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Analyst Report:

# Streamlining TILA Compliance for Lending

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By Pelorus Associates

## Introduction

According to an April 2018 report by the Federal Reserve Bank of St. Louis, compliance costs represented an average 7% of noninterest expense over the period of 2015 to 2018. The data was collected from 1100 Community Bank and thrift institutions. A deeper dive revealed that the Truth in Lending Act (TILA), also known as Regulation Z, accounted for 21.2% of compliance expenses which could be attributable to specific regulations. This was second only to the Bank Secrecy Act which accounted for 22.3% of expenses.

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## Introduction to Truth in Lending Act (TILA)

The Truth in Lending Act is a US federal law that evolved from the 1968 Consumer Credit Protection Act. In 2011 authority was transferred to the Consumer Financial Protection Bureau which was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of July 2010.

Over the years TILA has been amended several times and now includes several related consumer financial protection laws:

- Truth in Lending Act
- Fair Credit Billing Act
- Fair Credit and Charge Card Disclosure Act
- Home Equity Loan Consumer Protection Act
- Home Ownership and Equity Protection Act
- Fair Debt Collections Practices Act
- Real Estate Settlement Procedures Act

TILA applies to consumer financing only. It does not apply to:

- Credit extended primarily for business, agricultural or commercial purposes
- Credit extended to government agencies or instrumentalities.
- Credit in excess of an annually adjusted threshold, not secured by real estate or personal property, used or expected to be used as a principal dwelling

Failure to comply with provisions of TILA can result in fees and penalties:

- Actual damages in all cases.
- Attorneys' fees and court costs for successful enforcement and rescission actions.
- Statutory damages.
- For individual actions, double the correctly calculated finance charge but not less than \$100 or more than \$1,000 for individual actions.
- For class actions, a maximum of \$500,000 or 1% of the creditor's net worth, whichever is less.

This paper is intended to remind bankers and others involved in consumer finance with some key provisions of TILA and point to advances in technology that can assist creditors in achieving compliance goals. The Truth in Lending Act (TILA) consolidates seven statutes that deal with consumer financial protections, as well as hundreds of regulatory rulings. We strive to simplify but the actual legislative language includes many exceptions which we do not go into here. Readers can learn the details at <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/>.

This is not a legal document.

## Pertinent provisions

- Terms, rates, and charges including annual percentage rate and finance charges must be expressed consistent with the required formats and tolerances. The lender must provide the borrower with the following information as part of the credit agreement:
  - Identity of the creditor
  - Amount financed
  - Itemization of amount financed
  - Annual percentage rate including applicable variable rate disclosures
  - Total payments
  - Payment schedule
  - Prepayment/ late payment penalties
  - If applicable, total sales cost, insurance, down payment and related initial expenses
- Required disclosures must be clearly and conspicuously presented in a tabular form. For example:

<b>Annual Percentage Rate</b>	<b>Finance Charge</b>	<b>Amount Financed</b>	<b>Total Of Payments</b>
The cost of your credit as a yearly rate. 14.4%	The dollar amount the credit will cost you. \$1,500.00 e	The amount of credit provided to you on your behalf. \$1,000.00	The amount you will have paid when you have made all the scheduled payments. \$2,500.00 e
<b>Your payment schedule will be:</b>			"e" indicates an estimate
Number of Payments	Amount of Payments	When Payments are Due	
18	\$140.00	Monthly, Beginning on: January 10, 2020	
<p><b>Late Charge:</b> You will be charged 5% of the unpaid balance of the installment on each installment not paid in full upon the 10th day after its due date.</p> <p><b>Prepayment:</b> You may prepay all or any portion of your debt under this Note at any time without penalty.</p> <p><b>Security Interest:</b> You are giving a security interest in the property described above.</p> <p><b>Additional Information:</b> Please read the Agreement for additional information, default the right to accelerate the maturity of the obligation, and prepayment rebates and penalties.</p> <p>E means "an estimate".</p>			

- Any annual percentage rate, any introductory rate, any rate that will apply after a premium initial rate expires, and any fee or percentage must be disclosed in bold text.
- If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply.
- The creditor shall make the disclosures required by this subpart clearly and conspicuously.
- In addition to disclosing the periodic rate(s), creditors must disclose any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees.
- The total amount of fees a consumer is required to pay with respect to a credit card account during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened.
- The card issuer shall provide required disclosures on or with a solicitation or an application to open a credit or charge card account. The disclosures are spelled out in TILA and must be in a specified tabular format.
- If the initial rate is an introductory rate, the card issuer must disclose the time period during which the introductory rate will remain in effect and must use the term “introductory” or “intro” in immediate proximity to the introductory rate.
- Disclosures provided in electronic form must be accurate as of the time they are sent or viewed.
- The creditor shall make the disclosures required clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required may be provided to the consumer in electronic form.
- A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer.
- With regard to automatic debit plans, the cardholder’s authorization must be in writing and signed or initialed by the cardholder.

- No person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.
- Creditors must mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice.
- The creditor shall comply with the appropriate resolution procedures within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.
- If the creditor believes that a billing error alleged by the consumer is incorrect, upon request the creditor must furnish copies of documentary evidence of the consumer's indebtedness.
- A creditor shall retain evidence for two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require creditors under their jurisdictions to retain records for a longer period.
- A creditor shall permit the agency responsible for enforcement to inspect its relevant records for compliance.
- Any person making a telephone solicitation to open a consumer credit plan must provide certain specified oral disclosures.
- In general, A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations.
- Card issuers must establish and maintain reasonable written policies and procedures to consider the consumer's ability to make the required minimum payments under the terms of the account based on a consumer's income or assets and a consumer's current obligations.
- A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and the card issuer has independent resources to meet payment obligations or a cosigner. There can be no credit line increases until the individual is 21 years of age.

## How Technology Is Simplifying Compliance

With the invention of the first automated teller machine in 1969 the banking industry has been no stranger to innovation. However, processes and procedures associated with consumer lending remain highly labor-intensive. As we've seen in this discussion, TILA requires highly specific disclosures when extending consumer credit and a structured and consistent approach to responding to changes in credit terms and the handling of billing errors. There are many processes associated with extending personal credit, from collecting and processing credit worthiness information to executing complex agreements. This is particularly the case with mortgage loans. Manual paper-based processing is inherently error-prone and can lead to costly compliance breaches.

Technologies are available to simultaneously eliminate risk and streamline processes. Some examples include:

### 1 Process automation vs. 'best effort'

Rather than relying on agent's best attempts, lenders can create automated workflows and triggers to ensure that the right messages are delivered to the right people at the right time. For example, when certain notifications must be sent, it can be triggered based on programmable events, not relying on agent's workday tasks or task lists.

### 2 Rule-based fulfillment vs. agent-dependent decision

Businesses can codify what needs to be presented, collected and agreed automatically based on user and 3rd party inputs. These can then trigger the associated steps for TILA compliance, rather than relying on an agent to decide and evaluate each case for themselves. These rule-based solutions can either be crafted as business workflows, or for the more advanced lenders, through RPA - robotic process automation.

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### Simplified customer discussions vs. cumbersome paperwork

Lenders can adhere to the spirit and the letter of the regulation by making it easier for end customers to receive, understand and respond to TILA legislated actions. For example, rather than subjecting them to endless stacks of legalese paper for them to print and sign and scan, they can be presented in more digestible mobile formats with business guidance to ensure they understand the regulation and its applicability.

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### Digitized vs. legacy

While lenders invest heavily in compliance, it is important that they simplify inevitable audits. By ensuring correspondence is recorded, digitized and easily accessible, they can simplify inevitable audits and ensure they have court admissible audit trails for their compliance processes. Digital files are easily archived and retrieved, to meet TILA retention requirements.



## Summary

TILA compliance has many nuances but need not be burdensome. Compliance programs can slow business because of antiquated compliance processes. This needlessly burdens both lenders and borrowers - causing them to jump through hoops of printing, scanning, faxing, branch visits and more. And, even with that heavy overlay, TILA compliance is not guaranteed - often relying on agent memory, manual interventions and heuristics for compliance. This cumbersome approach leads to errors, exposures and slows business. Investments in integrated software solutions improves accuracy, speeds performance, and reduces customer effort.

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## About the author

Dick Bucci is Principal of Pelorus Associates, a market research and consulting company that specializes in the customer care industry. Dick has authored 19 books and comprehensive reports on contact center technologies and dozens of white papers, trade articles, and blog posts. He has written extensively about the legislative and regulatory impacts on the customer care industry for both North America and Europe.

## About Lightico

Lightico's mission is to empower businesses to create streamlined experiences in the last mile of the customer journey, where customers want to get things done, now. Lightico's real-time customer collaboration platform empowers your agents to collect forms, documents, e-signatures, photos, consent to disclosures and to verify ID instantly while they have customers on the phone. By simplifying customer interactions in the last mile of the customer journey, businesses make it easier for their customers to be their customers, earning their trust and loyalty, translating to higher profits.

Streamline Your Compliance

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