfy disclosure requirements (unless the law were to say so, which TIL does not). The TIL law concerns only disclosure, not calculation, following TIL's own set of rules for its purposes. Maybe a brief example can help make this clear:

Suppose there is somewhere a potential lender who is simply irrationally enamored of the mystical properties of the number 2. (Pythagoras, a noteworthy ancient Greek philosopher and mathematician, apparently actually *was* somewhat irrationally concerned about the properties of the square root of this number, ironically itself an irrational number.) This creditor decides to provide 2 kinds of amortizing installment loans: a 2 month loan of $222.22 with finance charge of $22.22, and a 22 month loan of $2222.22 with accompanying finance charge of $222.22. Clearly, in this fictitious example, there are no percentage rates involved in establishing either the amount of the loan or the finance charge, and so developing the cost does not involve a percentage in the borrower or lender's mind. But, of course, it is easy enough to calculate an APR under TIL rules for both loans, after the fact (79.15 percent APR for the former loan and 10.14 percent APR for the latter).

In this example, the APR is merely a measuring device for comparing credit costs arising from unlike credit amounts and timing of repayments prepared after the fact and in no way a calculating rate or a credit cost. It is also easy enough to see in the example that, despite their APRs, the cost of the larger loan is much greater than the smaller one (finance charge of $222.22 for the former compared to $22.22) even though the APR is much higher on the smaller loan (79.15 percent compared to 10.14 percent). From this example it is also easy enough to surmise that even if various percentages *are* somehow used in calculating costs, there is no necessary reason they need be used in the same way for disclosures (unless required so legally). But, again,

TIL does not require that percentages be used in the same way for calculations and disclosures; it only requires its specified APR be *disclosed* in the same prescribed manner for all credit transactions that come under its associated definitions of credits covered.

Comparisons

Also contrary to urban legend, the APR is not the only way that credit costs for unlike amounts and timing can be compared, or, for that matter, even the only method that Congress contemplated during the period leading to TIL passage. In the period before TIL, there were many alternate means in use for expressing and comparing credit costs, each with its own adherents and advocates and each with some of its methods enshrined in various state laws. By necessity, Congress had to think about all of them.

It was common at the time, for example, for credit grantors to refer to credit costs only in dollars and cents, although this permitted easy comparisons only for the same amount of credit extended for a similar period of time. This limitation on comparison usefulness led to shorthand terminology referring to the total of the dollars and cents as a proportion of the original balance per year, $5 per hundred dollars per year, for instance. Creditors tended not to use percentage notation in such cases, no doubt mostly for fear of legal entanglements arising from allegations of intentional confusion with a simple interest rate on a declining balance, a notoriously difficult calculation to make before electronic calculating devices. Dollars per hundred per year certainly *seems* to denote a percentage, though, even if not a TIL APR percentage. Such percentages could be and were used at the time as calculating rates to derive the dollars and cents of the credit charges.

Eventually, many state legal ceilings for credit charges (usury laws) came to be stated in the manner of dollars and cents per hundred dollars of initial balance per year. This encouraged creditors to use the same method for calculations, since by doing so and by not using a proportion above the allowed numerical limit, they then could not violate the usury law. In percentage formulation, dollars and cents per hundred of initial balance were known as “add on” rates because the calculated dollars and cents were added onto the loan principal to derive the total amount due. Like APRs, add on rates could also be used for making comparisons of credit costs through disclosures based on them, although Congress ultimately made a different choice when it passed TIL. At the time that add on rates were common for calculations and disclosures, many people believed they were simpler to use and more informative for consumers than rates

that applied to declining balances, such as the rate that became the APR. Again, an illustration seems worthwhile:

Add on rates were popular with creditors because calculations were easy to teach to employees and then easy for them to use. For this reason, add on rates became commonly used for calculating finance charges on time purchases of specific goods like automobiles and appliances where lots of these calculations were made in thousands of retail establishments. Because of their simplicity and their placement in usury laws, add on rates survived as calculating rates long after they were no longer expressed to consumers for disclosure purposes due to TIL requirements.

To make the calculation, an employee multiplied an initial balance by the add on rate times the number of years of the repayment period (or fraction of a year for short term credit) and "added on" the result to the initial principal amount to compute the total of the amount due over time. Division of this amount by some time unit (usually number of months the contract would run) would produce the periodic payment (usually monthly). Before TIL, many adherents preferred add on rates because even financially unsophisticated individuals with only the barest of mathematical skills could use them in mental arithmetic to compute quickly the total finance charge and monthly payment on a proposed credit contract. A pencil and the back of an envelope were more than adequate high tech calculating devices for straight add on calculations, precisely the reason why retail dealers and managers of stores liked them for employees.

At an auto dealership, for example, a consumer armed with the add on rate could mentally calculate total cost and rough monthly payments while still outside in the car lot, well before the dealer could provide the accurate totals with a calculator. To illustrate, someone looking at a $3000 automobile purchase after down payment (a reasonable amount due on a substantial auto in the early 1960s) on a three year contract at $5 per hundred per year (calculating rate of 5 percent add on) could easily and rapidly estimate the finance charge and monthly payment in his or her head in two quick steps:

1. ($3000 times 5 percent) for 3 years = $450 finance charge.

2. Then, ($3000 + $450) / 36 = a bit under $100 per month (rough estimate; using the pencil, actual monthly payments = $95.83).

Thus, with no mathematical heavy lifting, the consumer knowing the add on dollars per hundred rate very quickly had available all the key numbers for a credit use decision: finance

charge (credit cost), rough estimate of monthly payment, and means of comparing credit costs at one dealer to another (the add on rate itself). Additional fees might complicate the transaction, but the math was still simple, never rising above the pencil and envelope level. The only key piece of information missing from an add on transaction was its actuarial annuity equivalent rate that applied to the unpaid balance over time, sometimes known then and now as the "effective rate." This effective rate could be important for comparing with interest rates on asset accounts like deposit accounts. Even then, the latter comparison was not really needed by those certainly intending to use credit for the purchase and wanting only to compare credit costs among various dealers. Some individuals with just a bit more financial sophistication knew that the add on rate was approximately half the effective rate because of the declining outstanding balance. A precise and detailed version of the latter became the APR later mandated under TIL.

Add on rates were not the only rates in use at the time, or required for consumer disclosures under various laws. Another sort of calculating rate commonly quoted for disclosure purposes in the years before TIL was a periodic finance rate applied to an unpaid balance. A monthly rate could, if desired, be multiplied by 12 to produce an annualized equivalent, and either or both rates were used for disclosures at the time. This approach is conceptually exactly the method used today to produce an APR for disclosure on an open end account (like a credit card account) under TIL rules, although more common in recent years is a daily analogue: multiplication of a daily calculating rate by the number of days in a year. It is also the method used under various state laws to calculate the finance charge on so-called "payday loans." In both cases, the product of the credit balance times the periodic rate is added on to the credit balance, as with add on rates in an earlier era. (There is no need to multiply the add on rate by two in these cases for a rough approximation of the effective rate, since the add on amount is being compared to a current, not declining balance.)

Before TIL, this second method of disclosure based upon revealing the periodic calculating rate, and sometimes its yearly multiple, was common for credit union and finance company cash loans. Such disclosure was a requirement of the Federal Credit Union Act of June 1934, as well as of many state laws governing consumer finance companies in the early decades of the twentieth century. (At the time, consumer finance companies were the most important source of consumer cash loans.) Annualizing this calculating rate made it conceptually analogous to effective rates applied to deposit accounts and compounded monthly, but neither the monthly

rate nor its multiple rate was comparable to the add on rates common or required with goods financing and its governing laws.

Furthermore, unlike with add on rates, most consumers were unable to use percentage rates on a current balance to calculate total finance charges or periodic payments on balance that declined due to installment repayment, especially when the payments were constant in size. Use of such rates on the back of the envelope in the add on manner would produce total finance charges roughly twice the correct calculation and bias calculated payment size upward.

To complicate matters still further, many state laws specified interest rate ceilings on loans at consumer finance companies in a step-wise manner. The charge on the first $200 of loan might, for example, be calculated at a 3 percent monthly calculating rate, with the next $300 at 2 percent and any remaining amount at 1 percent per month. Calculating the finance charge and an effective rate on a $2000 loan for two years with constant payment size became very complicated very quickly and was virtually impossible for a consumer, even one with some math skills. Even experts had to use a multi stage iterative process to determine finance charges and payments on split rate loans, which in some states involved up to four different rates. Required disclosure under such state laws typically consisted of revelation of the various monthly calculating rates on the components of the original balance.

The third basic calculating method for producing finance charges and making disclosures in the years before TIL involved employing a calculating percentage concept known as the bank discount rate. To determine a credit cost using the bank discount rate method, a lender applied a percentage to an initial balance multiplied by the number of years or fraction but subtracted the resulting finance charge from the balance at the outset rather than adding it on as with the add on method. This produced a yield slightly higher than add on for the same initial balance and rate and had been the familiar calculating method in the banking industry for commercial loans for centuries. (This method also has somewhat different mathematical properties than add on rates as maturities lengthen.) When banks began to move more aggressively into consumer credit beginning in the 1930s, the bank discount method of calculation migrated wholesale to consumer lending.[7]

Like add on rates, this calculating method also attracted criticism in use for disclosures because it produced an effective rate about twice the bank discount rate when the balance was

[7]A pioneer in using the bank discount method for consumer lending was Arthur J. Morris who began his “Morris Plan” lending at the first of his chain of industrial banks in 1910 in Norfolk, Virginia.

returned in installments over time. Nonetheless, many states adopted the bank discount method for rate ceiling specification in bank cash lending. The calculations also were considerably more complicated than for add on because of the subtraction of the interest from the principle at the outset. This meant the discount method had the same disadvantages for comparisons with deposit rates as the add on method but without its consumer friendly calculating simplicity.

In the years before TIL, no one used what became the APR either as a calculating device or for disclosures; most observers of the scene simply regarded the math as too complicated. The mathematical difficulties *did* prompt extensive academic and public discussions about what simpler algebraic formulas might produce acceptably close estimates (see, for example, Ayers 1946, Neifeld 1951, Johnson 1961, and Mors 1965 for discussion of the algebra of such formulas as the constant ratio method, the direct ratio method, the minimum yield method, etc.). Even today, the APR is very often produced only as a residual calculation for regulatory purposes after applying a calculating rate or other method of producing a finance charge and payment amount, although individuals sophisticated in financial mathematics can use APRs to produce finance charges if they really want to, by employing electronic calculators and annuity methodology. Today, computer power has provided the possibility of using APRs for both calculations and disclosures, but such usage hardly became common before (or on) the effective date of TIL. In fact, it took decades.

Birth and Adolescence of Truth in Lending

Although disclosures were widespread before TIL, no one questions that there was a need for some consistent method of comparing credit costs due to the variety of disclosure methods at the time of TIL passage. One careful observer at the time summarized conditions as follows: (Mors 1965, p. 4)

> The result of the varying disclosure practices is that consumers do not obtain easily comparable information from alternative suppliers of credit. Some suppliers give consumers information about finance charges in dollars; some give multiple percent per month on outstanding balances; some give multiple annual rates on amounts borrowed; some give single rates of charge in the form of dollars per hundred on amounts borrowed (computational equivalents); and some (relatively few) give both rates of charge and dollar charges. Credit unions often give monthly effective rates

> of charge computed on outstanding balances in their contracts and sometimes quote annual effective rates orally. Virtually all credit sources, of course, give consumers payment information, i.e., the number of installment payments and the size of each payment.

Although the National Commission on Consumer Finance (NCCF, appointed by Congress and the President to study consumer credit) noted in 1972 that practices of the times sometimes had permitted valid comparisons among institutions of the same class (among banks, credit unions, finance companies, etc.), "shopping for credit across industry lines was almost impossible"... and this "helped create a climate favorable for legislation requiring uniform quoting of rates of charge" (National Commission on Consumer Finance 1972, p. 170).

Whatever the underlying method of determining the credit cost (finance charge) on closed end credit, Congress decided in 1968 that in addition to finance charges in dollars and cents consumer credit disclosures would include an effective rate on the declining balance calculated under rules to be specified by the Federal Reserve Board. Allowing the Board just over one year to determine all the necessary rules and put them in place, as well as for the consumer lending industry to come into compliance, Truth in Lending went into effect July 1, 1969.

The Almighty APR Disclosure

The general equation for calculating the TIL APR according to the Federal Reserve's rule for closed end credit, which was almost all consumer credit and consumer mortgage credit at the time of TIL passage, is found in section 8 of Appendix J to Regulation Z. The equation that annualizes the calculated periodic rate is in section 7 of Appendix J. This appendix was written by actuaries to take into account every possible contingency concerning time pattern of credit advances and repayments, and this makes the equations appear very formidable. They actually are conceptually much simpler than they appear, although they are still not computationally simple to use, particularly before electronic calculators and computers became widespread.[8]

[8]Even if not especially complicated conceptually for someone versed in the field (like a financial analyst or an actuary), the computations necessary for calculating the APR were considered complicated enough at the time of passage of TIL that President Johnson went out of his way at the Act's signing ceremony to single out and comment favorably on efforts of the Treasury department actuary who did the TIL work, even contending passage of the act depended upon this mathematical effort:

"I particularly want to single out one person in the executive department, one of our much overlooked individuals, the career public servant, Mr. Cedric W. Kroll of the Treasury Department. Mr. Kroll is the Government's actuary. He is a veteran of more than 25 years of Federal service.

Taken together, the two equations define the APR as the annualized nominal internal rate of return familiar to financial analysts that equates the present value of the stream of contractual payments to their present value, the latter called the "amount financed" in TIL terminology. Thus, using the normal and simplest example, a single credit advance and a stream of i identical future payments, the definition of the APR for closed end credit in decimal form is the number of periods in a year, n (which equals 12 for monthly payments), times the rate, r/n, that provides the solution to the following discounting equation for the number of years, t.[9] Multiplying the decimal rate by the number of periods (normally 12) and then by 100 (both multiplications in equation 2) gives the rate as an annual percentage:[10]

$$AmtFin = PV = \sum_{i=0}^{nt} (Pmts_i)(1+r/n)^{-i} \qquad (1)$$

$$APR = n(r/n)*100 = r*100 \qquad (2)$$

He and his colleagues in the Treasury's Office of Public Debt Analysis had a tough job to do before we could even begin to get a truth-in-lending bill. The lenders had argued that any bill was unworkable because of the variety of credit transactions involved. They said the requirements were just too complicated to be calculated with accuracy.

Well, Mr. Kroll and his associates didn't buy those arguments. They put their heads together and came up with a set of interest rate tables and schedules that make disclosure of the many varieties of credit transactions relatively simple. They cracked this tough, impossible, big, technical problem that had stalled a truth-in-lending bill for years.

These few men, these quiet, effective men, whom the Government is filled with--men and women like them--are called bureaucrats sometimes in the heat of debate in the Congress. I call them real patriots. They were working backstage and they proved that this bill could be made to work. These men, and thousands like them, are living proof of how our Government works for the people.

We owe this bill and other good bills to our career civil servants who are always working behind the scenes to better our lives and usually doing the things for which we take the credit.

I am proud today to speak for not only our consumers and for all of our people in recognizing our debt and paying our thanks to the public servants who go unheralded, unknown, and unsung, and who make our prosperity and our security better by their careers."

[9] Appendix J also outlines some much more complicated examples, such as the equation for loans involving multiple credit advances along with multiple payments. The mathematical principles are always the same; the more complicated examples just involve more terms.

[10] Some financial experts have been critical of this second equation over the years, saying that rather than a simple rate of interest it should reflect a compound rate: $APR = ((1+r/n)^n-1)*100$. Congress legislated, in effect, that it should be a simple rate, however, and comparisons among APR's are possible with either simple or compound rates as long as all rates are calculated the same way. Perhaps it is worth mentioning that the difference amounts to alternative ways of providing for compounding or not in the mathematics, but the consumer cost and pattern of payments is the same under the two alternatives. For extended discussion of the issue of the annualizing equation, see Ayers (1946, Chapters 25-29) and references there.

Importantly, these equations demonstrate how the Annual Percentage Rate on a typical closed end transaction is normally the residual calculation in the process. The closed end APR is calculated from the amount financed and the stream of payments that includes the finance charge, not solely from the amount financed and the finance charge, as some observers sometimes seem to believe (including some TIL lawyers). For closed end credit, the APR is dependent on the size and timing of the payments discounted to a present value (the "amount financed"). Equation 1 shows that the periodic discount rate r/n (and, therefore, by Equation 2 the APR) is the solution to a single equation (Equation 1) where everything else is already known: present value of the transaction along with the number, amount, and schedule of cash flows (payments). A single unknown is, of course, a requirement to make a single-equation system solvable.

It also is clear from these equations that, unlike add on rates, use of any such rate for calculating finance charges and payment amounts due is far beyond the experience and mathematical capabilities of typical consumers. At time of passage of TIL, it was also beyond the capabilities of most creditor personnel. Any use of such rates for calculations in the period before advent of electronic calculators and computer spreadsheet programs required dusting off logarithms and interpolations, or using paper rate sheets prepared by someone else based upon these aspects of mathematics. Even today, most people who work daily with APRs do not know what they are mathematically or where they come from, except out of the electronic mathematical black box.

What Else?

And so, as Section 107 of TIL quoted above requires, the APR is one of the prominent disclosures consumers receive concerning any credit transaction. But at time of passage of the law, Congress fully realized that the APR does not measure credit costs (the province of the finance charge) and also that the APR is not the only measure that consumers would consider to be important. At a minimum, they certainly also want to know required size and number of periodic payments, as creditors fully understood (and disclosed) at the time. As implemented, TIL also requires a lot of other disclosures as well. Whether all of the required other disclosures are really needed involves an ongoing debate now into at least its fifth decade but that probably has no completely satisfactory resolution. Ultimately, a good part of this debate arises from

different perceptions of the concept of "needed." It is obvious the end of this debate is not anywhere in sight.

The original draft of TIL, called by Senator Douglas in 1960 at the time of introduction the "Consumer Credit Labeling Bill" (S.2755, January 7, 1960), actually required only two federal disclosures, total finance charges and "simple annual interest." The whole bill, including definitions and penalties, consisted of only three and one half pages of large type. After this time and up to date of passage, one knowledgeable observer who actually has read the thousands of pages of the full hearings transcript over the period described the process of developing TIL as "accretive," an approach that has continued in the years since passage: (Rubin 1991, p. 279)

> ...the Subcommittee members tended to interpret any available information according to the internal dictates of their own [Subcommittee] debate, rather than the effects that the statute might ultimately generate. Consequently, they adopted an essentially reactive and accretive approach to statutory design; each argument had to be answered, and the easiest way to answer it was to add a new provision.

Table 1 lists in outline notation the formidable list of disclosures required by Truth in Lending as of mid 2007. Obviously, the list is much longer than just Senator Douglas's original finance charge and version of APR, even after adding to them the size of periodic payments and their number. The table divides numerous additional requirements into categories for closed end consumer credit, open end consumer credit, mortgage credit, high cost mortgage loans, reverse mortgages, and consumer leasing transactions that often substitute for credit arrangements for automobile acquisitions. Dozens of TIL amendments over the years together with thousands of lawsuits have kept the specifics of Truth in Lending requirements in a constant state of flux. A complete overhaul of the implementing regulation (Federal Reserve Regulation Z, 12 CFR, Part 226) has been in progress since late 2004, beginning with the rules for disclosures on unsecured open end credit. The whole revision project is complex enough that it likely will take a decade or more. This is a telling commentary on how complex TIL has become, certainly a strange outcome for such a simple idea.

The reason why TIL has gone through a decades long "accretive" process and now requires so many other disclosures in addition to credit cost likely arises mostly from two sources: the difficulty of separating the totality of transactions into components so that the components can be disclosed separately, and uncertainty about the future, both discussed further

in the next section. On account of these two difficulties, Truth in Lending and Regulation Z have come to require consistency of disclosure for all aspects of information that might conceivably have an impact on a transaction's outcome, in other words all information items that might conceivably be useful to someone, sometime, for some potential use, even if not a shopping element or even strictly a credit cost. In conjunction with the diversity of consumer credit transactions and the penalties for violating the law or regulation, the guiding principle of full disclosure of everything undoubtedly has contributed substantially to the extent of TIL's requirements and to its operational complexity.[11]

And then, the resulting complexity has generated calls for more disclosures to clarify the complexities for consumers. Proposals for layering of disclosures are especially prevalent if there is any evidence or belief that some population segment does not fully understand some aspect of existing disclosures or there might be some individual behavior that does not directly reflect simple measures of credit cost (irrationality?). The ensuing demand for summaries, explanations, and more details has produced a constantly expanding regulatory structure to help consumers try to understand.

This progression of disclosures leading to more disclosures is visible throughout the history of TIL but probably no more obviously so than for the example of credit cards. Disclosures for revolving credit, including credit cards, were not part of the earliest form of Truth in Lending, the draft Consumer Credit Labeling Bill in 1960, but after almost a decade of consideration in Congress, credit card related disclosures found their way into the original Truth in Lending Act passed in 1968. Apparently not satisfied with the outcome, two decades later in 1988 Congress provided for summary disclosures of existing requirements in the TIL

[11]It is sometimes difficult for those not close to the situation to have full feel for what happened to TIL after the lawyers discovered the law and began to litigate every little nuance. In a pithy comment, the law professor mentioned earlier wrote the following about compliance in the early days: (Rubin 1991, p. 237) "Regardless of the Act's intent, it is an admittedly imaginative enforcement strategy to facilitate the detection of violation by making violation unavoidable."

The current author is not generally enthusiastic about reporting anecdotes, but two conversations years ago about TIL compliance have since haunted his understanding of the early days. In the first, a consumer oriented lawyer bragged to him (this author has no idea about the correctness of the statement): "Because of the interaction of federal Truth in Lending and state law, you cannot write a mobile home [purchase/financing] contract in the state of Florida that I can't break." Second, a creditor when asked about how he handled TIL compliance growled: "You get an expert. Truth in Lending is like corporate tax. You don't do it yourself. You get an expert. Only stupid people do Truth in Lending or tax themselves." Both of these examples are further telling commentaries on what happened to a simple idea. They certainly lead to the question whether it is an appropriate function of law to raise such concerns among those operating businesses in good faith, even if they also occasionally trip up intentional wrongdoers.

amendment called the Fair Credit and Charge Card Disclosure Act (Public Law 100-583, November 3, 1988). After almost another two decades of experience, the Federal Reserve Board in 2007 proposed further wholesale revamping and more summaries of the information previously provided, portions of it already in summary form. And so the beat goes on for credit cards, now approaching their fifth decade of federal disclosure evolution. The first stage of this review in 2005 produced from various sources requests for 41 additional disclosures or significant rearrangements (this author's count; see Table 2).

The Conceptual Stumbling Block: What Is a Credit Cost?

Since implementation of Truth in Lending in 1969, most of the disclosure questions and controversy surrounding credit disclosures have arisen not from the mathematical requirements for calculating the mandated disclosures, but rather from a central conceptual matter: what expenditures constitute the cost of credit, the finance charge, and what parts of the present and future cash flows are something else? Since isolating the finance charge is necessary for disclosing it properly and calculating the Annual Percentage Rate correctly, this issue is a core concern for TIL compliance. At first glance the question might seem archaic when now approaching four decades after passage of the Act, but as credit markets evolve and everything must be litigated, it has remained remarkably unsettled. Ultimately, what constitutes the finance charge for required disclosures is the key operational question for Truth in Lending as a consumer protection, maybe the only really significant one. With a clear answer, disclosure of the other required measures, including the APR, becomes much simpler, even if not completely so due to accompanying uncertainty and wrangling over legal details in other areas, including mathematical methods and what else should be disclosed how and when.[12]

This central conceptual uncertainty manifests itself in three groupings of specific issues associated with finance charges and their interdependent APRs, the first two introduced above as the root causes of TIL complexity. First is the "Outlay" issue.[13] This is the problem that arises because not all outlays in conjunction with a credit transaction are credit costs, and this frequently generates confusion over which outlays constitute such costs and which are something

---

[12]Durkin and Elliehausen 2008 discuss these issues in more detail. For extended review of the course of the cases and court decisions 1968-1999, see Rohner, et al. (2000). There are annual updates of major TIL trends in a yearly issue of The Business Lawyer, usually in a spring issue around May.

[13]These are the author's terms; they are not part of TIL proper.

else. For example, outlays in a credit transaction also can include down payments, expenditures for other products, repayments of principal due on a prior transaction, and other outlays for a variety of ancillary services and taxes. Under full disclosure everything must be accounted for correctly, however, added and subtracted correctly, and disclosed as necessary in the right boxes and formats "clearly and conspicuously" (Regulation Z 226.5(a)(1) and 226.17(1)).

Second is the "Unknown Future Events" issue. It arises because both the amount of credit costs and the cash flows arising from credit arrangements always depend on future actions and typically are unknown at the outset of the transaction when initial disclosures are due. Consequently, there must always be some assumptions in order to make initial disclosures. But assumptions necessarily introduce an element of arbitrariness into any proceeding, and there often are good arguments for employing some other reasonable assumptions. This means there is potential for ambiguity and mistakes in determining proper finance charges and APRs, sometimes leading to arguments over policy as well as to legal disputes.

Third is the "Compliance" issue, which concerns the effects and implications of compromises, deviations from rules, and special rules generated to help creditors comply. Over the years the operation and evolution of credit markets, products, and the uses of credit products, together with the range of size, sophistication, and technical skills of creditors, has produced demand for simplifications, exceptions, shortcuts, and compliance aids. This demand has focused especially on the mathematical conception of the APR itself, and has produced a host of special provisions.

At the heart of the controversy over each of these three groupings of concerns about the finance charge is an inherent conflict of basic objectives. On one side is the laudable search for exactitude, completeness, consistency, and comparability in a complicated area despite complex and changing markets and an unknown future ("Truth" in Lending, after all). Against this is the difficulty for consumers to understand all the necessary concepts along with the equally praiseworthy goal, at least to those regulated and, importantly, to the political figures who constitute the Congress, of reasonable compliance ease for regulated institutions, especially smaller and less sophisticated ones and larger ones with a wide range of products. As so often is the case in legislative matters, a clear solution that is acceptable to everyone is not instantly obvious.

The Extent Issue: How Much Disclosure Is Enough?

Ultimately, the conceptual difficulties caused especially by the Outlay and Unknown Future Events issues have led to a good deal of the demand for extensive disclosures of calculating details, summaries, and explanations of cost and cost related information, in addition to the basic finance charge and APR, that has become inherent in the TIL disclosure rules as they have developed. But the approach of working around the difficulties by disclosing extensive details and related information has produced problems of its own, which might be characterized as the "Extent Issue." Table 1 shows that the finance charge and the APR may be the key disclosures, but they are very far from being the only ones.

To cite an example of the Extent Issue, in Section I-1-A of Table 1 it is easy enough to spot the key cost disclosures (finance charge and Annual Percentage Rate) in the first half dozen lines. The table also shows the extent of requirements, and some of them raise questions. For instance, it seems reasonable to require disclosure of the payment schedule (line A-g in the table), but the total of payments is also required (A-f). The total of payments is merely the periodic payment from the payment schedule multiplied by the number of them, also part of the schedule. Likewise, the total of payments is also the sum of the amount financed and the finance charge. In effect, the disclosures include three ways of looking at the same information: once as components, once as the product of two components, and a third time as the sum of two others. While no one disputes that all three disclosures potentially provide information useful at times to certain recipients, the mathematical redundancy also naturally raises the question what is gained and what is lost by requiring all the detail.

There also are other kinds of questions. For instance, although the amount financed is a required disclosure and is also necessary mathematically for solving the APR equation for closed end credit, some observers have asked whether the concept is meaningful to consumers, especially if the credit finances certain prepaid finance charges or insurance premiums. A report by two federal agencies in 1998 raised the question whether this disclosure should be replaced with something new called the "loan amount" (see Board of Governors of the Federal Reserve System and Department of Housing and Urban Development 1998). Then, should both amount financed and loan amount remain required disclosures? Would consumers understand the distinction? Would a summary and discussion of the distinction then be necessary?

Another ongoing question is how much of the contractual detail should be left in the contract and how much should become additional, separately required disclosures? What about name of the creditor, for example? The answer is mostly a legal issue, but one subject to much TIL litigation in the past. Is this important to consumers other than where and to whom the payments are due? To cite another example, provisions for late charges might be important if a consumer defaults, but how many consumers shop for this term? All such concerns cloud the answer to the Extent question.

Available evidence suggests the Extent Issue is a real concern. The accretion of disclosures that has taken place over the years with insufficient attention to consumers' understanding and use of the disclosures apparently has reached the point where understanding has become difficult for consumers. A new study employing a large experimental design show the improvements that might arise from a redesigned set of disclosures in the mortgage credit area (see Lacko and Pappalardo 2007). These results raise the question of the usefulness of actually starting over again to produce a useful set of disclosures for consumers interested in obtaining a mortgage loan, with all the difficulties such a proposal would entail.

The extent of requirements on open end credit is at least equally problematic. As discussed earlier, even the key disclosures are lengthier for open end credit: in addition to finance charges there are required, at least before the pending TIL revisions, "other charges." There is even more than one conception of the APR required in disclosures (prospective and retrospective).

Much of the debate over Truth in Lending disclosures has involved whether all the required disclosures are really needed as required disclosures in addition to their presence as contract provisions; that is, what should be the proper extent of the disclosure requirements? Equally important but more forward looking, are new disclosures sometimes needed and if so, what and when?

To a large degree, the answer in both cases depends on the underlying goals of the disclosure program in the first place. If, for example, the intent of the disclosures is to provide information necessary for shopping, then maybe something useful at the point of sale would be more valuable than the current formidable TIL forms. In contrast, if the goal is a full record of underlying transactions for record, tax, and dispute resolution purposes, for example, then maybe a fuller listing is appropriate. If it is both of these things at different times, then maybe different disclosures would be useful at different times rather than the current compromise. The issue of

goals of Truth in Lending is discussed further in the next section; suffice it to say here that the goals of disclosure programs have not always been as well articulated as one might hope, and certainly not generally agreed to in detail. The result has been that the extent of the disclosures required has remained controversial and probably will continue to remain so until a firmer conception of goals emerges.

Impact of Truth in Lending

Table 3 lists thirty-eight objectives for Truth in Lending that various analysts and interested parties have advanced at one time or another in eight separate categories. There probably are additional goals that might add to the list. By itself, the length of the table shows the difficulties of fully evaluating Truth in Lending and other information protections to the satisfaction of everyone.

Some of the goals offered for Truth in Lending concern broad aspects of economic efficiency including competitive functioning of markets, but most involve specific knowledge and behavior of individuals. Congress itself apparently believed that Truth in Lending would influence competition and individual consumer behavior directly (see discussion in Landers and Rohner 1979). Other TIL objectives include regulating macroeconomic conditions and influencing general educational and philosophical aims. Some even involve totally extraneous matters, including controlling specific behaviors of financial institutions in the marketplace; the latter objectives mostly do not concern the usefulness of information per se.

With such a lengthy list of objectives, it becomes obvious how even if economic information theory provides the fundamental economic underpinning for information protections, this does not indicate that a favorable outcome in this area will necessarily satisfy all interested observers of Truth in Lending. Accordingly, Truth in Lending as a consumer protection must withstand examination from many viewpoints and, indeed, even favorable evaluation according to a single perennially favorite goal like credit shopping (Goal 18 in Table 3) is not going to satisfy everyone. Even apart from the general issue of whether specific behavioral goals like credit shopping are important in themselves or whether they are simply a means to some other end (like enhancing efficiency of markets), specific behavioral goals are only one of eight categories in Table 3, and encouraging shopping is only one among 38 suggested objectives.

Durkin and Elliehausen (2008) review in greater detail than possible here available evidence on the effects of Truth in Lending on advancing these goals, largely from consumer surveys that allow some comparisons over time. Although the time dimension means the evidence is always subject to potential methodological problems, particularly that alternative explanations of the changes over time may well be available (like changes in the effectiveness of consumer education, for example), it is still possible to discuss general findings concerning some of the goals in the table.[14]

This evidence immediately suggests that consumers regard cost terms as the most important credit terms. This is clearly visible from the results of surveys following the effective date of TIL that explicitly asked consumers which credit terms they regard as most important. For example, in response to an open ended question concerning credit terms they regarded as most important on automobile credit, 62 percent of consumers in a national survey in 1977 mentioned "interest rates" or "annual rates" first, and monthly payment size and size of finance charges followed in importance (see Durkin and Elliehausen 1978, Table 4-3). These three terms were also the ones receiving the highest places in a follow-up, closed end question asking specifically for rankings of importance of cost and other credit terms (Durkin and Elliehausen 1978, Table 4-5). A smaller national survey in 1984 produced similar results to both questions. Again, 62 percent of consumers mentioned interest rates first; and rates, payments, and finance charges again were most important in the ranking question (unpublished Federal Reserve survey results available from the author).

More recent survey results concerning important terms on credit card accounts are similar, in that consumers continue to report they focus on cost terms as most important. In 2001 those both with and without credit card accounts were asked about information they would like to have if they were shopping for a new general purpose, bank type credit card account like Visa or MasterCard. Although respondents offered a variety of answers concerning important credit terms, cost items again predominated – notably percentage rates and finance charges. About two-thirds of those both with and without bank type credit cards indicated that interest rates or finance charges were the most important terms (see Durkin 2002, tables 2-3 and accompanying text).

[14]For discussion of some of these methodological issues, see Phillips and Calder (1979, 1980).

Beyond expression of an attitude that cost information is most important, most consumers also report that they frequently peruse the disclosures made, at least on credit card accounts that sometimes are controversial because they are so easy to use. A survey of card holders in early 2005 found that more than three fifths of holders of general purpose revolving cards like Discover, MasterCard, or Visa reported that they examined the Annual Percentage Rate on their cards at least four to five times per year, defined in the study as "frequently" (Durkin 2006, Table 1). Not surprisingly, at least to this author, the frequency of examination of the APR on credit cards appears to vary directly with the use of cards as credit, rather than transactions, devices. The survey found that the likelihood the holder reported examining the rate frequently rose as the outstanding balance on the card increased. Only about two-fifths of cardholders with no balance outstanding reported that they examined their APR frequently. In contrast, about four-fifths of those with a balance outstanding of $4500 or more reported they examined the APR frequently. Consumers reported examining the descriptive material on the bill somewhat less frequently, but again the likelihood of doing so rose with the balance outstanding on the card.

Concerning the particular behavior of credit shopping, available consumer surveys indicate that credit shopping by consumers was not universal either in the years immediately following implementation of Truth in Lending or more recently, but it does take place. For example, the nationwide survey in 1977 found that about one quarter of those with outstanding closed end credit accounts had tried to obtain information about other creditors or credit terms before obtaining the credit, the same proportion found in 1981 (line 1 of Table 4). The proportion who tried to obtain information about this sort of credit arrangement was a bit higher in later surveys, reaching about a third of closed end installment credit users in the 1990s.[15]

The notable thing about the pattern of responses to the questions about credit shopping is their general consistency over time. In all survey years, the most common action taken has been to shop institutions, including calling them (line 2 of the table).[16] It is possible that frequency of shopping or contacting individual institutions may have fallen off a bit in the more recent years

[15]This table is partly updated to include some questioning about credit cards in 2001 in Durkin (2002, Table 4). The findings reported here are broadly consistent with those from other surveys. See, for example, Day and Brandt (1973), who report on their 1970 California survey for the National Commission on Consumer Finance; Board of Governors of the Federal Reserve System (1987), which reports on an experiment concerning shoppers guides for credit; and Chang and Hanna (1991), who use data from the 1983 Survey of Consumer Finances. Brandt and Shay (1978) used a different shopping criterion, but results from their survey are consistent in that they found that shopping was fairly common but much less than universal.

[16]The lines in the table do not add to the total proportion of all those who took some action because some individuals responded they had undertaken more than one action.

in favor of other actions (indicated by vaguer responses like "calling around" or "checking around," line 6 of the table), but this may be more an artifact of the coding than a real trend. There also are more sources of information about credit today, including better-informed friends and advisors, and, of course, the internet. In any case, shopping for credit information seems reasonably common and shopping individual institutions seems, by whatever means, like the most frequent approach.

When consumers do seek information about credit terms, percentage rates are the most commonly sought information (line 7 of Table 4).[17] About three-quarters to four-fifths of those who indicated they sought some information said they wanted "interest rates," "best rates," or something similar that showed they were looking for percentage rates. Respondents also gave a variety of other answers, including fees and charges (line 8), payment sizes and maturities (line 9), and other credit information (lines 10 and 11). There may be some indication from the responses that availability of credit is less of a concern among respondents in recent years than it was in the past (line 10), at least for closed end financing.

More important than information sought, is whether those who try to obtain information are generally able to do so. In each year approximately nine-tenths of those who inquired about creditors or credit terms were able to find the information they sought (line 22 of Table 4). Although this outcome cannot be attributed solely to Truth in Lending, it is not clear there is a groundswell of opinion asking for disclosure of more information in the years since passage of the law. In 1993-4 and 1997 interviewers asked the same questions of users of home-equity credit, either in the form of home equity lines of credit or traditional second mortgage loans. Findings of the home-equity surveys are generally similar to results from the other surveys (see Durkin and Elliehausen 2008, Table 6.8).

While certainly not conclusive, this finding of a measurable proportion of consumers shopping for credit cost information and a large portion of those individuals able to obtain the information sought recalls the views of the National Commission on Consumer Finance that a portion of consumers shopping for credit would likely make the marketplace competitive: (National Commission on Consumer Finance (1972, p. 176)

---

[17]The lines in this section of the table also do not add to the percentage of respondents who took some action because individuals could answer they looked for more than one piece of information.

> An individual creditor cannot know whether a consumer is "aware" or "unaware." If, as in the general market somewhere between one third and one half of the prospects are aware, and if some portion shop for credit, a credit grantor is likely to offer each prospect a given package of credit terms for the same price. [18] Most important, if the price is not competitive with similar packages offered by other creditors, the credit grantor faces the ever-present risk of losing the customer to a competitor. Indeed consumers' shopping is supplemented by comparison shopping of creditors. Credit grantors in the general market must comparison shop if they are to maintain competitive rates because of the threat that many potential customers aware of APRs and differences in rates may shop around for the best rate.

Not all consumers shop extensively for credit, of course, and the NCCF was careful to point out (twice) in the paragraph quoted above that its contentions applied only to the general market where consumers have shopping skills, and not to the low-income market it discussed elsewhere. Lack of shopping skills certainly is one reason why credit shopping is not universal, but there is more to the issue. The general reason is that shopping is costly; and, as both economists and the other behavioral scientists have pointed out, the costs of shopping can easily outweigh the benefits. This is especially true for those generally aware of credit costs for whom much additional credit shopping can be largely redundant. Regardless, it seems that those with higher education and income are the ones most likely to shop for credit. These individuals also are likely also the customers of most interest to the credit grantors and those for whom competition is most fierce.

Importantly, lack of shopping does not necessarily indicate unreasonable or irrational behavior. On the contrary, failure to shop could indicate an awareness of credit costs on the part of the consumer and may reflect the view that further shopping is unwarranted. Consumers may be wrong in their judgments sometimes; but, by itself, failure to shop for credit terms does not indicate a failure of TIL. Probably more important for TIL evaluation are the questions whether the regulatory structure generally increases cost awareness and whether it permits effective shopping, if desired. By establishing a consistent unit price and standards of terminology, TIL permits consumers to shop for credit to whatever extent they feel is appropriate, although none of this suggests that current disclosures are the best possible.

---

[18] These were the proportions classified as "aware" in the NCCF's studies fifteen months after the effective date of TIL. The proportions classified as aware under the same definitions in 1977 were higher (see Durkin and Elliehausen 1978, Chapter 2).

Proposals for Reform

In 2004 the Federal Reserve Board began the difficult process of revision and reform of Regulation Z that implements TIL. The first stage was an Advance Notice of Proposed Rulemaking (ANPR) on December 8 that year asking for public comment on an extended series of questions about the need for reforms on disclosures required under TIL in the area of open end unsecured credit (mostly credit card credit). On October 17, 2005 there followed a second ANPR concerning TIL changes required under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8, April 2005). After considering the comments from the two ANPR processes, the Board issued a reform proposal in June 2007 (Federal Register, June 14, 2007, p. 32948, public comment period ends October 12, 2007). At the time of the first ANPR, the Board indicated that its efforts on open end, unsecured credit involved only the first of a series of efforts on TIL regulatory review, to be followed shortly by proposals in the area of secured (mortgage) credit.

The proposal issued for public comment in June 2007 comprises the most extensive set of changes to Regulation Z since 1980 following the Truth in Lending Simplification and Reform Act that year (Title VI, Public Law 96-221, March 31, 1980) and the most extensive without specific legislative requirement since the effective date of the original Regulation Z on July 1, 1969. Under the proposal, credit card issuers would have to alter virtually every aspect of their credit card programs in significant ways to implement the required disclosure changes: solicitations, account opening statements, periodic statements, change in terms notices, and advertisements. Timing rules for many disclosures would also change. Every computer system will require major reprogramming, and every contact with consumers will be influenced, necessitating retraining of every customer contact employee. The proposal itself is very complicated and likely will require large amounts of legal and management time to understand, evaluate, and implement. (Implementation of a final version of the revision will occur only after consideration of the comments and a period of at least a year to allow the industry time to come into compliance, likely moving the final effective date into 2010.)

Table 5 contains a listing of changes that would be required by the proposal (this author's compilation). In general, the proposed changes tend to equate disclosures with consumer education and are largely designed with the intent of trying to educate those with little of no understanding of financial matters. The revised rules likely will be an improvement, although

who knows whether ultimately worth the extensive underlying costs. For those who understand current disclosures a bit better, finding information may be somewhat easier and more straightforward under the new approach. Those who do not understand disclosures under current rules may also be helped a bit in finding the information they need, but they also may become more confused by additional details, despite some new clarifications within the details.

The new disclosure proposals are further indication of how suggestions for changes in the TIL regime typically involve enhancing disclosures, widening the scope, making them more extensive or more frequent of otherwise adding to their prevalence, all with the hope of influencing consumers in some preferred way. Although it is not obvious that underlying goals of the regulation were considered more carefully than with proposed changes in the past, this time the effort did involve review by consumer focus groups for clarity and basic understanding. Whether the proposal will lead to the outcomes preferred by the proponents is a matter that only the future will tell. Certainly an extensive before/after research program would be a useful accompaniment to the implementation of the changes.

Finally, is it time to bring the benefits of technology to the problem of disclosure? One way of lowering the cost of disclosure regimes is to use modern technologies and communications methods such as the internet wherever possible. Even if it is true, and always remains true, that not everyone uses the internet or modern communications, this is no reason why not to use technology as widely as possible to enhance information availability and lower its costs. Shopping disclosures could be made available early by internet, for example, even multiple or interactive disclosure approaches. In the highly charged environment of consumer-protection politics this seems like pie in the sky, but pie in the sky is sometimes worth recommending anyway.

References

Ayers, Milan V., *Instalment Mathematics Handbook*, New York, The Ronald Press, 1946.

Board of Governors of the Federal Reserve System, *Annual Percentage Rate Demonstration Project*, Washington, Board of Governors of the Federal Reserve System, March, 1987.

Board of Governors of the Federal Reserve System and Department of Housing and Urban Development, *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act*, Washington, Board of Governors of the Federal Reserve System and Department of Housing and Urban Development, 1998.

Brandt, William K., and Robert P. Shay, "Credit Shopping behavior and Consumer Protection Legislation," paper presented at the Annual Meeting of the Midwest Finance Association, April, 1978.

Calder, Lendol, *Financing the American Dream: A Cultural History of Consumer Credit*, Princeton, New Jersey, Princeton University Press, 1999.

Chang, Yu-Chun and Sherman Hanna, "Consumer Credit: An Exploratory Study of Search Behavior," paper presented at the Annual Conference of the American Council on Consumer Interests, 1991.

Curran, Barbara A., *Trends in Consumer Credit Legislation*, Chicago, University of Chicago Press, 1965.

Day, George S., and William K. Brandt, *A Study of Consumer Credit Decisions: Implications for Present and Prospective Legislation*, in National Commission on Consumer Finance, *Technical Studies of the National Commission on Consumer Finance*, Volume 1, Number 2, Washington, Government Printing Office, 1973.

Durkin, Thomas A., "Consumers and Credit Disclosures: Credit Cards and Credit Insurance," *Federal Reserve Bulletin*, April 2002.

Durkin, Thomas A., "Consumers and Disclosures: Results of Surveys About Credit Cards, solicitations, and Privacy Notices, *Federal Reserve Bulletin*, Third Quarter 2006.

Durkin, Thomas A. and Gregory E. Elliehausen, *The 1977 Consumer Credit Survey*, Washington, Board of Governors of the Federal Reserve System, 1978.

Durkin, Thomas A. and Gregory E. Elliehausen, *Financial Economics of Information Disclosure: Applications To Truth in Lending*, Oxford and New York, Oxford University Press, 2008, forthcoming.

Durkin, Thomas A., Gregory E. Elliehausen, and Michael E. Staten, *Consumer Credit and the American Economy*, Oxford and New York, Oxford University Press, 2008, forthcoming.

Frederick, Shane, George Loewenstein, and Ted O'Donoghue, "Time Discounting and Time Preference: A Critical Review," *Journal of Economic Literature*, June, 2002.

Johnson, Robert W., *Methods of Stating Consumer Finance Charges* New York, Columbia University Graduate School of Business, Studies in Consumer Credit, Number 2, 1961.

Lacko, James M. and Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures*, Washington, Federal Trade Commission Bureau of Economics Staff Report, June 2007.

Landers, Jonathan M. and Ralph J. Rohner, "A Functional Analysis of Truth in Lending," *UCLA Law Review*, April, 1979.

Mors, Wallace P. *Consumer Credit Finance Charges*, New York, Columbia University Press for the National Bureau of Economic Research, 1965.

National Commission on Consumer Finance, *Consumer Credit in the United States: The Report of the National Commission on Consumer Finance*, Washington, Government Printing Office, 1972.

Neifeld, M. R., *Neifeld's Guide to Instalment Computation*, Easton, Pennsylvania, Mack Publishing Company, 1951.

Phillips, Lynn W. and Bobby J. Calder, "Evaluating Consumer Protection Programs: Part I, Weak But Commonly Used Research Designs," *Journal of Consumer Affairs*, Winter, 1979.

Phillips, Lynn W. and Bobby J. Calder, "Evaluating Consumer Protection Laws II: Promising Methods," *Journal of Consumer Affairs*, Summer, 1980.

Rogers, David H., *Consumer Banking in New York*, New York, Columbia University Press, 1974.

Rohner, Ralph J., Frederick H. Miller, Robert A. Cook, Alvin C. Harrell, and Elizabeth Huber, *Rohner and Miller on Truth in Lending*, Section on Administrative and Regulatory Law, 2000.

Rubin, Edward L., "Legislative Methodology: Some Lessons from the Truth in Lending Act," *Georgetown University Law Review*, December 1991.

United States Senate, *Hearings Before the Subcommittee on Financial Institutions of the Committee on Banking and Currency, Ninetieth Congress, First Session, on S.5*, Washington, Government Printing Office, 1967.

Table 1: Truth in Lending Disclosure Requirements

(See Title I of the Consumer Credit Protection Act, 15 USC 1601 *et seq*., Federal Reserve Regulation Z, 12 CFR Part 226, and (for consumer leasing) Federal Reserve Regulation M, 12 CFR Part 213.)

1) Closed end Consumer Credit.

   a) Identity of the creditor
   b) Amount financed
   c) Itemization of amount financed
   d) Finance charge
   e) Finance charge expressed as an Annual Percentage Rate (APR)
   f) Total of payments
   g) Payment schedule
   h) Demand feature
   i) Total sales price (if applicable)
   j) Prepayment rebate or penalty (if applicable)
   k) Late payment fees (if applicable)
   l) Security interest charges (if applicable)
   m) Insurance and debt cancellation features
   n) Separately priced insurance charges
   o) Certain security interest charges
   p) Statement referring customer to contract concerning defaults, nonpayment, right of acceleration, and prepayment rebates and penalties
   q) Assumption policy (for purchase-money mortgages)
   r) Required deposit (if applicable)
   s) Statements about right of rescission when there is a security interest in debtor's residence and the credit is not for purchase of the property (if applicable)
   t) Variable rate features (if applicable)

2) Open end Consumer Credit, Including Credit Card Accounts.

   a) Finance charges
   b) Other charges
   c) Security interest (if applicable)
   d) Statement of billing rights and error resolution policy
   e) Home-equity plan information, if applicable
   f) Previous balance
   g) Transaction summary
   h) Credits to account
   i) Periodic rates
   j) Balance on which finance charge is computed
   k) Amount of finance charge
   l) Annual Percentage Rate

m) Other charges to account
n) Closing date of billing cycle and new balance
o) Free-ride periods without finance charge
p) Address for notice of billing errors
q) Supplemental credit devices and additional features with a different finance charge
r) Change in terms
s) Notice of fee to renew credit or charge card
t) Change in credit card account insurance provider
u) Fees for issuance or availability
v) Minimum or fixed finance charge
w) Transaction fees
x) Name of balance computation method
y) Statement that charges incurred by use of charge card are due when periodic statement is received
z) Cash advance fees
aa) Late payment fees
bb) Over-the-limit fees
cc) Balance transfer fees
dd) Statements about right of rescission when there is a security interest in debtor's residence and the credit is not for purchase of the property (if applicable)
ee) Grace period

3) Closed end Consumer Credit: Certain Residential Home Mortgage Transactions, Including Transactions with Variable Rates.

a) Redisclosure required if the APR at the time of consummation varies from the APR disclosed earlier by more than 1/8 of 1% in a regular transaction or more than 1/4 of 1% in an irregular transaction
b) Variable rate transactions (if APR may increase after consummation in a transaction secured by the consumer’s principal dwelling with a term greater than one year):
    1) Booklet titled <u>Consumer Handbook on</u> <u>Adjustable Rate Mortgages</u> or a suitable substitute
    2) The following loan-program disclosures for each variable rate program in which consumer expresses interest:
        i. Interest rate, payment, or term of loan may change
        ii. Index used in making judgment and source of information about this
        iii. Explanation of interest rate and payment determination and how index is adjusted
        iv. Statement that consumer should ask about current margin value and interest rate
        v. Interest rate will be discounted and consumer should ask about amount of discount

vi. Frequency of interest rate and payment changes

vii. Rules relating to changed in index, interest rate, payment amount, and outstanding loan balance

viii. An example of $10,000 loan illustrating the effect of interest rate changes

ix. Explanation of how consumer may calculate payments for the loan amount to be borrowed

x. Loan contains demand feature

xi. Type of information that will be provided in notices of adjustments and timing of such notices

xii. Statement that disclosure forms are available for creditor's other variable rate loan programs

c) In an assumption, new disclosures must be made to consumer based on the remaining obligation

d) Variable rate adjustments subject to b) above:

1) Current and prior interest rates and the index on which these are based

2) Extent to which the creditor has forgone any increase in interest rate

3) Contractual effects of the adjustment

4) Payment required to fully amortize the loan at the new interest rate over the remainder of the term

4) Open end Consumer Credit Secured by Consumer's Dwelling, in Addition to the Open End Credit Requirements in Section 1C Above.

a) The length of the draw and repayment periods

b) Explanation of determination of minimum payment

c) Information about balloon payments (if applicable)

d) Fees imposed by the creditor and by third parties

e) Statement concerning negative amortization (if applicable)

f) Limitations on number of extensions or amount of credit

g) Any minimum balance and minimum draw requirements

h) An example, based on a $10,000 outstanding balance, and a recent APR, showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit

i) Advice to consult a tax advisor regarding deductibility of interest

j) Statement that the consumer should retain a copy of the disclosures

k) Statement of the time by which the consumer must submit an application to obtain specific terms disclosed

l) Statement that if a disclosed term changes prior to opening the account and therefore the consumer decides not to open the account, then the consumer may receive a refund of all fees paid in advance

m) Statement that the security interest may result in loss of dwelling if default occurs.

n) Statement that the creditor may terminate the plan under certain circumstances and require payment of the outstanding balance in a full single payment and impose fees, prohibit additional credit extensions or reduce the credit limit, or implement certain other changes and that the consumer may receive information about the conditions under which such actions can occur

o) Home equity brochure explaining the nature of home equity lines of credit including benefits and disadvantages

p) Statement that the APR does not include costs other than interest and recent APR imposed under plan

q) For variable rate plans:

   1) APR, payment, or term subject to change
   2) APR includes only interest costs
   3) Index used in making rate adjustments and source of information for the index
   4) Information about how the APR will be determined and how the index is adjusted
   5) Statement that consumer should ask about current index value, margin, discount or premium, and APR
   6) Statement that initial APR is not based on the same information as later rate adjustments and period of time such initial rate will be in effect
   7) Frequency of changes in APR
   8) Rules regarding changes in the index value and APR
   9) Statement of limitations on changes in the APR
   10) Statement of the maximum APR
   11) Statement of minimum payment required and maximum APR for a $10,000 outstanding balance
   12) Statement of the earliest date or time the maximum rate may be imposed
   13) Historical example based on $10,000 extension of credit and past APRs
   14) Statement that periodic statements will include rate information

5) Home Ownership and Equity Protection Act of 1994 (HOEPA Requirements), in Addition to Other Truth in Lending Requirements, for Non Purchase-money, Closed End Loans Secured by Residential Real Estate with Rates or Fees Above Specified Amounts.

   a) Statement that the consumer need not complete the transaction even though the disclosures have been received and that consumer must meet loan obligations to avoid losing home
   b) APR
   c) Regular payment and balloon payment

d) For variable rate plans, interest rate and monthly payment may increase
e) For a mortgage refinancing, disclosure of the amount borrowed, which consists of the amount financed plus prepaid finance charges (if any), in early disclosures

6) Reverse Mortgages, in addition to other required disclosures on mortgages.

a) Statement that the consumer need not complete the transaction even though the disclosures have been received.
b) Good faith projection of the total cost, expressed as a table of "total-annual-loan-cost rates"
c) Explanation of the "total-annual-loan-cost rates" table
d) Itemization of loan terms, charges, age of the youngest borrower, and appraised property value

7) Consumer Leases of Personal Property.

a) Description of leased property
b) Total amount of any initial payments
c) Payment schedule and total amount of periodic payments
d) Itemized amounts of any other charges
e) Total amount to be paid
f) Payment calculation
g) Early termination conditions, charges, and notice
h) Identification and details of maintenance responsibilities
i) Statement concerning option to purchase property
j) Statement that lessee should consult lease for additional information
k) Statement of and information concerning lessee's liability, if any, at end or termination of lease
l) Statement concerning independent appraisal of value at end or termination of lease
m) Description of liability at end of lease term based on residual value, if necessary
n) Total fees and taxes
o) Identification of any insurance
p) Identification of any warranties
q) Amount or method of determining any default or delinquency charges
r) Description of security interest
s) Rate information disclaimer

Table 2: Additional Disclosures Suggested Recently
For Open End Credit

For Schumer Box:

1. Put in solicitations, applications, initial disclosures, periodic statements, change in terms notices
2. "Typical APR"
3. Minimum FC
4. Late fee
5. OTL fees
6. Cash advance fee
7. Credit limit
8. Security interest
9. Grace period
10. Balance transfer fee
11. Convenience check fee
12. Currency conversion fee
13. Bounced check fee
14. Payment allocation (brief and standardized)
15. Behaviors that will result in repricing (in box)
16. Behaviors that will lower rates after repricing

Following Schumer box:

17. Mathematical description of balance calculation method
18. Rank ordering of balance calculation methods

On Convenience Checks:

19. Check use will cause cash advance fee
20. Check use will cause higher rate to accrue immediately

Other:

21. Duration of payments to pay in full at minimum payment
22. Total interest (if minimum paid), and
23. Total of payments (if minimum paid)
24. Comparisons of OE and CE under various assumptions
25. Special disclosures for OE on door to door sales
26. More disclosures on secured credit cards
27. Daily simple interest (open end and closed end)
27. Limits of loss liability on debit versus credit cards
27. Difference in liability on convenience checks
30. Credit card blocking by hotels
31. Claims and defenses on cards versus convenience checks
32. More disclosures on deferred charges/payment programs
33. More disclosures on foreign uses and foreign merchants
34. Improve internet advertising rules
35. Improve electronic disclosure rules

36. Disclose universal penalty rate/default rules
37. Compound interest
38. Double cycle interest
39. Transaction date (rather than posting date) interest
40. Residual interest (in month of payoff)
41. Date of assessing OTL fee

Table 3: Goals of Truth in Lending

I. **Credit Market Goals**

1. Enhance Competition in Consumer Credit Markets
2. Improve Understanding of Differences Among Classes of Institutions
3. Drive Out High-Cost Producers
4. Encourage Industry to Reform
5. Improve Credit Market Products
6. Discourage Risk Shifting by Institutions
7. Discourage *In Terrorem* Boilerplate Clauses in Contracts
8. Provide Vehicle for Legal Reforms
9. Protect Legitimate Businesses from Unethical Competition

II. **Cognitive Goals: Awareness and Understanding**

10. Improve Awareness of Credit Costs
11. Improve Consumers Understanding of the Relationships Among Credit Cost Terms
12. Improve Awareness of Non-cost Credit Terms
13. Simplify Information Processing

III. **Attitudinal Goals**

14. Improve Consumer Satisfaction
15. Improve Consumer Confidence

IV. **Behavioral Goals**

16. Reduce Credit Search Costs
17. Show Consumers Where Search Can Be Beneficial
18. Encourage Credit Shopping
19. Improve Consumers' Ability to Make Comparisons
20. Enable Consumers to Match Products and Needs
21. Enable Consumers to Decide Between Using Credit and Using Liquid Assets
22. Enable Consumers to Decide Between Using Credit and Delaying Consumption

V. **General Philosophical and Educational Goals**

23. Satisfy Consumers' Right to Know
24. Enhance Consumer Education
25. Enhance Consumers' General Understanding of the Credit Process
26. Promote Long-Term Rise in Consumer Sophistication
27. Promote the Informed Used of Credit
28. Promote Wiser Credit Use

VI. **Macroeconomic Goals**

29. Enhance Economic Stabilization

VII. **Institutional Control Goals**

30. Promote Control of Institutions Through Compliance Requirements
31. Improve Consumers' Bargaining Position Relative to Institutions
32. Provide Defenses for Consumers
33. Provide Leverage for Hard-Pressed Debtors

VIII. **"Behavioral" or "Market Protection" Goals**

34. Require Procedures for Credit Card Billing Error Resolution
35. Provide End-of-Lease Liability Limits for Consumer Leasing
36. Provide "Cooling Off" Period for Credit Secured by Residence
37. Provide for Limited Liability on Lost or Stolen Credit Cards
38. Eliminate Unsolicited Credit Cards

Table 4: Consumers Who Engaged in Search for Credit Information on Closed end Consumer Credit
(Percent of Respondents)

	1977	1981	1994	1997
1) Tried to Obtain Information	26	26	37	33
What Done (percent of those who did something):				
2) Shopped other institutions	80	63	52	54
3) "Shopped" (not clear where)	13	*	19	10
4) Contacted people	4	*	2	3
5) Examined media/printed sources	1	4	4	7
6) "Called" or "checked" (not clear where)	7	*	31	34
Kind of information (percent of those who did something):				
7) Interest rates	73	83	81	88
8) Fees and charges	12	30	16	14
9) Payments/maturities	27	20	36	40
10) Amounts/limits/collateral	21	9	3	4
11) Other	16	20	17	14
What Done (percent of those with closed end credit):				
12) Shopped other institutions	20	17	19	17
13) "Shopped" (not clear where)	3	*	7	3
14) Contacted people	1	*	1	1
15) Examined media/printed sources	-	1	2	2
16) "Called" or "checked" (not clear where)	2	*	11	11
Kind of information (percent of those with closed end credit):				
17) Interest rates	18	28	30	28
18) Fees and charges	3	10	6	4
19) Payments/maturities	7	7	14	12
20) Amounts/limits/collateral	5	3	1	1
21) Other	4	7	6	4
22) Able to Obtain Information Sought (Percent of those who searched)	91	96	95	88

Note: * Not available in year indicated.

Table 5: Regulation Z (Truth in Lending) Changes Proposed in 2007
For Open End Credit

New requirements:

Statement (or not) of ability to opt out of checks (in 226.9) (2)

New rules for "Spurious" OE credit (2)

A. Advertising rules in 226.16 to require total if payment given

B. OE definition clarifies replenishment requirement: must be non de minimis to be OE

New requirement that opening disclosures be in table form (5A)

A. Substantially similar to solicitation table, but not identical

B. Plan to allow one table that can satisfy both

Late payment, OTL, cash advance, transfer, return fees in table; also cross reference to penalty rate, if applicable (5A)

Require term "penalty APR" rather than default APR (5A)

"Take one" disclosures no longer can be in narrative form (5A)

New disclosures for checks that access an account (9)

A. Introductory APR, if any

B. Post introductory APR

C. Fees or number to call

D. No grace period, if applicable

E. Can opt out or not

New requirements for change in terms notices (9)

A. Require change notice for penalty rate, late, OTL, score

To include notice of which balances

To include length of time

B. Notice of decrease in limits

New change notices for late, OTL, documentary fee changes (not necessarily 30 days), credit insurance and DCAs (9)

Require 30 day notice instead of 15 (25 or 27 if with periodic) (9)

New summary on first page of change notices; if on periodic statement on first page (9)

New disclosure for cutoff time if before 5:00 PM (10)

New disclosures for time to payoff if only making minimum payment (14)

Changed requirements:

Statement of opt out or not for convenience checks (2)

Proposed changes in 226.4 for ATMs, foreign currencies: Require all transactions charges be finance charges (comparable cash is difficult because consumer may not have asset account with issuer). No longer comparable cash. (4) Examples:

A. ATM fees

B. Foreign transactions fees

C. Could be others

Expands of types of disclosures exempt from (5)

A. In writing requirement

B. Disclosures that can be given after opening can be oral
C. Some changes in required terminology

Clear and Conspicuous (5)

A. Extended to all communications (C&C)
B. C&C for oral reasonably understandable if volume, speed, and timing sufficient to hear and comprehend
C. FC/APR more conspicuous only when reg. requires (not each use)
D. Terminology in a variety of sections need be similar enough that consumers can relate

Timing (5)

A. Must be able to assess solicitations and reject balance transfers at account opening
B. Electronic solicitation disclosures must be electronic
C. Some fees coming into play later not required at opening; others required
D. Not have to determine FC and OC
E. Have to disclose all account associated fees when appropriate; but can continue to follow old rules (Not clear; cf. p.13)
F. For telephone account opening during a purchase
    a. Can provide disclosures later if:
    b. There is a reasonable (mandatory) return policy, including opportunity to pay by other means and keep goods
    c. Consumer informed of return policy before purchase

Periodic statement exceptions (5)

A. De minimis
B. Uncollectible (but requires court action)

Late payment, OTL, cash advance, transfer, return fees in table; also cross reference to penalty rate, if applicable (5A)

In the table, APRs and fees must be bold (5A)

Internet solicitations (5A)

A. To contain same information as mail
B. Cannot bypass disclosures

Require term "penalty APR" rather than default APR (5A)

Contents of table (See extensive listing in notes) (5A)

Accuracy of variable rates (Bankruptcy Act: Updated regularly) (5A)

A. 60 days for mail
B. 30 days for electronic
C. Other terms accurate when made

Telephone Disclosure Rules: Most disclosures before fee (or use) (5A)

Account Opening Statement Changes (6)

A. Account opening disclosure highlights for OE in tabular form
B. Revise rules governing FC and OC
    a. Intent
        Have all charges disclosed before imposed
        Simplify rules for determining
        Match timing and method to practices and expectations
    b. Method

Charges for opening table and new or increased listed
All others before imposed at option of issuer
On list are those that affect plan cost, access, duration, credit amount, timing of billing or payment

c. Some additional charges would go on list

Expedited payment
Expedited delivery

C. Only name of billing method and source for info. in summary

D. Payment allocation disclosure to be with offers

E. Currency of disclosed variable rate to follow electronic disclosure rule

F. Disclosure for application of changed rates e.g. penalty (for any reason except for normal variable rate variation) on all existing balances

G. Periodic rates and margins not allowed in summary

H. Reference to information on billing rights

Periodic Statement Changes (7)

A. Group transactions by type (called "format" requirements)

a. Purchases
b. Cash advances
c. Payments and credits

B. Historical APR. Alternatives

a. Limit included fees

Minimum charges
Charges based on account activity or inactivity
Charges based on amount of credit
Charges for credit insurance and substitutes
Specifically exclude transactions, opening, and annual maintenance charges

b. Make optional

C. Disclose interest as such, with components if there are any

D. Disclose fees as such, with a total

E. Require totals of year to date for fees

F. Date late fee accrues and amount and increased rate in proximity

G. Change in terms summary required before transactions summary

Allow more flexibility for descriptions on descriptive billing (8)

Billing rights notices unchanged, but revised for readability (9)

Two proposals suggested in section VII for historical APR (14)

Include only interest and certain fees and exclude others

Include

Interest from periodic rates
Minimum charges
Charges based upon activity, inactivity, balance, limit
Mandatory credit insurance, DCA, and the like

Exclude

Transactions charges
Charges for account opening
Annual charges

Make optional

New disclosure regime for minimum payment duration

Clarified requirements:

- 1981 transition rules obsolete (1)
- First billing cycle can vary by more than 4 days (2)
- Definition of credit card unchanged (not convenience checks) (2)
  - A. Covered by UCCC
  - B. No relationship with merchants to make chargeback
  - C. Statement (or not) of ability to opt out of checks (in 226.9)
- Can still verify credit info., reduce lines etc. (2)
- Clarify exempt transactions as needed (3)
  - A. Business transactions on a consumer card are covered
  - B. Will consider the $25,000 threshold with closed end review
  - C. Will consider utilities credit with closed end
  - D. Exempt loans from retirement plans including 401k, etc.
- Internet solicitations (5A)
  - A. To contain same information as mail
  - B. Cannot bypass disclosures
- DCAs and DSAs (4)
  - A. Debt suspension agreements (DSAs) treated same as DCA
  - B. New disclosures concerning essence of suspension
  - C. Can expand coverages excludable as long as at least one of the coverages is life, accident, health, income and sold at one price
- Retain font safe harbor; does not match privacy proposal (5A)
- Periodic statements (7)
  - A. No requirement to specify promotional rates not in use
  - B. No change in disclosure of balances to which rate applies
  - C. Can provide name of balance method and source for more info.
- For electronic, clarify date is date sent (not received) (10)
- No change for credit balance refunds; clarify can request orally (11)
- Implement bankruptcy act provisions concerning inactivity (11)
- Not proposing to revise one for one rule outside of renewal (possibly allow revised rule if liability does not increase) (12)
- Clarifications of unauthorized use (12)
- Clarify HIDC rules do not apply to checks accessing card accounts (12)
- Clarify billing error includes intermediary payment service (13) Clarify already includes convenience checks (13)

Removed requirements

- One option for historical APR is to make disclosure optional

Requirements not changed:

Definition of credit card (not include convenience checks) (2)

Account opening disclosures for HELCs unaffected by proposal (6)

Country club billing (8)

Not clarified or changed: Structure of the regulation

Section 5 of Regulation Z, which contains general requirements for such things as clear and conspicuous, is sometimes not clearly related to sections containing the specific disclosure requirements

Section 5 for general should probably follow specific disclosure requirements, but apparently decision is made not to change order of sections, even if hard to follow now

No attempt is being made to reorder or reconstruct the regulation as a whole; it was formed by accretion, is sometimes less than clear for this reason, and it remains so.

Note: Parenthetical numbers refer to numbered sections of Federal Reserve Regulation Z (12 CFR Part 226).