

# *The Business Lawyer* at 75: The Annual Survey of Consumer Financial Services Law

By John L. Ropiequet\*

Over its forty-two year history in *The Business Lawyer*, the *Annual Survey on Consumer Financial Services Law*, written by numerous members of the Consumer Financial Services Committee, has chronicled the developments in an ever-changing area of law that deals with the regulation of credit products for personal, family, and household purposes. From the enactment of the Truth in Lending Act in 1974 to the enactment of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act in 2010 to the present, the alphabet soup of new federal statutes and their alphabetized federal regulations has created an astonishingly complex legal structure that has in turn led to the establishment of an army of compliance lawyers and litigators who are devoted to dealing with it. This article describes what the *Annual Survey* has done to keep the profession abreast of the twists and turns in this fascinating field during several different eras that reflect larger economic developments like the go-go eighties and the housing foreclosure crisis that followed it, and the congressional reactions to perceived abuses.

## INTRODUCTION

Unlike other categories of articles or annual surveys published in *The Business Lawyer* (“TBL”),<sup>1</sup> the *Annual Survey of Consumer Financial Services Law* (“*Annual Survey*”) cannot claim to have played a role in shaping its area of the law or even in influencing the policymakers who draft it, despite occasional laments from its editor about the chaotic state of federal consumer finance law with the hope that the states would enact uniform laws to improve the situation.<sup>2</sup> Rather, from its inception with Volume 34 of *TBL* in 1979, the *Annual Survey*’s authors and editors have done their utmost to chronicle and keep their readers

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1. See Patrick T. Clendenen, Penelope L. Christophorou & Gregory M. Duhl, *The Business Lawyer at 75: Introduction*, 75 *BUS. LAW.* 1571, 1571–72 (2019); Jonathan C. Lipson & Steven O. Weise, *The Business Lawyer at 75 and Secured Transactions Under Article 9 of the Uniform Commercial Code*, 75 *BUS. LAW.* 1575, 1576, 1578–84 (2019).

2. See, e.g., Lynne B. Barr, Alvin C. Harrell, Jeffrey I. Langer & Fred H. Miller, *Introduction to the 2004 Annual Survey of Consumer Financial Services Law: Where Do We Go From Here?*, 59 *BUS. LAW.* 1121, 1123 (2004).

abreast of the sometimes explosive growth of a legal subject matter that came into being following the enactment of the much-amended Truth in Lending Act (“TILA”)<sup>3</sup> in 1968.

### THE ORIGINS AND EARLY HISTORY OF THE ANNUAL SURVEY

The first *Annual Survey* to bear that title appeared in Volume 34, Issue 3 of *TBL* in April 1979. It was introduced by Roland E. Brandel of Morrison & Foerster, where he still practices today, as chairman of the Committee on Regulation of Consumer Credit, now the Committee on Consumer Financial Services (“Committee”), of the Section of Corporation, Banking and Business Law, now the Business Law Section (“Section”).<sup>4</sup> He made a number of observations in a short introduction about the subject of consumer finance law and the purpose of starting an *Annual Survey* devoted to it that are still valid today.

Brandel noted first of all that “the wide availability and universal use of credit by individuals for personal, family, and household purposes” was something new, “in large part a post-World War II phenomenon.”<sup>5</sup> He observed that the TILA, which he called by its more formal title of the Consumer Credit Protection Act (“CCPA”),<sup>6</sup> had a “limited purpose ‘to assure meaningful disclosure of credit terms’” so that consumers could compare credit offerings through “a relatively simple piece of legislation that would have a limited impact on creditors.” However, the TILA had nevertheless experienced “rapid and some feel uncontrolled growth,” turning it into something rather different.<sup>7</sup> Brandel marveled at the TILA’s accretion of sixty Official Board Interpretations and fifty-nine Official Staff Interpretations plus 1,200 public staff opinion letters coming from the Federal Reserve Board (“FRB”), in addition to the 9,000 TILA lawsuits filed in federal court and countless other claims and counterclaims filed in the state courts through mid-1978, all within ten years of its enactment.<sup>8</sup>

This, as we know today, forty years on, was just the start of a flood of consumer financial services laws and acronyms that had become evident even then with the enactment of the seven newer laws that Brandel listed<sup>9</sup>: the Fair Credit Reporting Act (“FCRA”);<sup>10</sup> the Fair Credit Billing Act, added to the TILA;<sup>11</sup> the Equal Credit

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3. Pub. L. No. 90-321, 84 Stat. 146 (1968) (codified as amended at 15 U.S.C. §§ 1601–1667f (2018)).

4. Roland E. Brandel, *An Overview and Introduction*, 34 *BUS. LAW.* 1401 (1979) [hereinafter *1979 Introduction*].

5. *Id.* at 1401.

6. The CCPA has now grown to encompass several other statutes, with the TILA in part of a subchapter labeled more precisely as Consumer Credit Cost Disclosure, 15 U.S.C. ch. 41, subch. I.

7. *1979 Introduction*, *supra* note 4, at 1401.

8. *Id.*

9. *Id.* at 1401–02.

10. Pub. L. No. 91-508, tit. VI, 84 Stat. 1114, 1128 (1970) (codified as amended at 15 U.S.C. §§ 1681–1681x (2018)).

11. Pub. L. No. 93-495, tit. III, 88 Stat. 1512 (1974) (codified as amended at 15 U.S.C. §§ 1666–1666j (2018)).

Opportunity Act (“ECO”);<sup>12</sup> the Consumer Leasing Act (“CLA”), also added to the TILA;<sup>13</sup> the Fair Debt Collection Practices Act (“FDCPA”);<sup>14</sup> the Electronic Fund Transfer Act (“EFTA”);<sup>15</sup> and the Bankruptcy Act.<sup>16</sup> He termed this “the creation of a large and intricate body of federal law regulating the extension of consumer credit where there was no law but ten years ago.”<sup>17</sup> These laws had sanctions “often severe” so that “every attorney who must advise a client on such matters should maintain an adequate level of awareness of this constant proliferation of a new legal development.”<sup>18</sup>

What was the solution to this dire state of affairs? The publication of the *Annual Survey*, which Brandel described as something planned to help practitioners find their way: “The following series of articles . . . deal with a segment of our economy that is of relatively recent significance and with a body of statutory and regulatory law that is of even more recent origin.”<sup>19</sup> The *Annual Survey* was “conceived as a partial response to the educational lag caused by this ever-expanding federal intervention into the field of consumer finance.”<sup>20</sup> Its purpose was not “a close dissection of individual developments to educate consumer credit experts,” but a means “to educate attorneys who are interested in maintaining proficiency in the field of consumer finance, but do not have occasion to closely and continuously monitor developments as they unfold.”<sup>21</sup> He hoped that through the *Annual Survey*, “consumer credit trends can be discerned and occasional predications can be made as to what those trends mean for the immediate future.”<sup>22</sup> These are words that have guided the editors of the *Annual Survey*, even those who never read them until doing research to write this article.

The seven articles in the first *Annual Survey* that were edited by the author of the final piece, William R. Burke, covered the waterfront as it then was, before the continuing change in the climate of consumer financial services law caused coastal flooding that moved the waterfront well inland from where it started. Professor Fred Miller of University of Oklahoma Law Center, who has also remained active with the Section to the present day, wrote about the latest developments in TILA regulations and litigation.<sup>23</sup> He may have been overly optimistic about the presumed salutary effects that would come from publishing an *Annual Survey*:

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12. Pub. L. No. 93-495, 88 Stat. 1500, 1521 (1974) (codified as amended at 15 U.S.C. §§ 1691–1691f (2018)).

13. Pub. L. No. 94-240, 90 Stat. 257 (1976) (codified as amended at 15 U.S.C. §§ 1667–1667f (2018)).

14. Pub. L. No. 95-109, 91 Stat. 874 (1977) (codified as amended at 15 U.S.C. §§ 1692–1692p (2018)).

15. Pub. L. No. 95-630, tit. XX, 92 Stat. 3728 (1978) (codified as amended at 15 U.S.C. §§ 1693–1693r (2018)).

16. Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified as amended at 11 U.S.C. §§ 101–1330 (2018)).

17. 1979 *Introduction*, *supra* note 4, at 1402.

18. *Id.*

19. *Id.* at 1401.

20. *Id.* at 1402.

21. *Id.* at 1403.

22. *Id.*

23. Fred H. Miller, *Truth in Lending Act*, 34 BUS. LAW. 1405 (1979).

The Truth in Lending Act, complex at the beginning, has not materially progressed towards simplification in the decade that it has been in existence. In fact, the trend has been decidedly in the direction of increased complexity. . . . A well informed bench and bar can perhaps serve as a useful brake against a worsening of the situation.<sup>24</sup>

The other six articles on what were considered the most important developments in consumer financial services law were: an article by Professor Ralph Rohner of Catholic University of America School of Law on regulatory developments under the ECOA, notably what was required by the statute and the new Regulation B promulgated thereunder that he was largely responsible for drafting, but with little in the way of litigation or Federal Trade Commission (“FTC”) enforcement actions to discuss yet;<sup>25</sup> an article about compliance with the Right to Financial Privacy Act of 1978<sup>26</sup> that discussed what the statute required when financial records are disclosed to U.S. agencies;<sup>27</sup> an article on the EFTA that covered what the statute required, but with no litigation or enforcement actions yet to make use of its civil and criminal liability provisions;<sup>28</sup> an article by William J. O’Connor on New York’s new Plain English Act,<sup>29</sup> which was hoped to be a sign of things to come elsewhere;<sup>30</sup> an article on the FDCPA by consumer advocate Toby J. Rothschild that opined that litigation would be needed to resolve issues like the meaning of “debt collector” since the FTC could not resolve it;<sup>31</sup> and an article by Burke about consumer credit and the Bankruptcy Act, the then-new Title 11 of the U.S. Code that we are still living with today.<sup>32</sup>

The whole *Annual Survey* occupied seventy-six printed pages, half of what its editors turn out today and less than a quarter of what was published in some future years, before the exigencies of printing and postage costs caused the editors to have to squeeze harder. Many of the topics became evergreen sources of future survey articles because the whole topic of consumer financial services law had already become grounded in a few basic federal statutes and it has remained so, although, as will be seen, it has expanded as more statutes were added to the pot. Indeed, for the forty-two issues of the *Annual Survey* through Volume 75 in 2020, the TILA was the subject of forty-four survey articles, the ECOA was the subject of forty-four articles, the EFTA was the subject of sixteen articles, and the FDCPA was the subject of thirty articles.

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24. *Id.* at 1405.

25. Ralph J. Rohner, *Equal Opportunity Credit Act*, 34 *BUS. LAW.* 1423 (1979).

26. Pub. L. No. 95-630, tit. XI, 92 Stat. 3641 (1978) (codified as amended at 12 U.S.C. §§ 3401–3422 (2018)).

27. Harvey N. Bock & Alan R. Feldman, *Compliance by Private Institutions with the Right to Financial Privacy Act of 1978*, 34 *BUS. LAW.* 1435 (1979).

28. Peter D. Schellie, *Electronic Funds Transfer Act*, 34 *BUS. LAW.* 1441 (1979).

29. N.Y. GEN. OBLIG. LAW § 5-708 (McKinney 2018).

30. William J. O’Connor, *Plain English*, 34 *BUS. LAW.* 1453, 1455–56 (1979).

31. Toby J. Rothschild, *Debt Collection*, 34 *BUS. LAW.* 1459, 1463–64 (1979).

32. William M. Burke, *Consumer Credit and the New Bankruptcy Act*, 34 *BUS. LAW.* 1467 (1979).

In the *Introduction* to the 1980 *Annual Survey*, Brandel again cautioned that “the reader will not find, for the most part, in-depth analyses of abstruse points,” something that has become impossible for the editors to avoid in succeeding years, “but an exposition of selected major developments and occasional predictions by teams of experts, so as to allow the nonexpert to maintain a proficiency in the field of consumer financial services law without the daily monitoring and synthesis of apparently unrelated developments that might otherwise be required.”<sup>33</sup> The seven articles of the second *Annual Survey* largely updated the first set. A “late-breaking postscript” was added by *TBL*’s editors for a discussion of the Supreme Court’s first TILA decision, *Milhollin v. Ford Motor Credit Co.*,<sup>34</sup> that appears to have been shoehorned into what otherwise would have been white space at the end of a survey article plus adding an extra page at the end of the issue.<sup>35</sup> Future *TBL* editors, at least in the author’s experience, have exercised more restraint in adding late-breaking developments after the page-proof stage has been reached despite urgent pleas from survey authors.

The second *Annual Survey* recounted the first attempts by Congress and the FRB to simplify the complexity of the TILA,<sup>36</sup> a task that still remains unfinished today. It also included the first article on the FCRA and privacy rights under federal statutes,<sup>37</sup> a topic that has become another evergreen subject, with thirty articles appearing through Volume 75 in 2020. The second *Annual Survey* concluded with a new feature, a recent developments section featuring the work of several authors including the first of many contributions by Alan S. Kaplinsky, a future chair of the Committee and still a forceful presence at almost all of its meetings.<sup>38</sup>

New editors joined Brandel for the third, fourth, and fifth *Annual Surveys*. In the third *Introduction*, he and Fred Miller remarked that “[t]he deluge of federal laws and regulations that in 1968 began to rain down upon the credit granting sector of the economy provided the *raison d’être* for the creation of the Committee.”<sup>39</sup> Furthermore, “[t]he life span of the Committee has been co-extensive with the significant involvement of the federal government in the relationship between those who provide consumer financial services and the individuals who consume those services.”<sup>40</sup> The big news in 1980 was that, after “substantial problems” created by the enactment of the TILA, Congress had passed the Truth in Lending Simplification and Reform Act, through which Congress “took steps necessary to begin solving them.”<sup>41</sup> Combined with the Supreme Court’s decision in *Milhol-*

33. Roland E. Brandel, *Introduction to the Annual Survey of Consumer Financial Services Law*, 35 *BUS. LAW.* 1193, 1193 (1980).

34. 444 U.S. 555 (1980).

35. David S. Willenzik & Mark Leymaster, *Recent Trends in Truth-in-Lending Litigation*, 35 *BUS. LAW.* 1197, 1220 (1980).

36. William J. O’Connor, Jr., *Truth in Lending Simplification*, 35 *BUS. LAW.* 1221 (1980).

37. Alan R. Feldman & George Gordin, Jr., *Privacy and Personal Information Reporting: The Legislative Boom*, 35 *BUS. LAW.* 1259 (1980).

38. Ralph J. Rohner, *Recent Developments*, 35 *BUS. LAW.* 1311 (Ralph J. Rohner ed., 1980).

39. Roland E. Brandel & Fred H. Miller, *Introduction to the Annual Survey of Consumer Financial Services Law*, 36 *BUS. LAW.* 1129, 1129 (1981).

40. *Id.*

41. *Id.* at 1130.

lin, they found that the Simplification Act “promises to mitigate problems with the Truth in Lending Act.”<sup>42</sup> The Simplification Act was not simple, of course, requiring a lengthy multi-author article just to explicate what was in it.<sup>43</sup> That, plus twenty pages of TILA developments<sup>44</sup> and other topics, helped to pump up the third *Annual Survey* to 135 pages, not much smaller than it is today.

The fourth *Annual Survey* began with the comforting thought that “the major changes wrought by the Truth in Lending simplification and reform efforts in 1980–81 will at last mitigate the vast majority of past problems in that area.”<sup>45</sup> In addition, “this year [1981] saw the promulgation of an entirely rewritten regulation Z and the consolidation of well over 1,000 Federal Reserve Board interpretations and staff opinions into a new law source called a ‘commentary.’ Not surprisingly, it takes a lengthy article in this survey merely to detail the welcome news.”<sup>46</sup> The fourth *Annual Survey* was also notable for Burke’s and Kaplinsky’s even longer article on the Depository Institutions Deregulation and Monetary Control Act of 1980<sup>47</sup> that allowed mortgage loan interest rates to become untethered by state usury limits.

There was a special bonus in Volume 37 of *TBL*, transcriptions of the Section’s National Institute on Consumer Credit in December 1981 featuring presentations by and panel discussions among nineteen people, including many previous survey authors, and edited by Ralph Rohner.<sup>48</sup> Brandel’s brief *Introduction* took note of two earlier national institutes on consumer finance law in 1970 and 1977.<sup>49</sup> The 1970 institute dealt with the “national phenomenon” of consumerism and what might result from the then-one-year-old TILA.<sup>50</sup> Of the twenty-one papers and panel discussions presented by a slew of professors and eminent members of the bar like Frederick G. Fisher, Jr., whose well-attended memorial program is part of every spring meeting of the Section, Brandel singled out then-Congressman Abner J. Mikva’s opening remarks as “a call to arms” that listed problems that had to be cured by society, citing such examples as the holder in due course doctrine and confessions of judgment in cognovit notes.<sup>51</sup>

Brandel described the 1977 National Institute on Consumer Credit as a “new, and much broader, exercise” at a time when “business was reeling” and “attempting to deal with a procession of new federal and state statutes, regulations, and

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42. *Id.*

43. *Truth in Lending Simplification*, 36 *BUS. LAW.* 1161 (William J. O’Connor, Jr. ed., 1981).

44. David S. Willenzik & D. Edwin Schmelzer, *Truth in Lending Activities in 1980*, 36 *BUS. LAW.* 1133 (1981).

45. Roland E. Brandel & Fred H. Miller, *Introduction to the Annual Survey of Consumer Financial Services Law*, 37 *BUS. LAW.* 1043, 1043 (1982).

46. *Id.*

47. Pub. L. No. 96-221, 94 Stat. 101 (1980) (codified as amended in scattered sections of 15 U.S.C. ch. 41, subch. I (2018)).

48. Nat’l Inst. on Consumer Credit, *Consumer Financial Services in the 1980s*, 37 *BUS. LAW.* 1293 (1982).

49. Roland E. Brandel, *Introduction*, 37 *BUS. LAW.* 1293 (1982) [hereinafter *1982 Introduction*].

50. *Id.* at 1294.

51. *Id.*; see Abner J. Mikva, *An Overview*, 26 *BUS. LAW.* 753 (1971). The proceedings of the National Institute may be found at 26 *BUS. LAW.* 753–941 (1971).

federal pronouncements.”<sup>52</sup> Featuring twelve different sets of remarks, addresses, and panel discussions by twenty-seven speakers, the national institute was essentially the precursor of the first *Annual Survey*, although the title of the closing panel discussion, “Consumer Credit Regulation: Illusion or Reality?”<sup>53</sup> is not a question that has been posed again in any *Annual Survey* or, in the author’s recollection, at any meeting of the Committee that he has attended over the past twenty years.

Ralph Rohner took over the editorship for the fifth *Annual Survey*. In his and Brandel’s view, the year just past “produced no single major development, but rather a series of changes, adjustments, and minor eruptions that in the aggregate suggest that the financial services marketplace and the law affecting it are still evolving,”<sup>54</sup> a description that could equally well apply to most subsequent *Annual Surveys*. The survey article on the TILA marked the debut of future Committee and Section Chair Lynne Barr.<sup>55</sup> The only “new” issue covered, with the benefit of thirty-seven years’ hindsight, was “Renting a National Bank’s Charter” to avoid state usury limitations, something that can still be a troubling matter.<sup>56</sup>

## THE ANNUAL SURVEY DURING THE QUIET YEARS OF THE 1980s

Volume 39 in 1984 saw a new chairman leading the Committee, Carl Felsenfeld, who later became a professor at Fordham Law School. Felsenfeld and Rohner found that for the TILA section of the *Annual Survey*, there had been merely “leftover” litigation from the presimplification days” to report on along with “modest” changes in the statute, Regulation Z, and the Official Staff Comments.<sup>57</sup> The Simplification Act apparently had done its work well because the TILA report “fails to find a single significant reported case since October 1, 1982, the effective date of the revised regulation Z.”<sup>58</sup> However, despite characterizing the TILA landscape as “calm,” the TILA survey authors wisely cautioned that “unbridled optimism on the future of compliance with Truth-in-Lending is not yet warranted.”<sup>59</sup> Likewise, the editors found that little was new with the

52. 1982 *Introduction*, *supra* note 49, at 1294.

53. Carl Felsenfeld, Lewis H. Goldfarb, Robert W. Johnson, Richard P. McManus & Curtis A. Prins, *Consumer Credit Regulation: Illusion or Reality?*, 33 *BUS. LAW.* 1145 (1978). The proceedings of the National Institute may be found at 33 *BUS. LAW.* 945–1171 (1977).

54. Roland E. Brandel & Ralph J. Rohner, *Introduction to the Annual Survey of Consumer Financial Services Law*, 38 *BUS. LAW.* 1267, 1267 (1983).

55. George S. Ginsberg, John E. Jacobs & Lynne Barr, *Truth in Lending*, 38 *BUS. LAW.* 1271 (1983).

56. John L. Culhane, Jr. & Alan S. Kaplinsky, *Trends Pertaining to the Usury Laws*, 38 *BUS. LAW.* 1329, 1350–53 (1983); see, e.g., Catherine M. Brennan & Latif Zaman, *True Lender Developments: Litigation and State Regulatory Actions*, 74 *BUS. LAW.* 545, 545–47 (2019) (including RICO claims against bank and partner).

57. Carl Felsenfeld & Ralph J. Rohner, *Introduction to the Annual Survey on Consumer Financial Services Law*, 39 *BUS. LAW.* 1151, 1152 (1984) [hereinafter 1984 *Introduction*].

58. *Id.*

59. D. Edwin Schmelzer & Frank M. Salinger, *Truth in Lending: A Year of Calm Consolidation*, 39 *BUS. LAW.* 1225, 1231 (1984). The calm extended for at least another year. See D. Edwin Schmelzer &

EOA, with merely a “pending FRB proposal to simplify or clarify loose ends in the present Regulation B.”<sup>60</sup>

More significant to the editors was an ominous new development, “numerous civil actions brought against financial institutions under RICO (the Racketeer Influenced and Corrupt Organizations Act) . . . for practices that lawyers would, not long ago, have viewed as no more than breaches of contract.”<sup>61</sup> RICO became a feature of the next two *Annual Surveys* before it reached the end of the litigation cycle and disappeared from view.<sup>62</sup> Also new was the “phenomenon of ‘non-bank banks’” that provided “major innovations in structure and services for financial service suppliers,”<sup>63</sup> a subject that reappeared in the 2017 *Annual Survey* with the advent of financial technology (“fintech”) companies that offered innovative new financial products to consumers.<sup>64</sup> Anne Fortney provided an insider’s view of the FTC’s enforcement and other activities.<sup>65</sup> Alan Kaplinsky’s fourth annual survey of usury law expanded to a survey within the *Survey*, with several authors’ contributions constituting a full quarter of the 164 total pages of the 1984 *Annual Survey*.<sup>66</sup>

The *Introduction* for Volume 40 found “no clear patterns to the legal developments for the preceding year.”<sup>67</sup> The TILA survey article reported “interesting but modest developments.”<sup>68</sup> The EFTA article reported that “[a]utomated teller machines (ATM) are no longer a novelty,”<sup>69</sup> although it found that “[w]hen is an ATM a Branch?” was an interesting question.<sup>70</sup> The survey article on housing finance, another topic that became a mainstay for the *Annual Survey*, noted the “skyrocketing popularity” of adjustable rate mortgages (“ARM”) that made housing more affordable but that could result in “a potentially devastating time bomb for homeowners in the event interest rates rise dramatically.”<sup>71</sup>

Volume 40 also offered another bonus feature, William O’Connor’s book review of Rohner’s new treatise on *The Law of Truth in Lending*, “one of the first volumes to attempt a comprehensive exploration of both the theory and the

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Robert P. Chamness, *Truth in Lending: The Calm Continues*, 40 *BUS. LAW.* 1035 (1985) [hereinafter *TILA 1985*].

60. 1984 *Introduction*, *supra* note 57, at 1152.

61. *Id.*

62. See Peter D. Schellie, *Racketeer Influenced and Corrupt Organizations Act (RICO)*, 40 *BUS. LAW.* 1133 (1985); Peter D. Schellie, *Racketeer Influenced and Corrupt Organizations Act (RICO)*, 41 *BUS. LAW.* 1023 (1986).

63. 1984 *Introduction*, *supra* note 57, at 1153; see Carl D. Lobell, *Nonbank Banks: Controversy Over a New Form of Consumer Bank*, 39 *BUS. LAW.* 1193 (1984).

64. See Robert Savoie & Philip (PJ) Hoffman, *Marketplace Lending Developments: A Survey of Federal and State Issues Confronting the Industry*, 72 *BUS. LAW.* 529 (2017).

65. Anne Price Fortney, *Consumer Credit Compliance and the Federal Trade Commission: Sketching the New Directions*, 39 *BUS. LAW.* 1305 (1984).

66. Alan S. Kaplinsky, *Recent Usury Law Developments*, 39 *BUS. LAW.* 1251, 1251 (1984).

67. Carl Felsenfeld & Ralph J. Rohner, *Introduction to the Annual Survey on Consumer Financial Services Law*, 40 *BUS. LAW.* 1031 (1985).

68. *TILA 1985*, *supra* note 59, at 1035.

69. Roland E. Brandel & Lynne B. Barr, *Electronic Fund Transfers*, 40 *BUS. LAW.* 1051, 1051 (1985).

70. *Id.* at 1052.

71. John Jin Lee & Robert M. Zinman, *Housing Finance: Major Developments in 1984*, 40 *BUS. LAW.* 1101, 1101–02 (1985).



practice of this turbulent new field of federal law.”<sup>72</sup> The book’s discussion of the theory accomplished more than its competitors’ emphasis on “compliance with the intricate and technical rules”<sup>73</sup> of the TILA; it also displayed an understanding “that one need not be deadly serious to produce a scholarly legal text. A felicitous recognition that understanding is often enhanced by a light touch is aptly reflected here.”<sup>74</sup> Over the following decades, this treatise proved to be foundational for all things TILA, as Rohner and Miller produced a new edition in 2000<sup>75</sup> with contributions from members of the Committee after years of annual supplements, and Professor Alvin C. Harrell of Oklahoma City University School of Law, the long-time editor of the *Annual Survey* after 1990, produced another new edition in 2014<sup>76</sup> after members of the Committee wrote more annual supplements.

Felsenfeld and new editor John Culhane found that the following year, 1985, was “another quiet year for developments under the Truth in Lending Act and regulation Z,” as the housing finance industry dealt with ARM developments and “the legal problems facing lenders seeking to ride the wave of popularity of home equity loan products.”<sup>77</sup> One topic that roiled the otherwise quiet waters was a ruling by the California Supreme Court over a six dollar insufficient funds fee that legitimized “price unconscionability as a valid cause of action in California.”<sup>78</sup> Unconscionability resurfaced in California in 2018.<sup>79</sup>

“Quiet” was also the word for 1986, when Culhane was joined by new Committee Chair Alan Kaplinsky. There was a “relatively quiet year in the interest rate and usury area,”<sup>80</sup> although “state regulators began to take a more probing look at the documentation for credit cards offered to the residents of their respective states through direct mail solicitation.”<sup>81</sup> It was also a “quiet year” for ECOA and

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72. William J. O’Connor, *Book Review: The Law of Truth in Lending*, 40 *BUS. LAW.* 1199, 1199 (1985).

73. *Id.* at 1201.

74. *Id.* at 1203.

75. *TRUTH IN LENDING* (Ralph J. Rohner & Fred H. Miller eds., 2000).

76. *THE LAW OF TRUTH IN LENDING* (Alvin C. Harrell ed., 2014). To lend some perspective on the massiveness of the subject, the 890-page 2018 supplement to the 1705-page 2014 edition was almost as long as the 1008-page 2000 edition.

77. Carl Felsenfeld & John L. Culhane, Jr., *Introduction to the Annual Survey on Consumer Financial Services Law*, 41 *BUS. LAW.* 995, 996 (1986); see John Jin Lee & D. Edwin Schmelzer, *Adjustable Rate Mortgages: Continued Debate Over Disclosure and Underwriting Standards*, 41 *BUS. LAW.* 1065 (1986); Richard P. Eckman & Andrew T. Semmelman, *A Look at Home Equity Loans: Some Problems and Solutions*, 41 *BUS. LAW.* 1079 (1986).

78. Michael D. Finnegan, *Perdue v. Crocker National Bank—The Attack on Pricing*, 41 *BUS. LAW.* 997 (1986).

79. Justin B. Hosie, K. Dailey Wilson, Erica A.N. Kramer & Christopher J. Capurso, *Catastrophe: Operating Under the Dangerous Currents of Small Dollar Lending Regulation in 2019*, 75 *BUS. LAW.* 2025, 2029–31 (2020) (citing *De La Torre v. CashCall, Inc.*, 422 P.3d 1004 (Cal. 2018)).

80. John L. Culhane, Jr. & Alan S. Kaplinsky, *Introduction to the Annual Survey on Consumer Financial Services Law*, 42 *BUS. LAW.* 887 (1987).

81. *Id.* at 887–88. However, this development was apparently limited to the State of Maine. See Robert A. Burgess & Monica A. Ciolfi, *Exportation or Exploitation? A State Regulator’s View of Interstate Credit Card Transactions*, 42 *BUS. LAW.* 929, 929–30 (1987).

Regulation B issues.<sup>82</sup> The only area that offered something less quiet was developments under the Community Reinvestment Act (“CRA”),<sup>83</sup> which provided “the legal vehicle for challenges” by public interest groups and neighborhood action committees.<sup>84</sup>

## THE ROARING 80s’ EFFECT ON THE ANNUAL SURVEY

The size of the *Annual Survey* doubled from Volume 42 in 1987 to Volume 43 in 1988, then went up again by half or more for the next three years, peaking at 342 pages for Volume 45 in 1990 and reflecting the end of the quiet era on several fronts. In Volumes 43 through 45, there was so much to report that the *Survey* had to be published in two parts.<sup>85</sup> What accounted for the extra reportage?

During these years, TILA litigation went from quiet to “active” to “frenetic” to “interstitial” to abating but still “interstitial,” needing thirty pages or more to be described and, at times, more than one article in the same *Survey*.<sup>86</sup> This caused Culhane and Kaplinsky to observe that “Truth in Lending simplification has never produced Truth in Lending silence.”<sup>87</sup> At the same time, the insolvency of the savings and loan industry that caused Congress to bail out the Federal Savings and Loan Insurance Corporation led to the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”)<sup>88</sup> to correct perceived abuses<sup>89</sup> in addition to spawning scholarly commentary.<sup>90</sup> Such issues also helped expand the *Annual Survey* by adding survey articles on the new topic of housing finance with a size that sometimes rivaled the TILA articles.<sup>91</sup>

82. Culhane, Jr. & Kaplinsky, *supra* note 80, at 888.

83. Pub. L. No. 95-128, tit. VIII, 91 Stat. 1148 (1977) (codified as amended at 12 U.S.C. §§ 2901–2908 (2018)).

84. Peter D. Schellie, *Current Developments with the Community Reinvestment Act*, 42 *BUS. LAW.* 943, 943 (1987).

85. Part II of the 1988 *Annual Survey* appeared in Volume 43, No. 4, of *TBL*. Part II of the 1989 *Annual Survey* appeared in Volume 44, No. 4, of *TBL*. Part II of the 1990 *Annual Survey* appeared in Volume 46, No. 1, of *TBL*.

86. D. Edwin Schmelzer & Robert P. Chamness, *Truth in Lending Developments in 1987: An Active Year on Several Fronts*, 43 *BUS. LAW.* 1041 (1988); D. Edwin Schmelzer & Robert P. Chamness, *Truth in Lending Developments in 1988: A Year of Frenetic Activity*, 44 *BUS. LAW.* 987 (1989); Robert P. Chamness, Stanley B. Mabbitt & Timothy P. Meredith, *Truth in Lending Developments in 1989: A Year of Interstitial Activity*, 45 *BUS. LAW.* 1831 (1990); Robert P. Chamness & Timothy P. Meredith, *Truth in Lending Developments in 1990: The Interstitial Activity Continues*, 46 *BUS. LAW.* 347 (1990) (Part II of 1990 *Annual Survey*); Stanley B. Mabbitt, Robert A. Cook & Timothy P. Meredith, *Truth in Lending Developments in 1990: The Changes Abate*, 46 *BUS. LAW.* 1193 (1991); Dwight Golann, *Beyond Truth in Lending: The Duty of Affirmative Disclosures*, 46 *BUS. LAW.* 1307 (1991); Warren L. Dennis & Mark Masling, *Death Knell for Fiduciary Duties of Lenders to Consumer Borrowers*, 46 *BUS. LAW.* 1323 (1991).

87. John L. Culhane, Jr. & Alan S. Kaplinsky, *Introduction to the Annual Survey on Consumer Finance Law: Part I*, 44 *BUS. LAW.* 899, 901 (1989).

88. Pub. L. No. 101-73, 103 Stat. 183 (1989) (codified as amended in scattered sections of 12 U.S.C.).

89. Alvin C. Harrell, *Impact of FIRREA on Consumer Financial Services*, 45 *BUS. LAW.* 1939 (1990).

90. Kenneth E. Scott, *Deposit Insurance and Bank Regulation: The Policy Choices*, 44 *BUS. LAW.* 907 (1989); Kenneth E. Scott, *Never Again: The S&L Bailout*, 45 *BUS. LAW.* 1883 (1990).

91. E.g., John Jin Lee & John H. Mancuso, *Housing Finance: Major Developments in 1987*, 43 *BUS. LAW.* 1025 (1988); John Jin Lee, John H. Mancuso & James T. Walter, *Housing Finance: Major Developments in 1990*, 46 *BUS. LAW.* 1149 (1991).

Lending discrimination developments became a more prominent topic during these years, particularly after the Fair Housing Act<sup>92</sup> was amended in 1988, also generating more than one article in some *Annual Surveys*.<sup>93</sup> As Alvin Harrell took over editorial responsibilities from John Culhane with Volume 45 in 1991, he introduced an annual feature summarizing FDCPA developments that he wrote with Laurie Lucas, a former research assistant who was later to become co-editor of the *Annual Survey*, for sixteen more years.<sup>94</sup> Credit card practices<sup>95</sup> and consumer bankruptcy problems arising from the new Bankruptcy Code<sup>96</sup> also became prominent features of the *Annual Survey*. However, a seventy-eight page EFTA survey article in Volume 44, another survey within the *Annual Survey* that caught up on previously unreported developments, only led to one subsequent EFTA article.<sup>97</sup>

### A RETURN TO NORMALCY LEADING UP TO THE NEW MILLENIUM

Robert Chamness succeeded Alan Kaplinsky as chair of the Committee with Volume 47 in 1992, followed by Professor Dwight Golann of Suffolk University Law School with Volume 50 in 1995 and Amy Bizar with Volume 53 in 1998. During these years, Alvin Harrell continued as the editor of the *Annual Survey*. The enormous, single-part 298-page *Survey* in Volume 46 was followed by a dramatically smaller 120-page *Survey* in Volume 47 and, after that, *Surveys* fluctuated year to year between a low of 116 pages and a high of 250 pages through Volume 55 in 2000 as consumer finance law activity ebbed and flowed.

The most notable feature of the *Annual Surveys* during this period was the regularity of the topics covered. The TILA was the subject of one or more survey articles in eight of the nine years.<sup>98</sup> There were also survey articles on FDCPA

92. Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. §§ 3601–3631 (2018)).

93. E.g., Laura L. Rogers & John L. Culhane, Jr., *Developments Under the Equal Credit Opportunity Act and Regulation B*, 43 BUS. LAW. 1571 (1988); Richard P. Eckman, *Recent Developments in Credit Discrimination*, 44 BUS. LAW. 1409 (1989); Craig Ulrich, *Fair Lending Law Developments*, 45 BUS. LAW. 1807 (1990).

94. Alvin C. Harrell & Laurie A. Lucas, *Update on the Fair Debt Collection Practices Act*, 45 BUS. LAW. 2001 (1990); see Laurie A. Lucas & Alvin C. Harrell, *The Federal Fair Debt Collection Practices Act: 2006 Review of Appellate Cases*, 61 BUS. LAW. 941 (2006).

95. E.g., Jeffrey I. Langer & Andrew T. Semmelman, *Creditor List Screening Practices: Certain Implications Under the Fair Credit Reporting Act and the Equal Credit Opportunity Act*, 43 BUS. LAW. 1123 (1988); Joseph W. Gelb & Peter N. Cubita, *Credit Card Application and Solicitation Disclosure Legislation: An Alternative to the Rate Ceiling Approach*, 43 BUS. LAW. 1557 (1988).

96. E.g., David A. Scholl, *Bankruptcy Court: The Ultimate Consumer Law Forum?*, 44 BUS. LAW. 935 (1989); Lawrence Avery Young, “Bankruptcy Court: The Ultimate Consumer Law Forum?”—*The View from the Other Side of the Looking Glass*, 44 BUS. LAW. 1401 (1989).

97. *Electronic Fund Transfers*, 44 BUS. LAW. 1081 (David B. Goldstein et al. ed., 1989); David B. Goldstein, *Electronic Fund Transfers*, 45 BUS. LAW. 1957 (1990).

98. E.g., Stanley D. Mabbitt, Robert A. Cook & Timothy P. Meredith, *Truth in Lending Developments in 1991*, 47 BUS. LAW. 1247 (1992); Elizabeth C. Yen & Timothy P. Meredith, *Truth in Lending Developments in 1999*, 55 BUS. LAW. 1261 (2000).

developments,<sup>99</sup> consumer bankruptcy developments,<sup>100</sup> and the sale of insurance products by banks<sup>101</sup> in each of the nine years. Interest rate regulation<sup>102</sup> and the securities and investment activities of banks<sup>103</sup> were surveyed for the first seven years of this period. Housing finance was reported on for the first four years<sup>104</sup> and was replaced by developments under the Real Estate Settlement Procedures Act (“RESPA”)<sup>105</sup> for the last four years.<sup>106</sup> Personal property finance was a subject that appeared in the last seven years of the period<sup>107</sup> and consumer arbitration appeared in the last three years at the start of a string that extended through Volume 75 except for one year.<sup>108</sup> Fair lending also reappeared as a topic for the last six years of this period.<sup>109</sup> To a large extent, this reflected the Committee’s subcommittee structure, with the bulk of the survey articles being drafted by the chairs and/or vice chairs of subcommittees and colleagues from their law firms.

During this nine-year period, there were a few notable newer topics that tended to enlarge the size of the *Annual Survey* in some years, particularly toward the end of this period. Volume 50 in 1995 included the first survey article on stu-

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99. E.g., Laurie A. Lucas & Alvin C. Harrell, *1992 Update on the Federal Fair Debt Collection Practices Act*, 47 BUS. LAW. 1309 (1992); Laurie A. Lucas & Alvin C. Harrell, *2000 Update on the Federal Fair Debt Collection Practices Act*, 55 BUS. LAW. 1453 (2000).

100. E.g., Mark E. Budnitz, *Consumer Bankruptcy Developments*, 47 BUS. LAW. 1299 (1992); Jon Ann Giblin & Alvin C. Harrell, *Current Issues and Recent Developments in Consumer Bankruptcy*, 55 BUS. LAW. 1467 (2000).

101. E.g., Barry A. Abbott & Helen W. Leslie, *Financial Institutions and Insurance in 1991: A Possible Watershed Year*, 47 BUS. LAW. 1279 (1992); James M. Cain & John J. Fahey, *Banks and Insurance Companies—Together in the New Millennium*, 55 BUS. LAW. 1409 (2000).

102. E.g., Joseph W. Gelb, James F. Lerner & Eileen S. Simon, *Update by the Subcommittee on Interest Rate Regulation*, 47 BUS. LAW. 1261 (1992); Jeffrey I. Langer & Michael F. Day, *Interest Rate Regulation Developments: State Opt-Outs of Federal Preemption of Discount-Point Limitations on First Mortgage Loans*, 53 BUS. LAW. 985 (1998).

103. E.g., Robert M. Kurucz, Robert G. Ballen & Natalie H. Diana, *Securities and Investment Activities of Banks*, 47 BUS. LAW. 1271 (1992); Robert M. Kurucz & Barry I. Pershkov, *Securities and Investment Activities of Banks*, 55 BUS. LAW. 1145 (1998).

104. E.g., James T. Walter & Grace Sterrett, *Housing Finance: Major Developments in 1991*, 47 BUS. LAW. 1219 (1992); Bennet S. Koren, Arthur B. Axelson & Grace Sterrett, *Housing Finance: Major Developments in 1994*, 50 BUS. LAW. 1061 (1995) [hereinafter *Housing Finance 1995*].

105. Pub. L. No. 93-533, 88 Stat. 1724 (1974) (codified as amended at 12 U.S.C. §§ 2601–2617 (2018)).

106. E.g., Jeremiah S. Buckley & Joseph M. Kolar, *HUD Issues New RESPA Rules on Employer-Employee Payments, Controlled Business Arrangements, and Computerized Loan Origination Systems; Congress Passes RESPA Amendments in Banking Bill*, 52 BUS. LAW. 1047 (1997); Robert W. Jaworski, *RESPA at the Millennium: A Y2K Problem or a Problem Solved?*, 55 BUS. LAW. 1349 (2000) [hereinafter *RESPA 2000*].

107. E.g., Thomas B. Hudson, *Consumer Leasing and Personal Property Financing Developments: Early Termination Provisions in Automobile Leasing Contracts*, 49 BUS. LAW. 1377 (1994); Thomas B. Hudson, Michael A. Benoit & Joseph D. Looney, *Update on Indirect Auto Finance Dealer Compensation Litigation and Other Pertinent Litigation*, 55 BUS. LAW. 1281 (2000).

108. E.g., Alan S. Kaplinsky & Mark J. Levin, *Consumer Financial Services Arbitration: Current Trends and Developments*, 53 BUS. LAW. 1075 (1998); see Alan S. Kaplinsky, Mark J. Levin & Martin C. Bryce, Jr., *Three Supreme Court Decisions and a Ninth Circuit Preemption Ruling Highlight the Year’s Arbitration Decisions*, 75 BUS. LAW. 1967 (2020) [hereinafter *Arbitration 2020*].

109. E.g., David E. Teitelbaum, *Developments in Fair Lending and Community Reinvestment*, 50 BUS. LAW. 1023 (1995); Anne P. Fortney, *Fair Lending Law Developments*, 55 BUS. LAW. 1309 (2000).

dent lending, which noted the existence of “schools that provide little meaningful education, make promises they do not keep, or close in mid-program [that] neither enable students to pay off their educational loans nor instill in them any sense of obligation to do so,”<sup>110</sup> still very much a problem today.<sup>111</sup> The fair lending and the housing finance articles both noted activity by ten federal regulators in issuing an interagency policy statement about fair lending enforcement<sup>112</sup> that, combined with the first fair lending enforcement action by the U.S. Department of Justice (“DOJ”),<sup>113</sup> presaged “a watershed year for fair lending and community reinvestment policy and enforcement.”<sup>114</sup>

More new developments were chronicled in the *Annual Survey* in Volume 54. The TILA survey article reported on the first U.S. Supreme Court TILA decision since 1981, which dealt with TILA rescission rights,<sup>115</sup> while that article and the RESPA survey article discussed efforts by the FRB and the U.S. Department of Housing and Urban Development (“HUD”) to consolidate TILA and RESPA disclosure requirements,<sup>116</sup> a development that took several more years and a foreclosure crisis to bring into being.<sup>117</sup> The TILA article and the auto finance survey article reported on a nationwide wave of auto finance litigation that sought to hold auto finance companies liable for the alleged misdeeds of auto dealers despite a TILA provision that was designed to limit such liability.<sup>118</sup> The fair lending survey article described the “paradox” of mortgage loan data that the Home Mortgage Disclosure Act of 1975 (“HMDA”)<sup>119</sup> required banks to publicly report showing “a growing disparity in access to credit between whites and minorities” while “very few government investigations appear to uncover patterns of discrimination.”<sup>120</sup>

110. Michael Ferry, *Changes in Student Loan Regulations*, 50 *BUS. LAW.* 1135, 1135 (1995).

111. See Laurie A. Lucas & Christopher L. Peterson, *Developments in Federal Student-Lending Law: Harbingers of Change?*, 72 *BUS. LAW.* 465 (2017) (discussing CFPB enforcement actions against for-profit educational institutions for unfair, deceptive, and abusive practices).

112. David E. Teitelbaum, *Developments in Fair Lending and Community Reinvestment*, 50 *BUS. LAW.* 1023, 1024–25 (1995) [hereinafter *Fair Lending 1995*]; *Housing Finance 1995*, *supra* note 104.

113. *Fair Lending 1995*, *supra* note 112, at 1023 (citing Consent Decree, *United States v. Blackpipe Bank*, No. 93-cv-5115 (D.S.D. Jan. 21, 1994), <https://www.justice.gov/crt/housing-and-civil-enforcement-cases-documents-186>); *Housing Finance 1995*, *supra* note 104, at 1078 (same).

114. *Fair Lending 1995*, *supra* note 112, at 1023.

115. Elizabeth C. Yen & Timothy P. Meredith, *1998 Truth in Lending Developments*, 54 *BUS. LAW.* 1275, 1277 (1999) (discussing *Beach v. Ocwen Bank*, 523 U.S. 410 (1998)) [hereinafter *TILA 1999*].

116. *Id.* at 1276; Robert M. Jaworski, *RESPA 1998: The Long and Winding Road*, 54 *BUS. LAW.* 1357, 1370 (1999).

117. See John P. Kromer, Sanford Shatz & Jonathan W. Cannon, *There’s a New Sheriff in Town—2011 Survey of RESPA Developments*, 67 *BUS. LAW.* 553, 554 (2012) (“The CFPB’s first regulatory goal regarding RESPA is to combine the initial disclosures under RESPA and TILA.”).

118. *TILA 1999*, *supra* note 115, at 1290; Thomas B. Hudson, Michael A. Benoit & Joseph D. Looney, *Indirect Auto Finance Dealer Compensation Litigation*, 54 *BUS. LAW.* 1301, 1303–07 (1999); see 15 U.S.C. § 1640(a) (2018).

119. Pub. L. No. 94-200, 89 Stat. 1124 (1975) (codified as amended at 12 U.S.C. §§ 2801–2810 (2018)).

120. Anne P. Fortney, *Fair Lending Law Developments*, 54 *BUS. LAW.* 1329, 1340–41 (1995).

As a sign of the times, the 2000 *Annual Survey* in Volume 55 included one survey article with “Y2K” in the title<sup>121</sup> and no fewer than four that employed “Millennium” or “the New Millennium.”<sup>122</sup> The TILA survey article reported that TILA/RESPA reform was “highly politicized” and “offers little hope of success.”<sup>123</sup> The auto finance survey article reported even more TILA litigation, describing one such case as “the kitchen sink on wheels.”<sup>124</sup> The privacy survey article reported on the new Gramm-Leach-Bliley Financial Modernization Act,<sup>125</sup> which was designed to address consumer privacy concerns with respect to use of the internet with amendments to the FCRA and several other consumer protection statutes that imposed “new privacy obligations” on financial institutions to protect consumer information.<sup>126</sup> Class action developments were also included in the *Annual Survey* for the first time.<sup>127</sup>

### THE ANNUAL SURVEY’S FIRST DECADE IN THE NEW MILLENNIUM

The new millennium for the *Annual Survey* saw a new chair for the Committee, Lynne Barr, arriving with Volume 56 in 2001, then Jeff Langer as chair starting with Volume 59 in 2004, Don Lampe as chair starting with Volume 62 in 2007, and Terry Franzén as chair starting with Volume 65 in 2010. Alvin Harrell continued as the editor through Volume 66 in 2011, except for one year.

As in the previous decade, much of what the *Annual Survey* covered from 2001 to 2010 was continuing developments. The TILA was the subject of nine survey articles<sup>128</sup> while the FCRA and privacy issues were the subject of fifteen.<sup>129</sup> The FDCPA was the subject of nine survey articles,<sup>130</sup> while auto finance and leasing

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121. *RESPA 2000*, *supra* note 106.

122. *Id.*; Elizabeth C. Yen & Timothy P. Yen, *Truth in Lending Developments in 1999*, 55 *BUS. LAW.* 1261 (2000) [hereinafter *TILA 2000*]; James M. Cain & John J. Fahey, *Banks and Insurance Companies—Together in the New Millennium*, 55 *BUS. LAW.* 1409 (2000); Corinne Ball & Jacqueline B. Stuart, *The Battle Over Bankruptcy Law for the New Millennium*, 55 *BUS. LAW.* 1487 (2000).

123. *TILA 2000*, *supra* note 122, at 1261.

124. Thomas B. Hudson, Michael A. Benoit & Joseph D. Looney, *Update on Indirect Auto Finance Dealer Compensation Litigation and Other Pertinent Litigation*, 55 *BUS. LAW.* 1281 (2000) (discussing *Johnson v. Rohr-Ville Motors, Inc.*, 64 F. Supp. 2d 737 (N.D. Ill. 1999)). The author was co-counsel for the defense in that case.

125. Pub. L. No. 106-102, 113 Stat. 1338 (1999).

126. Michael A. Benoit & Joseph D. Looney, *Recent Federal Privacy Initiatives Affecting the Delivery of Financial Services*, 55 *BUS. LAW.* 1377, 1378 (2000).

127. Joseph W. Gelb, Yoav M. Griver & Seth C. Berman, *Class Action Settlements in the Aftermath of Anchem Products and Ortiz*, 55 *BUS. LAW.* 1439 (2000).

128. E.g., Elizabeth C. Yen, Wingrove S. Linton & Timothy P. Meredith, *Truth in Lending in the Year 2000*, 56 *BUS. LAW.* 1089 (2001); Jacqueline A. Parker, Jeffrey P. Naimon, Catherine M. Brennan & Kirk D. Jensen, *Truth in Lending Update—2009*, 65 *BUS. LAW.* 523 (2010) [hereinafter *TILA 2010*].

129. E.g., Stephen F. Ambrose, Jr. & Joseph W. Gelb, *Consumer Privacy Regulation and Litigation*, 56 *BUS. LAW.* 1157 (2001); Patricia E.M. Covington & Meghan S. Musselman, *Recent Privacy and Data Security Developments*, 65 *BUS. LAW.* 611 (2010).

130. E.g., Laurie A. Lucas & Alvin C. Harrell, *2001 Update on the Federal Fair Debt Collection Practices Act*, 56 *BUS. LAW.* 1231 (2001); Anna-Katrina S. Christakis, Tomio B. Narita & Laurie A. Lucas, *FDCPA Update: Keeping Pace in a Changing Consumer Environment*, 65 *BUS. LAW.* 673 (2010).

were the subject of twelve.<sup>131</sup> Consumer bankruptcy was the subject of seven in the first six years of the decade before largely disappearing,<sup>132</sup> while fair lending was the subject of seven survey articles in the last five years.<sup>133</sup> Consumer arbitration was the subject of ten survey articles,<sup>134</sup> continuing a string that began in the previous decade, and “cyberbanking” through the use of stored value cards and electronic credits was the subject of eight survey articles,<sup>135</sup> also continuing a string that began in the previous decade.<sup>136</sup>

As in the previous decade, most of the survey articles covered what Roland Brandel described as “a close dissection of individual developments to educate consumer credit experts”<sup>137</sup> because they were written by experts in ever-narrowing subspecialties in the field of consumer finance law who were communicating and trying to make sense of ever more complex new statutes, regulations, and case law developments. There were, of course, new developments as well as continuations of existing trends that affected the course of consumer finance law. The enactment of the Electronic Signatures in Global and National Commerce Act (“E-SIGN”)<sup>138</sup> not only started a trend for more tortured acronyms but was also called “[t]he single most important Truth-in-Lending (TILA) development” of 2000.<sup>139</sup> The following year, it was noted that E-SIGN led to the FRB’s new interim electronic disclosure rules for Regulations B, E, M, Z, and DD.<sup>140</sup>

The terrorist attacks of September 11, 2001, brought us the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA-PATRIOT Act”),<sup>141</sup> an even more tortured acronym, which introduced anti-money laundering laws and all of the reg-

131. E.g., Kenneth J. Rojc & Elena A. Lovoy, *Motor Vehicle Financing Via the Internet*, 56 BUS. LAW. 1127 (2001); Robert A. Aitken, Deborah M. Robertson & Douglas T. Johnson, *Personal Property Financing: Manufactured Housing and Auto Finance*, 65 BUS. LAW. 621 (2010).

132. E.g., Richard E. Coulson & Alvin C. Harrell, *Consumer Bankruptcy Developments*, 56 BUS. LAW. 1265 (2001); Jon Ann Giblin, Stephen P. Strohschein, Jeffrey E. Tate & Alvin C. Harrell, *The 2005 Bankruptcy Reform Act*, 61 BUS. LAW. 949 (2006).

133. E.g., Nicole F. Munro, Jean L. Noonan & R. Elizabeth Topoluk, *Recent Developments in Fair Lending and the ECOA: A Look at Housing Finance and Motor Vehicle Dealer Participation*, 60 BUS. LAW. 627 (2005); John L. Ropiequet, Christopher S. Naveja & L. Jean Noonan, *Fair Lending Developments: The End of Discretionary Pricing?*, 65 BUS. LAW. 571 (2010).

134. E.g., Alan S. Kaplinsky & Mark J. Levin, *Arbitration Developments: The Millennium Edition*, 56 BUS. LAW. 1219 (2001); Alan S. Kaplinsky, Mark J. Levin & Martin C. Bryce, Jr., *Arbitration Developments: The Battle Against Arbitration Intensifies*, 65 BUS. LAW. 657 (2010) [hereinafter *Arbitration 2010*].

135. E.g., Lee S. Adams, David J. Martz & Obrea O. Poindexter, *Developments in Cyberbanking*, 56 BUS. LAW. 1179 (2001); Rick Fischer, Daniel Laudicina & Obrea Poindexter, *The New Credit Card Rules*, 65 BUS. LAW. 537 (2010) [hereinafter *Credit Cards 2010*].

136. See Lee S. Adams & David J. Martz, *Developments in Stored-Value Cards and Cyberbanking*, 52 BUS. LAW. 1149 (1997).

137. 1979 *Introduction*, *supra* note 4, at 1403.

138. Pub. L. No. 106-229, 114 Stat. 164 (2000) (codified as amended at 15 U.S.C. §§ 7001–7031 (2018)).

139. *TILA 2010*, *supra* note 128, at 1089.

140. James A. Huizinga, David E. Teitelbaum, Krista B. LaBelle & Karl F. Kaufmann, *Electronic Disclosures Under the Federal Reserve Board’s Consumer Protection Regulations*, 57 BUS. LAW. 1197, 1199 (2002).

141. Pub. L. No. 107-56, 115 Stat. 272 (2001) (codified as amended in scattered sections of 12 U.S.C.).

ulatory activity necessary to implement them to the *Annual Survey*.<sup>142</sup> At the same time, “bad loans,” not in the traditional meaning of being in default but for which the loan cost was too high to be affordable, came into the vocabulary of the consumer finance industry and were called abusive or predatory loans that should not have been made, leading to state and local responses in new laws and a “heated political battle.”<sup>143</sup>

Indeed, state and local laws against predatory lending became a feature of several survey articles starting in 2004.<sup>144</sup> By 2009, despite the fact that federal banking agencies had matched the “activism” of the states in enacting anti-predatory lending provisions that dealt with such problems as “loan flipping” and “equity stripping,”<sup>145</sup> the 2009 *Introduction* described the provisions of the new laws that varied from state to state and city to city as a “patchwork” much in need of some uniformity.<sup>146</sup> The *Annual Survey* also introduced the concept of “phishing” as “scams in which hackers and fraudsters imitate legitimate companies in e-mails to entice people to share passwords, credit card numbers, or other personal financial information . . . that can enable them to access individuals’ bank accounts or credit records for purposes of identity theft.”<sup>147</sup> This led to enactment of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”)<sup>148</sup> to “prohibit certain fraudulent and misleading practices” and provide consumers the ability to opt out of future emails.<sup>149</sup> The CAN-SPAM Act was followed by the Junk Fax Prevention Act of 2005, amending the Telephone Consumer Protection Act (“TCPA”),<sup>150</sup> that may or may not have impeded mass marketing,<sup>151</sup> but has contributed to a flood of subsequent class action litigation under the TCPA.<sup>152</sup>

As the business cycle turned starting in 2007, predatory, high-cost, or subprime mortgage lending led to a “credit crisis” as a fifteen-year-old real estate boom ended and defaults stemming from “too much credit” being extended

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142. David A. Teitelbaum & Karl F. Kaufmann, *Current Developments in Anti-Money Laundering Laws*, 58 *BUS. LAW.* 1149 (2003).

143. Robert M. Jaworski, *Legislating Against Bad Loans: The State/Local Battleground*, 58 *BUS. LAW.* 1129, 1129 (2003).

144. E.g., Therese G. Franzén & Leslie M. Howell, *State and Local Predatory Lending Issues and Developments*, 59 *BUS. LAW.* 1179 (2004); Julie R. Caggiano, Theresa G. Franzén & Leslie M. Howell, *Subprime Mortgage and Predatory Lending Law Developments*, 63 *BUS. LAW.* 625 (2008).

145. Julie L. Williams & Michael S. Bylsma, *Federal Preemption and Federal Banking Agency Responses to Predatory Lending*, 59 *BUS. LAW.* 1193, 1193, 1197–98 (2004).

146. Donald C. Lampe, Fred H. Miller & Alvin C. Harrell, *Introduction to the 2009 Annual Survey of Consumer Financial Services Law*, 64 *BUS. LAW.* 465, 467 (2009) [hereinafter 2009 *Introduction*].

147. Mark T. Gillett, Obrea O. Poindexter, Veronica McGregor & Martin Villongco, *Developments in Cyberbanking*, 59 *BUS. LAW.* 1335, 1335 (2004) [hereinafter *Cyberbanking 2004*].

148. Pub. L. No. 108-187, 117 Stat. 2699 (2003) (codified as amended) at 15 U.S.C. §§ 7701–7713 (2018).

149. *Cyberbanking 2004*, *supra* note 147, at 1343.

150. Pub. L. No. 109-21, 119 Stat. 359 (2005) (amending 47 U.S.C. § 227).

151. Robert M. Jaworski & Robert H. Jackson, *More Marketing Compliance Obstacles: Do Not Call/Fax/Spam*, 61 *BUS. LAW.* 899, 904–05 (2006).

152. See John R. Chiles & Zachary D. Miller, *A Repurposed Consumer Protection Statute—2013 Survey of TCPA Developments*, 69 *BUS. LAW.* 633 (2014) [hereinafter *TCPA 2014*].



became a national problem, “the widely reported meltdown in the subprime mortgage market, with sharp increases in subprime mortgage loan delinquencies and foreclosures.”<sup>153</sup> The financial crisis led to many responses from Congress, including the enactment of the Housing and Economic Recovery Act of 2008<sup>154</sup> amending the TILA to add more disclosure requirements and increase statutory penalties;<sup>155</sup> a \$700 billion bailout of the government sponsored entities that held a large portion of the country’s home mortgage loans;<sup>156</sup> and the introduction of corrective legislation by Senator Dodd and Congressman Frank in 2008<sup>157</sup> that ultimately became the Dodd-Frank Act described in the next part. Another response to the mortgage foreclosure crisis was lawsuits brought by municipal governments seeking to recover their own economic damages from predatory mortgage lenders on theories of public nuisance and racial discrimination against their resident mortgage borrowers.<sup>158</sup> The urge to correct perceived shortcomings in the financial services laws also led to the enactment of the Credit Card Accountability, Responsibility and Disclosure Act of 2008 (“CARD Act”)<sup>159</sup> amending the TILA, with commentary in the *Annual Survey*.<sup>160</sup>

## THE DODD-FRANK DECADE

Consumer financial services law in the decade concluding with Volume 75 of *TBL* in 2020 was dominated by the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).<sup>161</sup> Consisting of sixteen titles that govern a variety of matters including bank regulation, insurance, investor protection, and other matters, two of the titles had a profound impact on consumer financial services.<sup>162</sup> Title X created the Bureau of Consumer Financial Services (“CFPB”), a new federal agency that succeeded to or shared many of the powers of the FRB, the prudential banking regulators, the FTC, and HUD and was given substantial new authority that was designed to put consumers’ interests first in contrast to the traditional safety and soundness concerns for the banking and thrift industries that require the prudential

153. Donald C. Lampe, Fred H. Miller & Alvin C. Harrell, *Introduction to the 2008 Annual Survey of Consumer Financial Services Law*, 63 *BUS. LAW.* 561, 562–63, 567 (2008).

154. Pub. L. No. 110-289, 122 Stat. 2913 (2008) (codified as amended at scattered sections of 15 U.S.C.).

155. Jacqueline A. Parker, Jeffrey P. Naimon & Catherine M. Brennan, *Truth in Lending Update—2008*, 64 *BUS. LAW.* 471, 471–72 (2009).

156. 2009 *Introduction*, *supra* note 146, at 466.

157. *Id.* at 469.

158. Richard E. Gottlieb & Brett J. Natarrelli, *Update on Municipal Nuisance and Discrimination Litigation*, 65 *BUS. LAW.* 665 (2010).

159. Pub. L. No. 111-24, 123 Stat. 1734 (2008) (codified as amended in scattered sections of 15 U.S.C.).

160. Jacqueline A. Parker, Jeffrey P. Naimon, Catherine M. Brennan & Kirk D. Jensen, *Truth in Lending Update—2009*, 65 *BUS. LAW.* 523, 524 (2010); *Credit Cards 2010*, *supra* note 135.

161. Pub. L. No. 111-203, 124 Stat. 1376 (2010).

162. See John L. Ropiequet, Christopher S. Naveja & Jason B. Hirsch, *The Dodd-Frank Act Changes the Consumer Finance Landscape*, 64 *CONSUMER FIN. L.Q. REP.* 285, 286 (2010), *reprinted in* *THE LAW OF TRUTH IN LENDING* ¶¶ 12.01[3], 16.01 (Alvin C. Harrell ed., 2014).

regulators to put banks and thrifts first.<sup>163</sup> Title XIV dealt with mortgage lending reform and predatory lending issues by adding many provisions to the TILA and requiring the new CFPB to issue many new regulations.<sup>164</sup>

The Dodd-Frank Act significantly affected the makeup and content of the *Annual Survey* as committee chair Terry Franzén was succeeded by Nikki Munro with Volume 68 in 2013, Munro was succeeded by Andrew Smith with Volume 71 in 2016, and Smith was succeeded by Katrina Christakis with Volume 74 in 2019. Alvin Harrell returned to edit the *Survey* for Volume 66 in 2011 and then asked the author to become his co-editor for the next two years before retiring from the editorship. The author has been ably assisted by co-editors Professor Laurie Lucas of the Oklahoma State University Spears School of Business for Volumes 69 through 71 and Professor Chris Odinet of the University of Oklahoma College of Law for Volumes 74 and 75.

Some topics were the subject of survey articles for all ten years of the decade, including fair lending,<sup>165</sup> auto finance,<sup>166</sup> FCRA and privacy,<sup>167</sup> deposit products and payment systems,<sup>168</sup> the FDCPA,<sup>169</sup> and consumer arbitration.<sup>170</sup> Even among these topics, fewer and fewer were written by subcommittee chairs and vice chairs. Instead, each year the editors have called on the full leadership of the Committee's subcommittees, often consisting of several Committee members apiece, and prior survey authors to propose topics for the upcoming *Annual Survey*. This has led to a broadening of the authorship and making room for new topics in addition to reporting on new developments for the evergreen topics within the tighter page limitation that has been in effect for the *Annual Survey* during this decade.

The *Introduction* for the 2011 *Annual Survey* labeled the changes wrought by the Dodd-Frank Act "the most significant restructuring of federal consumer credit law and regulation in memory . . . likely to affect the state of the consumer finance industry and, perhaps, the availability of consumer credit for years to

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163. *Id.* at 286–89.

164. *Id.* at 290–94.

165. E.g., John L. Ropiequet, Christopher S. Naveja & L. Jean Noonan, *Fair Lending Developments: Enforcement Comes to the Fore*, 66 *BUS. LAW.* 447 (2011); John L. Ropiequet & L. Jean Noonan, *Fair Lending Developments in the Wake of City of Miami*, 75 *BUS. LAW.* 2001 (2020).

166. E.g., David E. Gemperle & Kenneth J. Rojc, *Auto Finance: Litigation and Legislative Developments Impacting Supplemental Products*, 66 *BUS. LAW.* 495 (2011); Kevin M. McDonald & Kenneth J. Rojc, *Keeping the Pedal to the Metal: Auto Finance Enforcement Floors Ahead in 2019*, 75 *BUS. LAW.* 2013 (2020) [hereinafter *Auto Finance 2019*].

167. E.g., Andrew M. Smith & Peter Gilbert, *Fair Credit Reporting Act Update—2010*, 66 *BUS. LAW.* 473 (2011); Andrew Soukup, David A. Stein & Lucille C. Bartholomew, *Fair Credit Reporting Act and Financial Privacy—2019*, 75 *BUS. LAW.* 1907 (2020) [hereinafter *FCRA 2019*].

168. E.g., Ryan S. Stinneford, Laura Hobson Brown & Candace Modlin Davis, *Current Developments in Bank Deposits and Payment Systems*, 66 *BUS. LAW.* 507 (2011); Ryan S. Stinneford & D. Patrick Yoest, *Current Developments in Bank Deposits and Payment Systems*, 75 *BUS. LAW.* 2033 (2020).

169. E.g., Laurie A. Lucas, Tomio B. Narita & Anna-Katrina S. Christakis, *Recent Cases Concerning the Treatment of Attorney Debt Collectors Under the FDCPA*, 66 *BUS. LAW.* 551 (2011); Caren D. Enloe & Sabrina A. Neff, *The Proposed Debt Collection Rule*, 75 *BUS. LAW.* 1983 (2020) [hereinafter *Debt Collection Rule*].

170. E.g., Alan S. Kaplinsky, Mark J. Levin & Martin C. Bryce, Jr., *Arbitration Developments: Has the Supreme Court Finally Stepped In?*, 66 *BUS. LAW.* 529 (2011); *Arbitration 2020*, *supra* note 108.

come.”<sup>171</sup> Several survey articles took note of the substantial transfer of regulatory and supervisory authority from other federal agencies to the new agency that the Dodd-Frank Act created, the CFPB,<sup>172</sup> and the other changes mandated by the Act.<sup>173</sup> The following year was a lull before the storm of regulatory changes mandated by the Dodd-Frank Act began as the CFPB opened, staffed up, and started the process of writing and issuing proposed regulations. One important development that year was the Supreme Court’s decision in *AT&T Mobility LLC v. Concepcion*,<sup>174</sup> in which it held that the Federal Arbitration Act<sup>175</sup> “preempts the application of state laws used to invalidate arbitration agreements containing class action waivers,” a ruling that had been anticipated in several prior *Annual Surveys*.<sup>176</sup>

Before it abated, the flood of new rules mandated by the Dodd-Frank Act resulted in thirteen final rules being issued in 2012 and more during the following two years.<sup>177</sup> These included rules to curb the abuses that became apparent during the 2007–08 financial crisis, beginning with ability-to-repay and other rules for loan origination and ending with loan servicing, and amendments to correct the problems that the new rules caused.<sup>178</sup> The TILA-RESPA Integrated Disclosure Rule (“TRID Rule”)<sup>179</sup> was so complex that its initial effective date

171. Therese G. Franzén & Alvin C. Harrell, *Introduction to the 2011 Annual Survey of Consumer Finance Law*, 66 BUS. LAW. 409, 410 (2011).

172. John P. Kromer, Sanford Shatz & Jonathan W. Cannon, *2010 Survey of RESPA Developments*, 66 BUS. LAW. 435, 438 (2011).

173. Julie R. Caggiano, Jennifer L. Dozier, Richard P. Hackett & Arthur B. Axelson, *Mortgage Lending Developments: A New Federal Regulator and Mortgage Reform Under the Dodd-Frank Act*, 66 BUS. LAW. 457 (2011) (describing provisions of Dodd-Frank Act titles X and XIV); Andrew M. Smith & Peter Gilbert, *Fair Credit Reporting Act Update—2010*, 66 BUS. LAW. 473 (2011) (describing Dodd-Frank Act amendments to the FCRA); Ralph T. Wutscher & David L. Beam, *The Dodd-Frank Act’s New Federalism*, 66 BUS. LAW. 519 (2011) (describing Dodd-Frank Act’s amendments to the National Bank Act and Home Owners Loan Act to clarify federal preemption to allow interest rate exportation).

174. Alan S. Kaplinsky, Mark J. Levin & Martin C. Bryce, Jr., *Arbitration Developments: Concepcion—The Supreme Court Decisively Steps In*, 67 BUS. LAW. 629, 630 (2012).

175. Ch. 392, 61 Stat. 669 (1947) (codified as amended at 9 U.S.C. §§ 1–16 (2018)).

176. E.g., Alan S. Kaplinsky, Mark J. Levin & Martin C. Bryce, Jr., *Arbitration Developments: Has the Supreme Court Finally Stepped In?*, 66 BUS. LAW. 529 (2011); *Arbitration 2010*, *supra* note 134.

177. Eric J. Mogilnicki & Melissa S. Malpass, *The First Year of the Consumer Financial Protection Bureau*, 68 BUS. LAW. 557, 558 n.13 (2013) [hereinafter *First Year*]; John L. Ropiequet, Nicole Frush Munro & Laurie A. Lucas, *Introduction to the 2014 Annual Survey of Consumer Financial Services Law*, 69 BUS. LAW. 521, 522 (2014); John L. Ropiequet, Nicole Frush Munro, Andrew M. Smith & Laurie A. Lucas, *Introduction to the 2016 Annual Survey of Consumer Financial Services Law*, 71 BUS. LAW. 633, 633 (2016).

178. Arthur B. Axelson & Heather C. Hutchings, *Mortgage Servicing Developments*, 68 BUS. LAW. 571 (2013) [hereinafter *Mortgage Servicing 2013*]; Arthur B. Axelson & Heather C. Hutchings, *Mortgage Servicing Developments*, 69 BUS. LAW. 527 (2014); Sanford Shatz & Justin Angelo, *The Consumer Financial Protection Bureau’s Ability-to Repay/Qualified Mortgage Rule*, 69 BUS. LAW. 539 (2014); Jonathan W. Cannon & Christine Acree, *Loan Originator Compensation Rule*, 69 BUS. LAW. 551 (2014); Laura Hobson Brown, Laura Greco & Robert Savoie, *Dodd-Frank Act Requirements for Escrow Accounts, High-Cost Mortgages, Homeownership Counseling, and Appraisal Requirements Take Shape*, 69 BUS. LAW. 563 (2014); Arthur B. Axelson & Heather C. Hutchings, *Mortgage Servicing Developments*, 68 BUS. LAW. 571 (2015).

179. *Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, 78 Fed. Reg. 79730 (Dec. 31, 2013) (codified as amended at 12 C.F.R. pts. 1024 & 1026).

had to be delayed for a year and it then had to be substantially amended in 2017.<sup>180</sup>

The CFPB also made its presence felt by filing enforcement actions against major lenders that resulted in large refunds to consumers<sup>181</sup> and were accompanied by even larger enforcement actions filed by the DOJ, HUD, and numerous state attorneys general acting in combination with them that addressed abuses.<sup>182</sup> Later in the decade, more fallout from the financial crisis resulted in multi-billion dollar settlements with issuers of residential mortgage-backed securities for a variety of fraud and breach of warranty claims stemming from massive numbers of defaults by mortgage loan borrowers.<sup>183</sup>

The change of Administration following the 2016 election and the resignation of the CFPB's original director significantly moderated the CFPB's enforcement and rulemaking activity, with its proposed consumer arbitration and small-dollar lending rules being overruled by Congress and reconsidered by the CFPB, respectively,<sup>184</sup> although a new Regulation F was proposed that would, for the first time, define what the FDCPA prohibits and allows.<sup>185</sup> The FTC seemingly picked up the CFPB's enforcement torch by entering into a \$700 million data breach settlement and issuing a \$5 billion fine for infringing on consumer privacy rights,<sup>186</sup> while California enacted landmark new personal privacy rights in a statute that may be emulated by other states.<sup>187</sup> Fifty-two state and territorial attorneys general entered into a \$575 million consent decree against a major lender over its mortgage and auto finance practices without involvement by the DOJ or HUD.<sup>188</sup> Litigation under the TCPA with its potentially unlimited class action liability, the subject of survey articles in six of the seven most recent *Annual Surveys*,<sup>189</sup> has supplanted the old standby of TILA litigation, last reported

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180. Jonathan W. Cannon, Christine Acree & Brandy Hood, *TILA-RESPA Integrated Disclosures Developments*, 71 *BUS. LAW.* 639 (2016); Jonathan W. Cannon, Christine Acree & Brandy Hood, *TILA-RESPA Integrated Disclosures Developments*, 72 *BUS. LAW.* 503 (2017); Christine M. Acree & Brandy A. Hood, *TRID 2.0 and the Disappearance of the Black Hole*, 74 *BUS. LAW.* 537 (2019).

181. *First Year*, *supra* note 177, at 565–68.

182. *Mortgage Servicing 2013*, *supra* note 178, at 571–75 (discussing \$25 billion settlement with mortgage servicers); see also John L. Ropiequet, Christopher S. Naveja & L. Jean Noonan, *Fair Lending Developments: Enforcement Intensifies, Class Actions Diminish*, 68 *BUS. LAW.* 637, 637–42 (2013) (discussing DOJ anti-discrimination enforcement actions with over \$800 million in consumer benefits).

183. Richard E. Gottlieb, Fredrick S. Levin, Amanda Raines Lawrence & A. Paul Heeringa, *Recent Developments in Residential-Mortgage-Backed Securities Litigation*, 71 *BUS. LAW.* 689 (2016); Richard E. Gottlieb & Brett J. Ntarelli, *ACE in the Hole: Developments Since ACE Securities in Residential Mortgage-Backed Securities Litigation*, 72 *BUS. LAW.* 585 (2017).

184. Alan S. Kaplansky, Mark J. Levin & Martin C. Bryce, Jr., *After the Demise of the CFPB Rule, It Is Back to the Future for Consumer Arbitration*, 74 *BUS. LAW.* 591 (2019); Justin B. Hosie, K. Dailey Wilson, Erica A.N. Kramer & Andrea S. Cottrell, *The Walking Dead: 2018 Small Dollar Lending Updates—Is the Small Dollar Loan Industry Mostly Dead or Mostly Alive?*, 74 *BUS. LAW.* 553 (2019).

185. *Debt Collection Rule*, *supra* note 169.

186. *FCRA 2019*, *supra* note 167, at 1907–09.

187. Sanford Shatz & Susan E. Chylik, *The California Consumer Privacy Act of 2018—A Sea Change in Protecting a California Consumer's Personal Information*, 75 *BUS. LAW.* 1917 (2020).

188. *Auto Finance 2019*, *supra* note 166, at 2018–19.

189. E.g., *TCPA 2014*, *supra* note 152; Zachary D. Miller & Rachel R. Friedman, *TCPA Update: The D.C. Circuit Rules and Chaos Ensues*, 74 *BUS. LAW.* 581 (2019).

in the 2012 Survey,<sup>190</sup> although the Supreme Court's decision in *Spokeo, Inc. v. Robins*<sup>191</sup> requiring a concrete injury-in-fact to be present to recover statutory damages threatens to upend much consumer finance litigation.<sup>192</sup> Marketplace lending to consumers over the internet by innovative non-bank fintech companies<sup>193</sup> and virtual currencies<sup>194</sup> present problems that both federal and state regulators are only beginning to address.

Based on this, the Committee and the editors expect that there will be many more consumer finance law developments for the *Annual Survey* to chronicle during the next decade.

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190. Arthur B. Axelson & Richard A. Vance, *Truth in Lending Update—2011*, 67 BUS. LAW. 541 (2012).

191. 136 S. Ct. 1540 (2016).

192. Matthew O. Stromquist, Anna-Katrina S. Christakis & Jeffrey D. Pilgrim, *The High Court Speaks on Standing, Mootness, Arbitration, and Representative Evidence*, 72 BUS. LAW. 567 (2017); Anna-Katrina S. Christakis, Jeffrey D. Pilgrim & Jennifer L. Majewski, *Post-Spokeo: The Impact of Article III Standing on Consumer Finance Litigation*, 74 BUS. LAW. 565 (2019).

193. Robert Savoie & Philip (PJ) Hoffman, *Marketplace Lending and Fintech: The States Object*, 73 BUS. LAW. 509 (2018); Robert Savoie & Sarah Edwards, *Developments in Fintech: The CFPB Product Sandbox and No-Action Letter Policy, State Sandboxes, and Federal Actions*, 75 BUS. LAW. 1939 (2020).

194. Ryan S. Stinneford & D. Patrick Yoest, *Current Developments in Bank Deposits and Payment Systems*, 74 BUS. LAW. 507, 511 (2019).

