

One Hundred Fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Wednesday,
the fourth day of January, one thousand nine hundred and ninety-five*

An Act

To amend the Truth in Lending Act to clarify the intent of such Act and to
reduce burdensome regulatory requirements on creditors.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Lending Act Amendments of 1995".

SEC. 2. CERTAIN CHARGES.

(a) **THIRD PARTY FEES.**—Section 106(a) of the Truth in Lending Act (15 U.S.C. 1605(a)) is amended by adding after the 2d sentence the following new sentence: "The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges.".

(b) **BORROWER-PAID MORTGAGE BROKER FEES.**—

(1) **INCLUSION IN FINANCE CHARGE.**—Section 106(a) of the Truth in Lending Act (15 U.S.C. 1605(a)) is amended by adding at the end the following new paragraph:

"(6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed.".

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect on the earlier of—

(A) 60 days after the date on which the Board of Governors of the Federal Reserve System issues final regulations under paragraph (3); or

(B) the date that is 12 months after the date of the enactment of this Act.

(3) **REGULATIONS IMPLEMENTING BORROWER-PAID MORTGAGE BROKER FEES.**—The Board of Governors of the Federal Reserve System shall promulgate regulations implementing the amendment made by paragraph (1) by no later than 6 months after the date of the enactment of this Act.

(c) **TAXES ON SECURITY INSTRUMENTS OR EVIDENCES OF INDEBTEDNESS.**—Section 106(d) of the Truth in Lending Act (15 U.S.C. 1605(d)) is amended by adding at the end the following new paragraph:

"(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.".

(d) PREPARATION OF LOAN DOCUMENTS.—Section 106(e)(2) of the Truth in Lending Act (15 U.S.C. 1605(e)(2)) is amended to read as follows:

“(2) Fees for preparation of loan-related documents.”.

(e) FEES RELATING TO PEST INFESTATIONS, INSPECTIONS, AND HAZARDS.—Section 106(e)(5) of the Truth in Lending Act (15 U.S.C. 1605(e)(5)) is amended by inserting “, including fees related to any pest infestation or flood hazard inspections conducted prior to closing” before the period.

(f) ENSURING FINANCE CHARGES REFLECT COST OF CREDIT.—

(1) REPORT.—

(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to the Congress a report containing recommendations on any regulatory or statutory changes necessary—

(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

(ii) to address abusive refinancing practices engaged in for the purpose of avoiding rescission.

(B) REPORT REQUIREMENTS.—In preparing the report under this paragraph, the Board shall—

(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

(ii) consult with and consider the views of affected industries and consumer groups.

(2) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe any appropriate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act.

SEC. 3. TOLERANCES; BASIS OF DISCLOSURES.

(a) TOLERANCES FOR ACCURACY.—Section 106 of the Truth in Lending Act (15 U.S.C. 1605) is amended by adding at the end the following new subsection:

“(f) TOLERANCES FOR ACCURACY.—In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

“(1) shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge—

“(A) does not vary from the actual finance charge by more than \$100; or

“(B) is greater than the amount required to be disclosed under this title; and

“(2) shall be treated as being accurate for purposes of section 125 if—

“(A) except as provided in subparagraph (B), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the total amount of credit extended; or

“(B) in the case of a transaction, other than a mortgage referred to in section 103(aa), which—

“(i) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 103(w), or is any subsequent refinancing of such a transaction; and

“(ii) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent of the total amount of credit extended.”.

(b) BASIS OF DISCLOSURE FOR PER DIEM INTEREST.—Section 121(c) of the Truth in Lending Act (15 U.S.C. 1631(c)) is amended by adding at the end the following new sentence: “In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.”.

SEC. 4. LIMITATION ON LIABILITY.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

“SEC. 139. CERTAIN LIMITATIONS ON LIABILITY.

“(a) LIMITATIONS ON LIABILITY.—For any consumer credit transaction subject to this title that is consummated before the date of the enactment of the Truth in Lending Act Amendments of 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this title for, and a consumer shall have no extended rescission rights under section 125(f) with respect to—

“(1) the creditor's treatment, for disclosure purposes, of—

“(A) taxes described in section 106(d)(3);

“(B) fees described in section 106(e)(2) and (5);

“(C) fees and amounts referred to in the 3rd sentence of section 106(a); or

“(D) borrower-paid mortgage broker fees referred to in section 106(a)(6);

“(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or

“(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

“(A) may be treated as accurate for purposes of this title if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$200;

“(B) may, under section 106(f)(2), be treated as accurate for purposes of section 125; or

“(C) is greater than the amount or percentage required to be disclosed under this title.

“(b) EXCEPTIONS.—Subsection (a) shall not apply to—

“(1) any individual action or counterclaim brought under this title which was filed before June 1, 1995;

“(2) any class action brought under this title for which a final order certifying a class was entered before January 1, 1995;

“(3) the named individual plaintiffs in any class action brought under this title which was filed before June 1, 1995; or

“(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 138 the following new item:

“139. Certain limitations on liability.”.

SEC. 5. LIMITATION ON RESCISSION LIABILITY.

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is further amended by adding at the end the following new subsection:

“(h) LIMITATION ON RESCISSION.—An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.”.

SEC. 6. CALCULATION OF DAMAGES.

Section 130(a)(2)(A) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)(A)) is amended—

(1) by striking “or (ii)” and inserting “(ii)”; and

(2) by inserting before the semicolon at the end the following: “, or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$200 or greater than \$2,000”.

SEC. 7. ASSIGNEE LIABILITY.

(a) VIOLATIONS APPARENT ON THE FACE OF TRANSACTION DOCUMENTS.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following new subsection:

“(e) LIABILITY OF ASSIGNEE FOR CONSUMER CREDIT TRANSACTIONS SECURED BY REAL PROPERTY.—

“(1) IN GENERAL.—Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any proceeding under section 108 against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

“(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

“(B) the assignment to the assignee was voluntary.

“(2) VIOLATION APPARENT ON THE FACE OF THE DISCLOSURE DESCRIBED.—For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

“(A) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or

“(B) the disclosure statement does not use the terms or format required to be used by this title.”.

(b) SERVICER NOT TREATED AS ASSIGNEE.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is further amended by adding after subsection (e) (as added by subsection (a) of this section) the following new subsection:

“(f) TREATMENT OF SERVICER.—

“(1) IN GENERAL.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

“(2) SERVICER NOT TREATED AS OWNER ON BASIS OF ASSIGNMENT FOR ADMINISTRATIVE CONVENIENCE.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

“(3) SERVICER DEFINED.—For purposes of this subsection, the term ‘servicer’ has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.

“(4) APPLICABILITY.—This subsection shall apply to all consumer credit transactions in existence or consummated on or after the date of the enactment of the Truth in Lending Act Amendments of 1995.”.

SEC. 8. RESCISSION RIGHTS IN FORECLOSURE.

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is amended by inserting after subsection (h) (as added by section 5 of this Act) the following new subsection:

“(i) RESCISSION RIGHTS IN FORECLOSURE.—

“(1) IN GENERAL.—Notwithstanding section 139, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial

foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

“(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

“(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

“(2) TOLERANCE FOR DISCLOSURES.—Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this title.

“(3) RIGHT OF RECOUPMENT UNDER STATE LAW.—Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

“(4) APPLICABILITY.—This subsection shall apply to all consumer credit transactions in existence or consummated on or after the date of the enactment of the Truth in Lending Act Amendments of 1995.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*