Foreword

The current regime of federal statutory, judicial and administrative oversight of consumer credit finds its roots in the enactment of the Truth in Lending (TIL) Act as part of the federal Consumer Credit Protection Act in 1968 (effective July 1, 1969). Over the ensuing forty-five years, we have witnessed the evolution of TIL law from an effort to provide simple, basic disclosures into the anchor for a comprehensive federal system of consumer credit regulation, with widespread effects on the composition of the consumer credit industry and the complexity and availability of consumer credit transactions. Periodic efforts at simplification have yielded important benefits but have not altered this basic path. Public policy responses to the consumer credit expansion that ended in 2007–2008, including enactment of the Dodd-Frank Act and its creation of the Bureau of Consumer Financial Protection (CFPB), are further milestones in this evolution. *The Law of Truth in Lending* advises practitioners on the scope and details of the issues to be addressed when considering the resulting matters of TIL compliance, disclosure, remediation, and enforcement.

This book has several major facets, including: (1) incorporation (throughout the text) of the updates previously provided in cumulative Supplements to the 2000 edition of this book, through 2009; (2) additionally providing similar updates of developments through 2013; (3) referencing the Dodd-Frank Act and related CFPB developments as relevant throughout the text; (4) summarizing developments outside of the Dodd-Frank Act in Chapter 15; and (5) summarizing Dodd-Frank Act issues and CFPB activities in Chapter 16.

Thus, for example, Chapter 1 (Overview of Truth in Lending) provides an introduction to and overview of TIL law from its inception through 2013, and Chapter 2 describes the scope of the TIL Act and Regulation Z. Chapter 15 additionally summarizes 21st century developments prior to the Dodd-Frank Act (focusing on the period 2005–2010); and Chapter 16 summarizes developments since 2010 with an emphasis on the Dodd-Frank Act and CFPB. The chapters in between (Chapters 3–14) cover many of the same issues in the context of more detailed discussion of specific issues and types of transactions. The further discussion below, noting the contents of this book, is necessarily selective, in order to illustrate the topics covered.

Chapter 1 by Eric L. Johnson describes the history and purpose of TIL law through 2013, including each major revision and related source material. In Chapter 2 Eric covers the important scope issues that define the reach of the TIL Act and Regulation Z.

In Chapter 3, James A. Huizinga and John K. Van De Weert describe the statutory and regulatory provisions and important case law on calculating and disclosing the finance charge, and related issues including issues such as: yield-spread premiums; hidden finance charges; overdraft and membership fees; over-the-limit credit card fees; and transaction charges such as title insurance and document preparation charges. Yield-spread premiums are also covered in
6.12. Chapter 3 also discusses changes that have de-emphasized the disclosure of the finance charge.

In Chapter 4, Teresa G. Franzen and Jennifer Dozier describe the all-important Annual Percentage Rate (APR) calculation and disclosure, and related issues such as the effects of minor errors and irregularities. In Chapter 5 Catherine M. Brennan, Meghan S. Musselman and Timothy P. Meredith describe the TIL regime governing closed-end credit disclosures, including the scope of the definition of terms such as “creditor” and “consumer,” the timing requirements, and the impact of subsequent events. The form, format and content of the disclosures are among the important issues described, with detailed coverage of each item required to be disclosed.

Chapter 6 is devoted to real estate transactions (although these are also covered at relevant points in other chapters). Paragraphs 6.01 – 6.09 by Robert A. Cook, Timothy P. Meredith and Daniel J. Laudicina cover issues such as the impact of the Dodd-Frank Act (¶ 6.02), computation and disclosure of the Finance Charge in real estate transactions (¶ 6.04), alternative mortgage financing (¶ 6.05), variable-rate transactions (¶ 6.06), residential mortgage transactions (¶ 6.07), home equity plans (¶ 6.08), and reverse mortgages (¶ 6.09). The material on high-cost mortgage loans (¶ 6.10) was completely rewritten by Laura H. Brown, Bennet S. Koren and Robert Savoie, with additional contributions to ¶¶ 6.10 and 6.12 by David A. Tallman and Steven Kaplan.

Chapter 7 reflects important changes resulting from implementation of the CARD Act since its enactment in 2009, as well as other developments including 2005 amendments to the Bankruptcy Code. It was completely rewritten by Daniel J. Laudicina and Frank H. Bishop, Jr. to reflect these important revisions in the required disclosures for open-end credit. Additional material on implementation of the CARD Act, by Stanton Koppel and Helen Y. Lee, appears at ¶ 15.10.

Chapter 8 on the right of rescission was again updated by Professor Daniel J. Morgan, to cover the important litigation developments in this area in recent years. Additional material on these and related issues appears in the case law update at ¶ 15.04.

Billing error resolution (Chapter 9) was updated by John L. Culhane, Jr.; the rights of credit card and other open-end account holders are covered by Daniel J. Laudicina and Timothy P. Meredith in Chapter 10.

Chapter 11 (Credit Advertising) was revised and updated by Scott Johnson. Revised Chapter 11 reflects the ever-changing landscape of consumer credit advertising and regulatory attempts to ensure that consumers are able to make informed decisions regarding credit. We have seen an emphasis on the type of credit advertised, dictating which advertising requirements apply. High-cost home loans, student loans, and credit cards marketed to college students are just some of the types of credit that now trigger specific requirements. The Board also addressed specific practices such as misleading representations in home-secured credit advertising and the marketing of student loans. Regulators have also attempted to keep pace
with the changes in technology available for credit advertising. Creditors have moved away from catalog and multi-page advertisements and to some extent radio and television and moved onto the Internet. We will continue to see the evolution of how information, including credit advertisements, is delivered to consumers. Creditors will continue to use social media, mobile devices, and new technologies to advertise credit. With those innovations will come the need to make sure that the information delivered is accurate and truthful. Going forward, regulators will be challenged to fit unique, novel advertising mediums into the framework of the TIL Act and Regulation Z.

Chapter 12 (Private Remedies for Truth in Lending Violations) has been completely revised by John L. Ropiequet to integrate the many developments in TIL litigation that have been reported in the annual Supplements through 2009 into this text, as well as to incorporate the many changes to substantive law under the TIL Act that were put into effect by the Dodd Frank Act and that affect TIL litigation. Special attention was given to delete or modify material that has become obsolete due to these developments.

Chapter 13, updated by Jeffrey P. Taft, describes administrative enforcement of TIL by various agencies, including specific enforcement authority of the CFPB and other agencies (see also Chapters 15 and 16). This includes extensive discussion of restitution and criminal enforcement. The relation of TIL to other law, including other parts of the Consumer Credit Protection Act, other federal law, and (importantly) the vast array of state law that forms the foundation for consumer credit law, is covered in Chapter 14, updated by Marc J. Lifset and Nancy R. Wilsker.

Chapter 15 then aims to bring together and summarize some of the most important 21st century developments (largely excluding the Dodd-Frank Act, which is covered in much the same way in Chapter 16, though there is some overlap between Chapters 15 and 16). Most of this material is new, being outside the coverage of the previous text and Supplements. Chapter 15 is authored largely by: Jeffrey P. Taft; Stephen F.J. Ornstein; Mathew S. Yoon; John P. Holahan; David A. Tallman; Scott D. Samlin; Rinaldo Martinez; John L. Ropiequet; Marc S. Zaslavsky; Stanton Koppel; and Helen Y. Lee.

For example, ¶ 15.10, by Stanton Koppel and Helen Y. Lee, focuses on summarizing the provisions of the Credit CARD Act of 2009 (CARD Act) and addresses how the CARD Act and implementing regulations have impacted credit card practices since enactment of that law. In particular, the authors note that the requirement for periodic reviews under the CARD Act will foster continual evolution of credit card practices by providing industry stakeholders, such as regulators, issuers and consumers, recurring opportunities to monitor the effectiveness of the CARD Act in meeting its stated objectives of bringing fairness and transparency to the credit card market and for the CFPB to adopt refinements within the latitude provided by the CARD Act.

Chapter 16, with contributions by numerous authors, summarizes the Dodd-Frank Act and traces its impact (through litigation and regulation)
on TIL law and related areas. The relation between the Dodd-Frank Act, the TIL Act and Regulation Z, and other consumer credit issues has become an overriding concern in many respects, and Chapter 16 (as well as the treatment of these issues through-out this book) is intended to help interested parties navigate through these issues. The authors for Chapter 16 are: Christopher L. Allen; Frank H. Bishop, Jr.; Roland E. Brandel; William W. Carpenter; Robert A. Cook; Richard P. Hackett; Kevin Hall; Jason B. Hirsh; John P. Holahan; Stefanie Jackman; Stephen S. Kudenholdt; Brian P. Larkin; Marjorie L. Levine; Jeremy R. Mandell; Rinaldo Martinez; Michael B. Mierzewski; Meghan Musselman; Christopher S. Naveja; Stephen F.J. Ornstein; John L. Ropiequet; Scott D. Samlin; Colgate Selden; John D. Socknat; Harry Wu; and Matthew S. Yoon.

Chapter 16 provides an illustration of how this book works, reflecting some of the ways in which the CFPB has become an active regulator. For example, by establishing an Office of Fair Lending and Equal Opportunity and signing a memorandum of understanding on fair lending coordination with the Department of Justice, the CFPB has built an infrastructure to enforce fair lending laws. In 2013, the CFPB and the Department of Justice brought their first joint fair lending enforcement action, which resulted in the federal government's largest auto loan discrimination settlement in history. The CFPB also has brought a number of actions to enforce other consumer financial protection laws.

In addition, the CFPB has been working to engage industry participants and the public, for example issuing a policy to encourage trial disclosure programs and a request for feedback on how the CARD Act has affected consumers and the business practices of issuers. In the rulemaking area, the CFPB has issued rules that require substantial compliance efforts. Particularly, the Ability-to-Repay/Qualified Mortgage rule, as well as other mortgage related rules, became effective in January 2014. As the CFPB begins to examine lenders and other financial services providers for compliance with these rules, we expect to see more guidance on the agency’s expectations, and likely more enforcement actions. As one example, ¶ 16.11 by Michael B. Mierzeweski, Christopher L. Allen, Brian P. Larkin, Marjorie L. Levine and Harry Wu highlights many of these issues.

In many ways, as reflected in the contents of this book, TIL and related laws may seem to have developed in chaotic ways over the course of this century to date. In other ways, some rules may now be more clear than in the past, even if those rules are not popular with some of those affected. It is the purpose of this book to help readers navigate through these troubled waters, in the hope that guidance can be provided to help interested parties anticipate and resolve common problems, in order to conduct important consumer credit transactions with acceptable levels of cost and legal certainty.

Alvin C. Harrell
Professor of Law
Oklahoma City University School of Law
July 2014