

## CFPB Files Amicus Brief in TILA Suit, Impacts How Banks Collect on HELOCs

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Recently, the CFPB filed an [amicus brief](#) in the U.S. Court of Appeals for the Fourth Circuit arguing that the court should reinstate a borrower's putative class action claim against a national bank. The CFPB argued that the district court erred by improperly narrowing a provision in Regulation Z of the Truth in Lending Act (TILA) that prohibits lenders from withdrawing from deposit accounts to cover debts caused by credit card plans.

The plaintiff held a credit card with the bank that could access a home-equity line of credit (HELOC). When the consumer fell behind on his payments, the bank withdrew several thousand dollars from his bank deposit accounts to cover that debt. The plaintiff filed suit against the bank, alleging, in part, that the bank violated TILA's offset provision by taking funds from his deposit accounts to pay off his HELOC account. The district court dismissed the TILA claim, holding that the plaintiff's HELOC was not a covered "credit card plan" under Regulation Z's offset provision because Regulation Z defines such a plan as a "credit card account under an open-end (not home-secured) consumer credit plan."

The CFPB argues that TILA and Regulation Z do not expressly define "credit card plan," but the offset provision has terms that are broad enough to include HELOCs. The CFPB also argued that the district court's holding conflicts with its and the Federal Reserve Board's interpretation of TILA's "plain language" applying to products that meet the definition of a "credit card"—which the CFPB officially interprets to include "HELOCs . . . accessed by cards" in its comments to Regulation Z.

**Putting it into Practice:** If the court agrees with the CFPB's position and reverses the district court's ruling, many lenders may have to review their current HELOC programs, particularly if the HELOC program is linked to the use of a credit card. Moreover, if the CFPB's position is supported by the Fourth Circuit, it is likely that the CFPB would seek to impose its position on a nationwide basis. Depending on the scope of the final decision, banks might find themselves no longer able to offset missed payments by withdrawing amounts from the customer's checking account, and also be forced to pursue collection efforts as though the HELOC were a credit card.

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