Amendments to the Truth in Lending Act as Found in the Bankruptcy Prevention and Consumer Protection Act of 2005

Presented by

D. Bradley Folsom

AMENDMENTS TO THE TRUTH IN LENDING ACT AS FOUND IN THE BANKRUPTCY PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The passage of The Bankruptcy Prevention and Consumer Protection act of 2005 significantly strengthens the requirements of the Truth in Lending Act. While the changes affect primarily credit card lenders some provisions may apply to loans that are secured by a dwelling, that feature an introductory rate, that are solicited over the Internet, or that feature late payment penalties.

I. Open-End Credit Plan Disclosures (Sec. 1301).

Lenders in open-end credit plans must provide specific new warnings as part of the periodic disclosures required by the Truth in Lending Act. These new warnings will alert the consumer to the undesirable financial consequences of making only the minimum required payment on the account each month.

A. Consumer Warning Options.

1. Creditor maintained Toll-Free Number. Disclosing Actual Number of Months to Repay Debt.

A creditor may maintain a toll-free number where customers may obtain the actual number of months that it will take to repay the customer=s outstanding balance. If a creditor chooses to provide such toll-free number the following statement must appear on each periodic billing statement: AMaking only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information please call this toll-free number.......

2. Creditor Maintained Toll-Free Number Not Disclosing Actual Number of Months to Repay Debt.

If a creditor chooses not to provide a toll-free number where customers may obtain the actual number of months that it will take to repay the customer=s outstanding balance, then the following requirements apply:

(a) Minimum payment of (4%) or less: Where the minimum monthly payment does not exceed 4% of the balance, the following statement must be Aclearly and conspicuously@ disclosed in a prominent location on the front of the statement: AMinimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number.....

(b) Minimum payment above 4%*:* Where the minimum monthly payment exceeds 4% of the balance, the following statement must be Aclearly and conspicuously@ disclosed in a prominent location on the front of the statement: AMinimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number......

3. Substitute Notices.

In making the disclosures described above, a lender may substitute an example based on an interest rate that is greater than 17%. Any creditor eligible to make the disclosure described in paragraph 2 above may choose to make the disclosure described in paragraph 1 above instead. The Federal Reserve Board may from time to time amend the example in paragraphs 1 and 2 above by adopting a rule spelling out the modified disclosures.

4. Toll-Free Phone Number.

The toll-free number that a bank, savings association, or credit union creditor must disclose (see paragraphs 1 and 2 above) may be established and maintained by the creditor or a third party for use of the creditor or multiple creditors. The number may connect consumers to an automated device where consumers access information by inputting data through a touch-tone phone, provided consumers whose phones lack touch-tone features are also afforded a means to obtain the same information.

5. Disclosure Table Provided.

The Federal Reserve Board will publish a detailed table illustrating the data that must be disclosed, calculated for a number of different percentage rates, account balances, and minimum payment amounts. The board will promulgate regulations governing the use of this table in responding to consumer queries to the toll-free number.

6. Temporary Alternative.

For the first two years after this provision takes effect, the Federal Reserve Board will maintain a toll-free telephone number for use by depository institutions with assets not exceeding $250 million. Qualifying institutions may rely on this toll-free number for complying with the requirements outlined in paragraphs 1 and 2 above. Not later than 6 months after this temporary alternative is scheduled to expire, the Federal Reserve Board will report to Congress on its operation. Presumably, this provision is intended to enable Congress to consider whether to expand the program.

B. Separate Rule for Non-bank Lenders.

For lenders subject to regulation by the Federal Trade Commission a slightly different rule applies. This rule requires the following disclosure in all cases, regardless of the size of the required minimum payment; AMinimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number........@

The Federal Trade Commission will establish and maintain a toll-free number for providing consumers with the required information.

II. Credit Secured by a Dwelling (Secs. 1302).

A. Disclosures for Open-end Credit Lines.

Currently, initial disclosures made when a consumer applies for an open-end loan secured by a dwelling must include a notice cautioning the consumer to consult a tax advisor regarding the deductibility of interest and charges under the plan. Under the new law, lenders will now be required to include an additional statement notifying consumers that in cases where the loan value exceeds the fair market value of the dwelling, interest on the portion of the loan exceeding fair market value is not deductible for federal income tax purposes.

B. Advertisements for Open-end Credit Lines.

Advertisements relating to the extension of open-end credit secured by a dwelling must include a clear and conspicuous statement stating that in cases where the loan value exceeds the fair market value of the dwelling, interest on the portion of the loan exceeding fair market value is not deductible for federal income tax purposes and that the consumer should consult a tax advisor regarding the deductibility of the interest and charges.

C. Disclosures for Closed-end Credit.

Where a closed-end loan secured by a dwelling exceeds the fair market value of the dwelling, disclosures made at the time of application must include a statement that interest on the portion of the loan exceeding fair market value is not deductible for federal income tax purposes and that the consumer should consult a tax advisor regarding the deductibility of the interest and charges.

D. Advertisements for Closed-end Credit Lines.

Advertisements relating to the extension of open-end credit secured by a dwelling must include a clear and conspicuous statement that in cases where the loan value exceeds the fair market value of the dwelling, interest on the portion of the loan exceeding fair market value is not deductible for federal income tax purposes and that the consumer should consult a tax advisor regarding the deductibility of the interest and charges.

E. Advertisement Disclosures.

The additional advertisement disclosures stated in sections B and D above do not apply to radio or television ads.

III. General Effective Date.

The changes enacted by the amendments to the Truth in Lending Act will take effect 180 days after the measure is signed into law.