

1 **SENATE FLOOR VERSION**

2 April 4, 2013

3 ENGROSSED HOUSE
4 BILL NO. 1829

By: Armes of the House

5 and

6 Newberry of the Senate

7
8 An Act relating to consumer credit; amending 14A O.S.
9 2011, Sections 1-302, 3-104, as amended by Section 4,
10 Chapter 172, O.S.L. 2012, 3-309, 3-309.1 and 5-203,
11 as amended by Section 6, Chapter 172, O.S.L. 2012
12 (14A O.S. Supp. 2012, Sections 3-104 and 5-203),
13 which relate to the Uniform Consumer Credit Code;
14 modifying definition; updating citation; requiring
15 creditor give additional information to the consumer
16 if certain conditions exist; describing method for
17 creditor to apply certain interest rates; providing
18 for manner and placement of certain disclosures;
19 prescribing a table format for certain disclosures;
20 requiring certain information be given in the billing
21 statement; directing Administrator to employ
22 terminology that is easier to understand; requiring
23 billing statement of certain accounts to include a
24 due date and late fee; prescribing notice if late
payments cause the interest rate to increase;
specifying that date payment is made in person is
date to be considered in applying late fees; updating
citations; directing creditor provide written notice
of increase in annual percentage rate within certain
time period; providing exception; requiring creditor
provide written notice of significant change in
cardholder agreement; describing manner and form of
notice; stating that account closure or cancellation
shall not be default or trigger immediate repayment;
prohibiting certain finance charges; providing
exceptions; disallowing over-the-limit fee unless
extension of credit is elected by the consumer;
requiring notice of over-the-limit fee; providing
notice of consumer's right to revoke election;
permitting consumer to revoke election orally,

electronically, or in writing; directing Administrator to prescribe regulations for making and revoking election; providing timing for consumer election; directing Administrator to prescribe regulations for disclosure of election and prevent deceptive practices; construing provision; permitting over-the-limit fee to be charged at certain times; prohibiting separate fee to repay extension unless it involves an expedited service; prescribing when the term "fixed" can be used; requiring payment due date to be the same day each month; prohibiting credit cards issued to consumers less than twenty-one years old; providing exception; disallowing extension of credit for certain consumer accounts unless prior written approval given; updating citations; limiting actions for private education loans to date on which the first principal payment is due; exempting private educational lender from certain liability; enacting the Oklahoma Private Student Loan Transparency and Improvement Act; defining terms; prohibiting private education lender from providing gift or engaging in revenue sharing with an educational institution; disallowing private educational lender from using certain images or logos of an educational institution in marketing; proscribing gifts to certain persons employed by an educational institution; providing exception for reimbursement of reasonable expenses; prohibiting penalizing a borrower for early repayment or prepayment of a private education loan; requiring higher education institution to disclose agreements made with card issuer or creditor; prohibiting card issuer from offering student a tangible item to induce participation in a consumer credit plan; providing parameters for prohibition; requiring disclosure of certain information to borrower on application for a private education loan; providing for additional disclosures upon approval of a private education loan application; requiring private education lender to obtain certain federal form signed by the borrower; directing Administrator to publish model forms; describing contents of model forms; setting forth time period for borrower to accept a private education loan; prohibiting private educational lender from changing the rates and terms during certain time period; limiting time when lender can change rates and terms of a private education loan; permitting borrower to cancel the loan without

1 penalty during certain time period; requiring lender
2 to disclose the right to cancel; prohibiting
3 disbursement of funds within certain time period;
4 directing Administrator to prevent duplicative
5 disclosures; requiring private educational lender to
6 annually provide certain information to the
7 educational institution; providing for codification;
8 providing an effective date; and declaring an
9 emergency.

10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-111 of Title 14A, unless there
13 is created a duplication in numbering, reads as follows:

14 Amendments to this title for purposes of complying with the
15 Federal Consumer Credit Protection Act shall be located in Article 3
16 of this title.

17 SECTION 2. AMENDATORY 14A O.S. 2011, Section 1-302, is
18 amended to read as follows:

19 Section 1-302. In this ~~act~~ title, "Federal Consumer Credit
20 Protection Act" means the Consumer Credit Protection Act (Public Law
21 90-321; 82 Stat. 146), as amended, including the amendments to the
22 Federal Consumer Credit Protection Act in the Truth in Lending
23 Simplification and Reform Act (Public Law 96-221; 94 Stat. 168-185)
24 and the Dodd-Frank Wall Street Reform and Consumer Protection Act
(Public Law 11-203), and includes regulations issued pursuant to

1 those Acts by the Board of Governors of the Federal Reserve System
2 and the Consumer Financial Protection Bureau, as applicable.

3 SECTION 3. AMENDATORY 14A O.S. 2011, Section 3-104, as
4 amended by Section 4, Chapter 172, O.S.L. 2012 (14A O.S. Supp. 2012,
5 Section 3-104), is amended to read as follows:

6 Section 3-104. Except with respect to a loan primarily secured
7 by an interest in land (Section 3-105 of this title), or except with
8 respect to loans granted by institutions of postsecondary education
9 except that such loans by institutions of postsecondary education
10 shall be subject to disclosure requirements pursuant to Section 3-
11 301 of this title and remedies for violation of disclosure
12 provisions pursuant to Articles 5 and 6 of this title if otherwise
13 they meet the definition of consumer loan, a "consumer loan" is a
14 loan made by a person regularly engaged in the business of making
15 loans in which:

16 (a) the debtor is a person other than an organization;

17 (b) the debt is incurred primarily for a personal, family
18 or household purpose;

19 (c) either the debt is payable in installments or a loan
20 finance charge is made; and

21 (d) either the principal does not exceed Fifty Thousand
22 Dollars (\$50,000.00), unless the loan is a private
23 education loan as that term is defined in ~~the Federal~~
24 ~~Consumer Credit Protection Act~~ Section 8 of this act,

1 or the debt is secured by an interest in land. The
2 dollar amount in this paragraph shall be adjusted
3 annually as indicated by the Consumer Financial
4 Protection Bureau by the annual percentage increase in
5 the Consumer Price Index for Urban Wage Earners and
6 Clerical Workers, as published by the Bureau of Labor
7 Statistics, rounded to the nearest multiple of One
8 Hundred Dollars (\$100.00) or One Thousand Dollars
9 (\$1,000.00) as applicable.

10 SECTION 4. AMENDATORY 14A O.S. 2011, Section 3-309, is
11 amended to read as follows:

12 Section 3-309. (1) Before opening any account under a
13 revolving loan account plan, the creditor shall give to the consumer
14 the following information:

15 (a) conditions under which a loan finance charge may be
16 made, including the time period, if any, within which
17 any credit extended may be repaid without incurring a
18 loan finance charge, except that the creditor may, at
19 his election and without disclosure, impose no such
20 loan finance charge if payment is received after the
21 termination of such period. If no time period is
22 provided, the creditor shall disclose that fact;

23 (b) method of determining the balance upon which a loan
24 finance charge will be computed;

- 1 (c) method of determining the amount of the loan finance
2 charge including any minimum or fixed amount imposed
3 as a finance charge, and where one or more periodic
4 rates may be used to compute the loan finance charge,
5 each such rate and the range of balances to which it
6 is applicable;
- 7 (d) corresponding nominal annual percentage rate pursuant
8 to subsection (3) of Section 3-304 of this title; if
9 more than one corresponding nominal annual percentage
10 rate may be used, each corresponding nominal annual
11 percentage rate shall be stated;
- 12 (e) identification of additional charges which may be made
13 and the method by which they will be determined;
- 14 (f) in cases where the creditor may retain or acquire a
15 security interest in property to secure the balances
16 resulting from credit extensions made pursuant to the
17 revolving loan account, a statement that a security
18 interest has been or will be taken in the property
19 purchased as part of the credit transaction or
20 property not purchased as part of the credit
21 transaction identified by item or type;
- 22 (g) a statement in a form prescribed by and describing the
23 protection provided by Sections 161 and 170 of the
24 Federal Consumer Credit Protection Act to an obligor

1 and the responsibility of a creditor under Sections
2 162 and 170 of the Federal Consumer Credit Protection
3 Act; and

4 (h) in the case of any account under a revolving loan
5 account plan which provides for any extension of
6 credit which is secured by the consumer's principal
7 dwelling, any information which:

8 (i) is required to be disclosed under subsection (1)
9 of Section 3-309.2 of this title; and

10 (ii) the Administrator determines is not described in
11 any other paragraph of this subsection.

12 (2) If there is an outstanding balance at the end of the
13 billing cycle or if a loan finance charge is made with respect to
14 the billing cycle, the creditor shall give to the consumer the
15 following information within a reasonable time after the end of the
16 billing cycle:

17 (a) outstanding balance at the beginning of the billing
18 cycle;

19 (b) the amount and date of each extension of credit made
20 during the billing cycle and a brief identification of
21 each extension of credit on or accompanying the
22 statement in a form prescribed by regulations of the
23 Administrator to enable the consumer to identify the
24 transaction, or relate it to copies of sale vouchers

1 or similar instruments previously furnished, except
2 that a creditor's failure to disclose information in
3 accordance with this paragraph shall not be deemed a
4 failure to comply with this part if the creditor
5 maintains procedures reasonably adapted to procure and
6 provide such information and the creditor responds to
7 and treats any inquiry for clarification or
8 documentation as a billing error and an erroneously
9 billed amount in accordance with Section 161 of the
10 Federal Consumer Credit Protection Act. In lieu of
11 complying with the requirements of the previous
12 sentence and to the extent permitted by rule of the
13 Administrator, in the case of any transaction in which
14 the creditor and a seller are related persons as
15 defined by the Administrator and the revolving loan
16 account plan has fewer than fifteen thousand (15,000)
17 accounts, the creditor may elect to provide only the
18 amount and date of each extension of credit during the
19 billing cycle and the seller's name and location where
20 the transaction took place if a brief identification
21 of the transaction has been previously furnished and
22 the creditor responds to and treats any inquiry for
23 clarification or documentation as a billing error and
24 an erroneously billed amount in accordance with

1 Section 161 of the Federal Consumer Credit Protection
2 Act;

3 (c) amount credited to the account during the billing
4 cycle;

5 (d) amount of loan finance charge debited during the
6 billing cycle, with an itemization or explanation to
7 show the total amount of loan finance charge, if any,
8 due to the application of one or more periodic
9 percentages and the amount, if any, imposed as a
10 minimum or fixed charge;

11 (e) the periodic percentage used to calculate the loan
12 finance charge; if more than one periodic percentage
13 is used, each percentage and the amount of the balance
14 to which each applies shall be disclosed;

15 (f) the balance on which the loan finance charge is
16 computed and a statement of how the balance is
17 determined; if the balance is determined without first
18 deducting all amounts credited during the period, that
19 fact and the amounts credited shall also be stated;

20 (g) if the loan finance charge for the billing cycle
21 exceeds fifty cents (\$0.50) for a monthly or longer
22 billing cycle, or the pro rata part of the fifty cents
23 (\$0.50) for a billing cycle shorter than monthly, the
24 loan finance charge expressed as an annual percentage

1 rate pursuant to paragraph (b) of subsection (2) of
2 Section 3-304 of this title; if more than one periodic
3 percentage is used to calculate the loan finance
4 charge, the creditor, in lieu of stating a single
5 annual percentage rate, may state more than one annual
6 percentage rate and the amount of the balance to which
7 each annual percentage rate applies;

8 (h) if the loan finance charge for the billing cycle does
9 not exceed fifty cents (\$0.50) for a monthly or longer
10 billing cycle, or the pro rata part of fifty cents
11 (\$0.50) for a billing cycle shorter than monthly, the
12 corresponding nominal annual percentage rate pursuant
13 to subsection (3) of Section 3-304 of this title;

14 (i) outstanding balance at the end of the billing cycle;

15 (j) date by which or period, if any, within which payment
16 must be made to avoid additional loan finance charges,
17 except that the creditor may, at his election and
18 without disclosure, impose no such additional loan
19 finance charge if payment is received after such date
20 or the termination of such period; ~~and~~

21 (k) address to be used by the creditor for the purpose of
22 receiving billing inquiries;

23 (l) a written statement in the following form: "Minimum
24 Payment Warning: Making only the minimum payment will

1 increase the amount of interest you pay and the time
2 it takes to repay your balance.”; and

3 (m) repayment information that would apply to the
4 outstanding balance of the consumer under the credit
5 plan, including:

6 (i) the number of months (rounded to the nearest
7 month) that it would take to pay the entire
8 amount of that balance, if the consumer pays only
9 the required minimum monthly payments and if no
10 further advances are made,

11 (ii) the total cost to the consumer, including
12 interest and principal payments, of paying that
13 balance in full, if the consumer pays only the
14 required minimum monthly payments and if no
15 further advances are made,

16 (iii) the monthly payment amount that would be required
17 for the consumer to eliminate the outstanding
18 balance in thirty-six (36) months, if no further
19 advances are made, and the total cost to the
20 consumer, including interest and principal
21 payments, of paying that balance in full if the
22 consumer pays the balance over thirty-six (36)
23 months, and

1 (iv) a toll-free telephone number at which the
2 consumer may receive information about accessing
3 credit counseling and debt management services;

4 In making the disclosures under this paragraph, the
5 creditor shall apply the interest rate or rates in
6 effect on the date on which the disclosure is made
7 until the date on which the balance would be paid in
8 full. If the interest rate in effect on the date on
9 which the disclosure is made is a temporary rate that
10 will change under a contractual provision applying an
11 index or formula for subsequent interest rate
12 adjustment, the creditor shall apply the interest rate
13 in effect on the date on which the disclosure is made
14 for as long as that interest rate will apply under
15 that contractual provision, and then apply an interest
16 rate based on the index or formula in effect on the
17 applicable billing date.

18 (3) (a) All of the information described in paragraph (m) of
19 subsection (2) of this section shall:

20 (i) be disclosed in the form and manner which the
21 Administrator shall prescribe, by regulation, and
22 in a manner that avoids duplication, and

23 (ii) be placed in a conspicuous and prominent location
24 on the billing statement;

1 (b) in the regulations prescribed under paragraph (a) of
2 this subsection, the Administrator shall require that
3 the disclosure of such information shall be in the
4 form of a table that:

5 (i) contains clear and concise headings for each item
6 of such information, and

7 (ii) provides a clear and concise form stating each
8 item of information required to be disclosed
9 under each such heading;

10 (c) in prescribing the form of the table under paragraph
11 (b) of this subsection, the Administrator shall
12 require that:

13 (i) all of the information in the table, and not just
14 a reference to the table, be placed on the
15 billing statement, as required by this section,
16 and

17 (ii) the items required to be included in the table
18 shall be listed in the order in which such items
19 are set forth in paragraph (m) of subsection (2)
20 of this section; and

21 (d) in prescribing the form of the table under paragraph
22 (b) of this subsection, the Administrator shall employ
23 terminology which is different than the terminology
24 which is employed in paragraph (m) of subsection (2)

1 of this section, if such terminology is more easily
2 understood and conveys substantially the same meaning.

3 (4) (a) In the case of a credit card account under an open-end
4 consumer credit plan under which a late fee or charge
5 may be imposed due to the failure of the obligor to
6 make payment on or before the due date for such
7 payment, the periodic statement required with respect
8 to the account shall include, in a conspicuous
9 location on the billing statement, the date on which
10 the payment is due or, if different, the date on which
11 a late payment fee will be charged, together with the
12 amount of the fee or charge to be imposed if payment
13 is made after that date.

14 (b) if one or more late payments under an open-end
15 consumer credit plan may result in an increase in the
16 annual percentage rate applicable to the account, the
17 statement required with respect to the account shall
18 include conspicuous notice of such fact, together with
19 the applicable penalty annual percentage rate, in
20 close proximity to the disclosure required under
21 paragraph (a) of this subsection of the date on which
22 payment is due under the terms of the account.

23 (c) if the creditor, in the case of a credit card account
24 referred to in paragraph (a) of this subsection, is a

1 financial institution which maintains branches or
2 offices at which payments on any such account are
3 accepted from the obligor in person, the date on which
4 the obligor makes a payment on the account at such
5 branch or office shall be considered to be the date on
6 which the payment is made for purposes of determining
7 whether a late fee or charge may be imposed due to the
8 failure of the obligor to make payment on or before
9 the due date for such payment.

10 SECTION 5. AMENDATORY 14A O.S. 2011, Section 3-309.1, is
11 amended to read as follows:

12 Section 3-309.1 Disclosure in credit and charge card
13 applications and solicitation:

14 (1) Any application to open a credit card account for any
15 person under a revolving loan account plan, or a solicitation to
16 open such an account without requiring an application that is mailed
17 to consumers shall disclose the following information, subject to
18 subsection (8) of this section and subsections (5) through (8) of
19 Section 3-302 of this title.

20 (a) Each annual percentage rate applicable to extensions
21 of credit under such credit plan.

22 (b) Where an extension of credit is subject to a variable
23 rate, the fact that the rate is variable, the annual
24

percentage rate in effect at the time of the mailing,
and how the rate is determined.

(c) Where more than one rate applies, the range of
balances to which each rate applies.

(d) Any annual fee, other periodic fee, or membership fee
imposed for the issuance or availability of a credit
card, including any account maintenance fee or other
charge imposed based on activity or inactivity for the
account during the billing cycle.

(e) Any minimum finance charge imposed for each period
during which any extension of credit which is subject
to a finance charge is outstanding.

(f) Any transaction charge imposed in connection with use
of the card to purchase goods or services.

(g) The date by which or the period within which any
credit extended under such credit plan for purchases
of goods or services must be repaid to avoid incurring
a loan finance charge, and, if no such period is
offered, such fact shall be clearly stated.

(h) If the length of such "grace period" varies, the card
issuer may disclose the range of days in the grace
period, the minimum number of days in the grace
period, or the average number of days in the grace
period, if the disclosure is identified as such.

1 (i) The name of the balance calculation method used in
2 determining the balance on which the loan finance
3 charge is computed if the method used has been defined
4 by the Administrator, or a detailed explanation of the
5 balance calculation method used if the method has not
6 been so defined.

7 (j) In prescribing rules to carry out the requirements of
8 paragraph (i) of this subsection, the Administrator
9 shall define and name not more than the five ~~(5)~~
10 balance calculation methods determined by the
11 Administrator to be the most commonly used methods.

12 (2) In addition to the information required to be disclosed
13 under subsection (1) of this section each application or
14 solicitation to which such subsection applies shall disclose clearly
15 and conspicuously the following information, subject to subsections
16 (8) and (9) of this section:

17 (a) Any fee imposed for an extension of credit in the form
18 of cash.

19 (b) Any fee imposed for a late payment.

20 (c) Any fee imposed in connection with an extension of
21 credit in excess of the amount of credit authorized to
22 be extended with respect to such account.

23 (3) (a) In any telephone solicitation to open a credit card
24 account for any person under a revolving loan account

1 plan, the person making the solicitation shall orally
2 disclose the information described in subsection (1)
3 of this section.

4 (b) Paragraph (a) of this subsection shall not apply to
5 any telephone solicitation if:

6 (i) the credit card issuer:

7 (aa) does not impose any fee described in
8 paragraph (d) of subsection (1) of this
9 section, or

10 (bb) does not impose any fee in connection with
11 telephone solicitations unless the consumer
12 signifies acceptance by using the card;

13 (ii) the card issuer discloses clearly and
14 conspicuously in writing the information
15 described in subsections (1) and (2) of this
16 section within thirty (30) days after the
17 consumer requests the card, but in no event later
18 than the date of delivery of the card; and

19 (iii) the card issuer discloses clearly and
20 conspicuously that the consumer is not obligated
21 to accept the card or account and the consumer
22 will not be obligated to pay any of the fees or
23 charges disclosed unless the consumer elects to
24 accept the card or account by using the card.

1 (4) (a) Any application to open a credit card account for any
2 person under a revolving loan account plan, and any
3 solicitation to open an account without requiring an
4 application, that is made available to the public or
5 contained in catalogs, magazines or other publications
6 shall meet the disclosure requirements of paragraph
7 (b), (c), or (d) of this subsection.

8 (b) An application or solicitation described in paragraph
9 (a) of this subsection meets the requirement of this
10 paragraph if such application or solicitation
11 contains:

12 (i) the information:

13 (aa) described in subsection (1) of this section
14 in the form required under subsections (5)
15 through (8) of Section 3-302 of this title
16 subject to subsection (8) of this section;
17 and

18 (bb) described in subsection (2) of this section
19 in a clear and conspicuous form, subject to
20 subsections (8) and (9) of this section;

21 (ii) a statement, in a conspicuous and prominent
22 location on the application or solicitation,
23 that:

1 (aa) the information is accurate as of the date
2 the application or solicitation was printed;
3 (bb) the information contained in the application
4 or solicitation is subject to change after
5 such date; and
6 (cc) the applicant should contact the creditor
7 for information on any change in the
8 information contained in the application or
9 solicitation since it was printed;

10 (iii) a clear and conspicuous disclosure of the date
11 the application or solicitation was printed; and

12 (iv) a disclosure, in a conspicuous and prominent
13 location on the application or solicitation, of a
14 toll free telephone number or a mailing address
15 at which the applicant may contact the creditor
16 to obtain any change in the information provided
17 in the application or solicitation since it was
18 printed.

19 (c) An application or solicitation described in paragraph

20 (a) of this subsection meets the requirement of this
21 paragraph if such application or solicitation:

22 (i) contains a statement, in a conspicuous and
23 prominent location on the application or
24 solicitation, that:

1 (aa) there are costs associated with the use of
2 credit cards; and

3 (bb) the applicant may contact the creditor to
4 request disclosure of specific information
5 of such costs by calling a toll free
6 telephone number or by writing to an address
7 specified in the application;

8 (ii) contains a disclosure, in a conspicuous and
9 prominent location on the application or
10 solicitation, of a toll free telephone number and
11 a mailing address at which the applicant may
12 contact the creditor to obtain such information;
13 and

14 (iii) does not contain any of the items described in
15 subsections (1) and (2) of this section.

16 (d) An application or solicitation meets the requirements
17 of this subsection if it contains, or is accompanied
18 by:

19 (i) the disclosures required by paragraphs (a)
20 through (f) of subsection (1) of Section 3-309 of
21 this title;

22 (ii) the disclosures required by subsections (1) and
23 (2) of this section included clearly and
24 conspicuously, except that the provisions of

1 subsections (5) through (8) of Section 3-302 of
2 this title shall not apply; and

3 (iii) a toll free telephone number or a mailing address
4 at which the applicant may contact the creditor
5 to obtain any change in the information provided.

6 (e) Upon receipt of a request for any of the information
7 referred to in paragraph (b), (c) or (d) of this
8 subsection, the card issuer or the agent of such
9 issuer shall promptly disclose all of the information
10 described in subsections (1) and (2) of this section.

11 (5) (a) Any application or solicitation to open a charge card
12 account shall disclose clearly and conspicuously the
13 following information in the form required by
14 subsections (5) through (8) of Section 3-302 of this
15 title subject to subsection (8) of this section:

16 (i) Any annual fee, other periodic fee, or membership
17 fee imposed for the issuance or availability of
18 the charge card, including any account
19 maintenance fee or other charge imposed based on
20 activity or inactivity for the account during the
21 billing cycle.

22 (ii) Any transaction charge imposed in connection with
23 use of the card to purchase goods or services.
24

1 (iii) A statement that charges incurred by use of the
2 charge card are due and payable upon receipt of a
3 periodic statement rendered for such charge card
4 account.

5 (b) In addition to the information required to be
6 disclosed under paragraph (a) of this subsection each
7 written application or solicitation to which such
8 paragraph applies shall disclose clearly and
9 conspicuously the following information, subject to
10 subsections (8) and (9) of this section:

11 (i) Any fee imposed for an extension of credit in the
12 form of cash.

13 (ii) Any fee imposed for a late payment.

14 (iii) Any fee imposed in connection with an extension
15 of credit in excess of the amount of credit
16 authorized to be extended with respect to such
17 account.

18 (c) Any application to open a charge card account, and any
19 solicitation to open such an account without requiring
20 an application, that is made available to the public
21 or contained in catalogs, magazines, or other
22 publications shall contain:

23 (i) the information:
24

1 (aa) described in paragraph (a) of this
2 subsection in the form required under
3 subsections (5) through (8) of Section 3-302
4 of this title subject to subsection (8) of
5 this section; and

6 (bb) described in paragraph (b) of this
7 subsection in a clear and conspicuous form,
8 subject to subsections (8) and (9) of this
9 section;

10 (ii) a statement, in a conspicuous and prominent
11 location on the application or solicitation,
12 that:

13 (aa) the information is accurate as of the date
14 the application or solicitation was printed;

15 (bb) the information contained in the application
16 or solicitation is subject to change after
17 such date; and

18 (cc) the applicant should contact the creditor
19 for information on any change in the
20 information contained in the application or
21 solicitation since it was printed;

22 (iii) a clear and conspicuous disclosure of the date
23 the application or solicitation was printed; and
24

1 (iv) a disclosure, in a conspicuous and prominent
2 location on the application or solicitation, of a
3 toll free telephone number or a mailing address
4 at which the applicant may contact the creditor
5 to obtain any change in the information provided
6 in the application or solicitation since it was
7 printed.

8 (d) If a charge card permits the card holder to receive an
9 extension of credit under a revolving loan account
10 plan which is not maintained by the charge card issuer
11 the charge card issuer may provide the information
12 described in paragraphs (a) and (b) of this subsection
13 in the form required by such paragraphs in lieu of the
14 information required to be provided under subsection
15 (1), (2), (3) or (4) of this section with respect to
16 any credit extended under such plan, if the charge
17 card issuer discloses clearly and conspicuously to the
18 consumer in the application or solicitation that:

19 (i) the charge card issuer will make an independent
20 decision as to whether to issue the card;

21 (ii) the charge card may arrive before the decision is
22 made with respect to an extension of credit under
23 a revolving loan account plan; and
24

1 (iii) approval by the charge card issuer does not
2 constitute approval by the issuer of the
3 extension of credit.

4 (e) The information required to be disclosed under
5 subsections (1) and (2) of this section shall be
6 provided to the charge card holder by the creditor
7 which maintains such revolving loan account plan
8 before the first extension of credit under such plan.

9 (f) For the purposes of this subsection, the term "charge
10 card" means a card, plate, or other single credit
11 device that may be used from time to time to obtain
12 credit which is not subject to a finance charge.

13 (6) The Administrator may, by rule, require the disclosure of
14 information in addition to that otherwise required by subsections
15 (1) through (7) of this section, and modify any disclosure of
16 information required by subsections (1) through (7) of this section,
17 in any application to open a credit card account for any person
18 under a revolving loan account plan or any application to open a
19 charge card account for any person, or a solicitation to open any
20 such account without requiring an application, if the Administrator
21 determines that such action is necessary to carry out the purposes
22 of, or prevent evasions of, any subsection of this section.

23 (7) (a) ~~Except as provided in paragraph (b) of this~~
24 ~~subsection, a~~ A card issuer that imposes any fee

described in ~~subsections~~ paragraph (d) of subsection
(1)~~(d)~~ or subparagraph (i) of paragraph (a) of
subsection (5)~~(a)(i)~~ of this section shall transmit to
a consumer at least thirty (30) days prior to the
scheduled renewal date of the consumer's credit or
charge card account a clear and conspicuous disclosure
of:

(i) the date by which, the month by which, or the
billing period at the close of which, the account
will expire if not renewed;

(ii) the information described in ~~subsections~~
subsection (1) or paragraph (a) of subsection
(5)~~(a)~~ of this section that would apply if the
account were renewed, subject to subsection (8)
of this section; and

(iii) the method by which the consumer may terminate
continued credit availability under the account.

(b) (i) The disclosures required by this subsection may
be provided:

(aa) prior to posting a fee described in

~~subsection~~ paragraph (d) of subsection

(1)~~(d)~~ or subparagraph (i) of paragraph

(a)~~(i)~~ of subsection (5) of this section to

the account; or

(bb) with the periodic billing statement first disclosing that the fee has been posted to the account.

(ii) disclosures may be provided under subparagraph (i) of this paragraph only if:

(aa) the consumer is given a thirty-day period to avoid payment of the fee or to have the fee recredited to the account in any case where the consumer does not wish to continue the availability of the credit; and

(bb) the consumer is permitted to use the card during such period without incurring an obligation to pay such fee.

(c) The Administrator may, by rule, provide for fewer disclosures than are required by paragraph (a) of this subsection in the case of an account which is renewable for a period of less than six (6) months.

(8) (a) If the amount of any fee required to be disclosed under the previous subsections of this section is determined on the basis of a percentage of another amount, the percentage used in making such determination and the identification of the amount against which such percentage is applied shall be disclosed in lieu of the amount of such fee.

1 (b) If a credit or charge card issuer does not impose any
2 fee required to be disclosed under any provision of
3 the previous subsections of this section, such
4 provision shall not apply with respect to such issuer.

5 (9) If the amount of any fee required to be disclosed by a
6 credit or charge card issuer under subsection (2), division (bb) of
7 subparagraph (i) of paragraph (b) of subsection (4) ~~(b) (i) (bb)~~,
8 paragraph (b) of subsection (5) ~~(b)~~ or division (bb) of subparagraph
9 (i) of paragraph (c) of subsection (5) ~~(c) (i) (bb)~~ of this section
10 varies from state to state, the card issuer may disclose the range
11 of such fees for purposes of subsections (1) through (5) of this
12 section in lieu of the amount for each applicable state, if such
13 disclosure includes a statement that the amount of such fee varies
14 from state to state.

15 (10) (a) Whenever a card issuer that offers any guarantee or
16 insurance for repayment of all or part of the
17 outstanding balance of a revolving loan account plan
18 proposes to change the person providing that guarantee
19 or insurance, the card issuer shall send each insured
20 consumer written notice of the proposed change not
21 less than thirty (30) days prior to the change,
22 including notice of any increase in the rate or
23 substantial decrease in coverage or service which will
24 result from such change. Such notice may be included

1 on or with the monthly statement provided to the
2 consumer prior to the month in which the proposed
3 change would take effect.

4 (b) In any case in which a proposed change described in
5 paragraph (a) of this subsection occurs, the insured
6 consumer shall be given the name and address of the
7 new guarantor or insurer and a copy of the policy or
8 group certificate containing the basic terms and
9 conditions, including the premium rate to be charged.

10 (c) The notices required under paragraphs (a) and (b) of
11 this subsection shall each include a statement that
12 the consumer has the option to discontinue the
13 insurance or guarantee.

14 (d) No provision of this subsection shall be construed as
15 superseding any provision of Oklahoma law which is
16 applicable to the regulation of insurance.

17 (e) The Administrator shall define, in rules, what
18 constitutes a "substantial decrease in coverage or
19 service" for purposes of paragraph (a) of this
20 subsection.

21 (11) (a) In the case of any credit card account under an open-
22 end consumer credit plan, a creditor shall provide a
23 written notice of an increase in an annual percentage
24 rate (except in the case of an increase described in

1 paragraph (1), (2) or (3) of 15 U.S.C. Section 1661i-
2 1(b)) not later than forty-five (45) days prior to the
3 effective date of the increase.

4 (b) In the case of any credit card account under an open-
5 end consumer credit plan, a creditor shall provide a
6 written notice of any significant change, as
7 determined by rule of the Administrator, in the terms
8 (including an increase in any fee or finance charge,
9 other than as provided in paragraph (a) of this
10 subsection) of the cardholder agreement between the
11 creditor and the obligor not later than forty-five
12 (45) days prior to the effective date of the change.

13 (c) Each notice required by paragraph (a) or (b) of this
14 subsection shall be made in a clear and conspicuous
15 manner, and shall contain a brief statement of the
16 right of the obligor to cancel the account pursuant to
17 rules established by the Administrator, before the
18 effective date of the subject rate increase or other
19 change.

20 (d) Closure or cancellation of an account by the obligor
21 shall not constitute a default under an existing
22 cardholder agreement, and shall not trigger an
23 obligation to immediately repay the obligation in full
24 or through a method that is less beneficial to the

1 obligor than one of the methods described in 15 U.S.C.
2 Section 1661i-1(c) (2), or the imposition of any other
3 penalty or fee.

4 (12) (a) Except as provided in subsection (2) of this section,
5 a creditor may not impose any finance charge on a
6 credit card account under an open-end consumer credit
7 plan as a result of the loss of any time period
8 provided by the creditor within which the obligor may
9 repay any portion of the credit extended without
10 incurring a finance charge, with respect to:

11 (i) any balances for days in billing cycles that
12 precede the most recent billing cycle; or

13 (ii) any balances or portions thereof in the current
14 billing cycle that were repaid within such time
15 period.

16 (b) This subsection shall not apply to:

17 (i) any adjustment to a finance charge as a result of
18 the resolution of a dispute; or

19 (ii) any adjustment to a finance charge as a result of
20 the return of a payment for insufficient funds.

21 (13) (a) In the case of any credit card account under an open-
22 end consumer credit plan under which an over-the-limit
23 fee may be imposed by the creditor for any extension
24 of credit in excess of the amount of credit authorized

1 to be extended under such account, no such fee shall
2 be charged, unless the consumer has expressly elected
3 to permit the creditor, with respect to such account,
4 to complete transactions involving the extension of
5 credit under such account in excess of the amount of
6 credit authorized.

7 (b) No election by a consumer under paragraph (a) of this
8 subsection shall take effect unless the consumer,
9 before making such election, received a notice from
10 the creditor of any over-the-limit fee in the form and
11 manner, and at the time, determined by the
12 Administrator. If the consumer makes the election
13 referred to in paragraph (a) of this subsection, the
14 creditor shall provide notice to the consumer of the
15 right to revoke the election, in the form prescribed
16 by the Administrator, in any periodic statement that
17 includes notice of the imposition of an over-the-limit
18 fee during the period covered by the statement.

19 (c) A consumer may make or revoke the election referred to
20 in paragraph (a) of this subsection orally,
21 electronically, or in writing, pursuant to regulations
22 prescribed by the Administrator. The Administrator
23 shall prescribe regulations to ensure that the same
24

1 options are available for both making and revoking
2 such election.

3 (d) A consumer may make the election referred to in
4 paragraph (a) of this subsection at any time, and such
5 election shall be effective until the election is
6 revoked in the manner prescribed under paragraph (c)
7 of this subsection.

8 (e) The Administrator shall prescribe regulations:

9 (i) governing disclosures under this subsection; and

10 (ii) that prevent unfair or deceptive acts or
11 practices in connection with the manipulation of
12 credit limits designed to increase over-the-limit
13 fees or other penalty fees.

14 (f) Nothing in this subsection shall be construed to
15 prohibit a creditor from completing an over-the-limit
16 transaction; provided, that a consumer who has not
17 made a valid election under paragraph (a) of this
18 subsection is not charged an over-the-limit fee for
19 such transaction.

20 (g) With respect to a credit card account under an open-
21 end consumer credit plan, an over-the-limit fee may be
22 imposed only once during a billing cycle if the credit
23 limit on the account is exceeded, and an over-the-
24 limit fee, with respect to such excess credit, may be

1 imposed only once in each of the two subsequent
2 billing cycles, unless the consumer has obtained an
3 additional extension of credit in excess of such
4 credit limit during any such subsequent cycle or the
5 consumer reduces the outstanding balance below the
6 credit limit as of the end of such billing cycle.

7 (14) With respect to a credit card account under an open-end
8 consumer credit plan, the creditor may not impose a separate fee to
9 allow the obligor to repay an extension of credit or finance charge,
10 whether such repayment is made by mail, electronic transfer,
11 telephone authorization, or other means, unless such payment
12 involves an expedited service by a service representative of the
13 creditor.

14 (15) With respect to the terms of any credit card account under
15 an open-end consumer credit plan, the term "fixed", when appearing
16 in conjunction with a reference to the annual percentage rate or
17 interest rate applicable with respect to such account, may only be
18 used to refer to an annual percentage rate or interest rate that
19 will not change or vary for any reason over the period specified
20 clearly and conspicuously in the terms of the account.

21 (16) If the terms of a credit card account under an open-end
22 consumer credit plan require the payment of any fees (other than any
23 late fee, over-the-limit fee, or fee for a payment returned for
24 insufficient funds) by the consumer in the first year during which

1 the account is opened in an aggregate amount in excess of twenty-
2 five percent (25%) of the total amount of credit authorized under
3 the account when the account is opened, no payment of any fees
4 (other than any late fee, over-the-limit fee, or fee for a payment
5 returned for insufficient funds) may be made from the credit made
6 available under the terms of the account. No provision of this
7 paragraph may be construed as authorizing any imposition or payment
8 of advance fees otherwise prohibited by any provision of law.

9 (17) The payment due date for a credit card account under an
10 open-end consumer credit plan shall be the same day each month. If
11 the payment due date for a credit card account under an open-end
12 consumer credit plan is a day on which the creditor does not receive
13 or accept payments by mail (including weekends and holidays), the
14 creditor may not treat a payment received on the next business day
15 as late for any purpose.

16 (18) No credit card may be issued to, or open-end consumer
17 credit plan established by or on behalf of, a consumer who has not
18 attained the age of twenty-one (21), unless the consumer has
19 submitted a written application to the card issuer that meets the
20 requirements of paragraph (a) of this subsection.

21 (a) An application to open a credit card account by a
22 consumer who has not attained the age of twenty-one
23 (21) as of the date of submission of the application
24 shall require:

1 (i) the signature of a cosigner, including the
2 parent, legal guardian, spouse, or any other
3 individual who has attained the age of twenty-one
4 (21) having a means to repay debts incurred by
5 the consumer in connection with the account,
6 indicating joint liability for debts incurred by
7 the consumer in connection with the account
8 before the consumer has attained the age of
9 twenty-one (21); or

10 (ii) submission by the consumer of financial
11 information, including through an application,
12 indicating an independent means of repaying any
13 obligation arising from the proposed extension of
14 credit in connection with the account.

15 (b) The Administrator shall promulgate regulations
16 providing standards that, if met, would satisfy the
17 requirements of subparagraph (ii) of paragraph (a) of
18 this subsection.

19 (19) No increase may be made in the amount of credit authorized
20 to be extended under a credit card account for which a parent, legal
21 guardian, or spouse of the consumer, or any other individual has
22 assumed joint liability for debts incurred by the consumer in
23 connection with the account before the consumer attains the age of
24

1 twenty-one (21), unless that parent, guardian, or spouse approves in
2 writing, and assumes joint liability for, such increase.

3 SECTION 6. AMENDATORY 14A O.S. 2011, Section 5-203, as
4 amended by Section 6, Chapter 172, O.S.L. 2012 (14A O.S. Supp. 2012,
5 Section 5-203), is amended to read as follows:

6 Section 5-203. (1) Except as otherwise provided in this
7 section, any creditor who fails to comply with any requirement
8 imposed by the provisions on disclosure (Part 3), other than the
9 provisions on advertising pursuant to Sections 2-313 of Article 2 of
10 this title and 3-312 of Article 3 of this title, or with any
11 requirement imposed by the provision on the right to rescind
12 pursuant to Section 5-204 of this title, with respect to any person
13 is liable to that person in an amount equal to the sum of:

14 (a) any actual damage sustained by that person as a result
15 of the failure;

16 (b) (i) (aa) in the case of an individual action twice
17 the amount of the credit service or loan
18 finance charge in connection with the
19 transaction,
20 (bb) in the case of an individual action relating
21 to a consumer lease twenty-five percent
22 (25%) of the total amount of monthly
23 payments under the lease but the liability
24 pursuant to this ~~part of this paragraph~~

division shall be not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),

(cc) in the case of an individual action relating to a credit transaction not under an open-end credit plan that is secured by real property or a dwelling, not less than Four Hundred Dollars (\$400.00) or greater than Four Thousand Dollars (\$4,000.00), or

(dd) in the case of an individual action relating to an open-end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of Five Hundred Dollars (\$500.00) and a maximum of Five Thousand Dollars (\$5,000.00), or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; or

(ii) in the case of a class action, an amount the court may allow, except that as to each member of the class no minimum recovery shall be applicable and the total recovery other than for actual damages in any class action or series of class

1 actions arising out of the same failure to comply
2 by the same creditor shall not be more than the
3 lesser of Five Hundred Thousand Dollars
4 (\$500,000.00) or one percent (1%) of the net
5 worth of the creditor;

6 (c) in the case of a successful action to enforce the
7 liability under paragraph (b) of this subsection or in
8 any action in which a person is determined to have a
9 right of rescission under Section 11 of this act and
10 Section 5-204 of this title, the costs of the action
11 together with reasonable attorney fees as determined
12 by the court. In determining the amount of award in
13 any class action, the court shall consider among other
14 relevant factors the amount of any actual damages
15 awarded, the frequency and persistence of failures of
16 compliance by the creditor, the resources of the
17 creditor, the number of persons adversely affected,
18 and the extent to which the creditor's failure of
19 compliance was intentional. In connection with the
20 disclosures required by Sections 2-310 and 3-309 of
21 this title, a creditor shall have a liability
22 determined under paragraph (b) of this subsection only
23 for failing to comply with the requirements of Section
24 5-204 of this title, ~~Sections~~ subsection (1) of

1 Section 2-310~~(1)~~ and subsection (1) of Section 3-
2 309~~(1)~~ of this title, ~~subsections (2)~~ paragraphs (d)
3 through (k) of subsection (2) of Section 2-310 of this
4 title, and ~~subsections (2)~~ paragraphs (d) through (k)
5 (m) of subsection (2) and subsections (3) and (4) of
6 Section 3-309 of this title. In connection with the
7 disclosures referred to in subsections (1) through (7)
8 of Sections 2-310.1 and 3-309.1 of this title, a card
9 issuer shall have a liability under this section only
10 to a cardholder who pays a fee described in paragraph
11 (d) of subsection (1) or subparagraph (i) of paragraph
12 (a) of subsection (5) of Section 2-310.1~~(1)(d)~~,
13 ~~Section 2-310.1(5)(a)(i)~~, or paragraph (d) of
14 subsection (1) or subparagraph (i) of paragraph (a) of
15 subsection (5) of Section 3-309.1~~(1)(d) or Section 3-~~
16 ~~309.1(5)(a)(i)~~ of this title or who uses the credit
17 card or charge card. In connection with disclosures
18 for closed-end credit, a creditor shall have a
19 liability determined under paragraph (b) of this
20 subsection only for failing to comply with the
21 requirements of Section 5-204 of this title,
22 ~~subsections (2)~~ paragraphs (b) insofar as it requires
23 a disclosure of the amount financed, through (f) and
24 ~~subsection~~ paragraph (j) of subsection (2) of Section

1 2-306 of this title, and ~~subsections (2)~~ paragraphs
2 (b) insofar as it requires a disclosure of the amount
3 financed, through (f), ~~subsection~~ and paragraph (h) of
4 subsection (2) of Section 3-306 of this title, and
5 subsections (2) and (3) of Section 3-310 of this
6 title, and paragraph (a), (b), (d), (f), or (j) of
7 subsection (2) of Section 11 of this act (for purposes
8 of subsection (2) or (4), paragraph (c) of subsection
9 (4) and subsection (6), (7), or (8) of Section 11 of
10 this act). With respect to any failure to make
11 disclosure, liability shall be imposed only upon the
12 creditor required to make disclosure, except as
13 provided in subsection (3) of Section 2-302 of this
14 title, subsection (3) of Section 3-302 of this title
15 and otherwise in this section; and

16 (d) in the case of a failure to comply with any
17 requirement under Section 3-309.4 of this title, an
18 amount equal to the sum of all finance charges and
19 fees paid by the consumer, unless the creditor
20 demonstrates that the failure to comply is not
21 material.

22 (2) A creditor or assignee has no liability under this section,
23 Section 5-302 of this title or Article 6 of this title in relation
24 to disclosure if within sixty (60) days after discovering an error

1 whether pursuant to a final written examination report or notice
2 issued under subsection (4) of Section 6-105 of this title or
3 through the creditor's or assignee's own procedures, and prior to
4 the institution of an action under this section or the receipt of
5 written notice of the error from the obligor, the creditor or
6 assignee notifies the person concerned of the error and makes
7 whatever adjustments in the appropriate account are necessary to
8 assure that the person will not be required to pay a credit service
9 charge or loan finance charge in excess of the amount actually
10 disclosed or the dollar equivalent of the percentage rate actually
11 disclosed, whichever is lower.

12 (3) A creditor or assignee may not be held liable in any action
13 brought under this section or Section 5-204 of this title for a
14 violation of this title if the creditor or assignee shows by a
15 preponderance of evidence that the violation was not intentional and
16 resulted from a bona fide error notwithstanding the maintenance of
17 procedures reasonably adapted to avoid the error. A bona fide error
18 includes, but is not limited to, a clerical, calculation, computer
19 malfunction and programming, and printing error, but not an error of
20 legal judgment with respect to a person's disclosure obligations
21 under this title.

22 (4) (a) Except as otherwise specifically provided in this
23 section, any civil action for a violation of this
24 section or administrative proceeding for restitution

1 which may be brought against the original creditor in
2 any transaction may be maintained against any
3 subsequent assignee of the original creditor in any
4 transaction where the violation from which the alleged
5 liability arose is apparent on the face of the
6 disclosure statement unless the assignment was
7 involuntary. For the purpose of this section, a
8 violation apparent on the face of the disclosure
9 statement includes, but is not limited to, a
10 disclosure which can be determined to be incomplete or
11 inaccurate from the face of the disclosure statement
12 or other documents assigned or a disclosure which does
13 not use the terms required to be used by this title.

14 (b) (i) Except as otherwise specifically provided in this
15 title, any civil action against a creditor for a
16 violation of this title, and any administrative
17 proceeding against a creditor, with respect to a
18 consumer credit transaction secured by real
19 property may be maintained against any assignee
20 of such creditor only if:

21 (aa) the violation for which such action or
22 proceeding is brought is apparent on the
23 face of the disclosure statement provided in
24

1 connection with such transaction pursuant to
2 this title; and

3 (bb) the assignment to the assignee was
4 voluntary.

5 (ii) For the purpose of this section, a violation is
6 apparent on the face of the disclosure statement
7 if:

8 (aa) the disclosure can be determined to be
9 incomplete or inaccurate by a comparison
10 among the disclosure statement, any
11 itemization of the amount financed, the
12 note, or any other disclosure of
13 disbursement; or

14 (bb) the disclosure statement does not use the
15 terms or format required to be used by this
16 title.

17 (5) Any person who has the right to rescind a transaction under
18 Section 5-204 of this title may rescind the transaction as against
19 any assignee of the obligation.

20 (6) No action pursuant to this section may be brought more than
21 one (1) year after the date of the occurrence of the violation or in
22 the case of a private education loan, as the term is defined in
23 Section 8 of this act, one (1) year from the date on which the first
24 regular payment of principal is due under the loan.

1 (7) (a) In this section, "creditor" includes sellers, lessors,
2 lenders, persons who regularly offer to lease or
3 arrange to lease under consumer leases and any other
4 person required to make disclosures under Part 3 of
5 either Article 2 or Article 3 of this title.

6 (b) (i) A servicer of a consumer obligation arising from
7 a consumer credit transaction shall not be
8 treated as an assignee of such obligation for
9 purposes of this section unless the servicer is
10 or was the owner of the obligation.

11 (ii) A servicer of a consumer obligation arising from
12 a consumer credit transaction shall not be
13 treated as the owner of the obligation for
14 purposes of this section on the basis of an
15 assignment of the obligation from the creditor or
16 another assignee to the servicer solely for the
17 administrative convenience of the servicer in
18 servicing the obligation. Upon written request
19 by the obligor, the servicer shall provide the
20 obligor, to the best knowledge of the servicer,
21 with the name, address, and telephone number of
22 the owner of the obligation or the master
23 servicer of the obligation.

1 (iii) For purposes of this subsection, the term
2 "servicer" has the same meaning as in Section
3 6(i)(2) of the Real Estate Settlement Procedures
4 Act of 1974.

5 (iv) This subsection shall apply to all consumer
6 credit transactions in existence or consummated
7 on or after September 30, 1995.

8 (8) Where there are multiple obligors in a consumer credit
9 transaction or consumer lease, there shall be no more than one
10 recovery under paragraph (b) of subsection (1) of this section for a
11 violation of this title.

12 (9) The multiple failure to disclose to any person any
13 information required under this title to be disclosed in connection
14 with a single account under an open-end consumer credit plan, other
15 single consumer credit sale, consumer loan, consumer lease, or other
16 extension of consumer credit shall entitle the person to a single
17 recovery under this section but continued failure to disclose after
18 a recovery has been granted shall give rise to rights to additional
19 recoveries. This subsection does not bar any remedy permitted by
20 Section 5-204 of this title.

21 (10) A person may not take any action to offset any amount for
22 which a creditor or assignee is potentially liable to that person
23 under paragraph b of subsection (1) of this section against any
24 amount owed by that person unless the amount of the creditor's or

1 assignee's liability has been determined by judgment of a court of
2 competent jurisdiction in an action to which the person was a party.
3 This subsection does not bar a person then in default on the
4 obligation from asserting a violation of disclosure requirements as
5 an original action or as a defense or counterclaim to an action to
6 collect amounts owed by the person brought by another person liable
7 under this title if the claim is not time barred, or as a setoff or
8 defense in accordance with Section 5-205 of this title.

9 (11) (a) Any person who purchases or is otherwise assigned a
10 mortgage referred to in subsection (10) of Section 1-
11 301 of this title shall be subject to all claims and
12 defenses with respect to that mortgage that the
13 consumer could assert against the creditor of the
14 mortgage, unless the purchaser or assignee
15 demonstrates, by a preponderance of the evidence, that
16 a reasonable person exercising ordinary due diligence,
17 could not determine, based on the documentation
18 required by this title, the itemization of the amount
19 financed, and other disclosure of disbursements that
20 the mortgage was a mortgage referred to in subsection
21 (10) of Section 1-301 of this title. The preceding
22 sentence does not affect rights of a consumer under
23 paragraph (a) of subsection (4) or subsection (5) of
24 this section or any other provision of this title.

- 1 (b) Notwithstanding any other provision of law, relief
2 provided as a result of any action made permissible by
3 paragraph (a) of this subsection may not exceed:
- 4 (i) with respect to actions based upon a violation of
5 this title, the amount specified in subsection
6 (1) of this section; and
- 7 (ii) with respect to all other causes of action, the
8 sum of:
- 9 (aa) the amount of all remaining indebtedness;
10 and
11 (bb) the total amount paid by the consumer in
12 connection with the transaction.
- 13 (c) The amount of damages that may be awarded under
14 subparagraph (ii) of paragraph (b) of this subsection
15 shall be reduced by the amount of any damages awarded
16 under subparagraph (i) of paragraph (b) of this
17 subsection.
- 18 (d) Any person who sells or otherwise assigns a mortgage
19 referred to in subsection (10) of Section 1-301 of
20 this title shall include a prominent notice of the
21 potential liability under this subsection as
22 determined by the Administrator.
- 23
24

1 (12) A private educational lender, as the term is defined in
2 Section 8 of this act, has no liability under this section for
3 failure to comply with subsection (3) of Section 11 of this act.

4 SECTION 7. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3-701 of Title 14A, unless there
6 is created a duplication in numbering, reads as follows:

7 Sections 7 through 11 of this act shall be known and may be
8 cited as the "Oklahoma Private Student Loan Transparency and
9 Improvement Act".

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3-702 of Title 14A, unless there
12 is created a duplication in numbering, reads as follows:

13 (1) The term "covered educational institution" means any
14 educational institution that offers a postsecondary educational
15 degree, certificate, or program of study (including any institution
16 of higher education) and includes an agent, officer, or employee of
17 the educational institution.

18 (2) (a) The term "gift" means any gratuity, favor, discount,
19 entertainment, hospitality, loan, or other item having
20 more than a de minimis monetary value, including
21 services, transportation, lodging, or meals, whether
22 provided in kind, by purchase of a ticket, payment in
23 advance, or reimbursement after the expense has been
24 incurred. Gift includes an item described in this

1 paragraph provided to a family member of an officer,
2 employee, or agent of a covered educational
3 institution, or to any other individual based on that
4 individual's relationship with the officer, employee,
5 or agent, if the item is provided with the knowledge
6 and acquiescence of the officer, employee, or agent;
7 and the officer, employee, or agent has reason to
8 believe the item was provided because of the official
9 position of the officer, employee, or agent.

10 (b) Gift does not include:

11 (i) standard informational material related to a
12 loan, default aversion, default prevention, or
13 financial literacy;

14 (ii) food, refreshments, training, or informational
15 material furnished to an officer, employee, or
16 agent of a covered educational institution, as an
17 integral part of a training session or through
18 participation in an advisory council that is
19 designed to improve the service of the private
20 educational lender to the covered educational
21 institution, if such training or participation
22 contributes to the professional development of
23 the officer, employee, or agent of the covered
24 educational institution;

- 1 (iii) favorable terms, conditions, and borrower on a
2 private education loan provided to a student
3 employed by the covered educational institution,
4 if such terms, conditions, or benefits are not
5 provided because of the student's employment with
6 the covered educational institution;
- 7 (iv) the provision of financial literacy counseling or
8 services, including counseling or services
9 provided in coordination with a covered
10 educational institution, to the extent that such
11 counseling or services are not undertaken to
12 secure:
- 13 (aa) applications for private education loans or
14 private education loan volume;
- 15 (bb) applications or loan volume for any loan
16 made, insured, or guaranteed under Title IV
17 of the Higher Education Act of 1965 (20
18 U.S.C. 1070 et seq.);
- 19 (cc) the purchase of a product or service of a
20 specific private educational lender;
- 21 (dd) philanthropic contributions to a covered
22 educational institution from a private
23 educational lender that are unrelated to
24 private education loans and are not made in

1 exchange for any advantage related to
2 private education loans; or

3 (ee) state education grants, scholarships, or
4 financial aid funds administered by or on
5 behalf of a state.

6 (3) The term "institution of higher education" has the same
7 meaning as in 20 U.S.C. 1002.

8 (4) The term "postsecondary educational expenses" means any of
9 the expenses that are included as part of the cost of attendance of
10 a student, as defined in 20 U.S.C. 1087.

11 (5) The term "preferred lender arrangement" has the same
12 meaning as in Section 151 of the Higher Education Act of 1965.

13 (6) The term "private educational lender" means:

14 (a) a financial institution, as defined in 12 U.S.C. 1813
15 that solicits, makes, or extends private education
16 loans;

17 (b) a Federal credit union, as defined in 12 U.S.C. 1752
18 that solicits, makes, or extends private education
19 loans; and

20 (c) any other person engaged in the business of
21 soliciting, making, or extending private education
22 loans.

23 (7) The term "private education loan" means a loan provided by
24 a private educational lender that:

1 (a) is not made, insured, or guaranteed under 20 U.S.C.
2 1070 et seq.;

3 (b) is issued expressly for postsecondary educational
4 expenses to a borrower, regardless of whether the loan
5 is provided through the educational institution that
6 the subject student attends or directly to the
7 borrower from the private educational lender; and

8 (c) does not include an extension of credit under an open-
9 end consumer credit plan, a reverse mortgage
10 transaction, a residential mortgage transaction, or
11 any other loan that is secured by real property or a
12 dwelling.

13 (8) The term "revenue sharing" means an arrangement between a
14 covered educational institution and a private educational lender
15 under which:

16 (a) a private educational lender provides or issues
17 private education loans with respect to students
18 attending the covered educational institution;

19 (b) the covered educational institution recommends to
20 students or others the private educational lender or
21 the private education loans of the private educational
22 lender; and

23 (c) the private educational lender pays a fee or provides
24 other material benefits, including profit sharing, to

1 the covered educational institution in connection with
2 the private education loans provided to students
3 attending the covered educational institution or a
4 borrower acting on behalf of a student.

5 SECTION 9. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3-703 of Title 14A, unless there
7 is created a duplication in numbering, reads as follows:

8 A private educational lender may not, directly or indirectly:

9 (a) offer or provide any gift to a covered educational
10 institution in exchange for any advantage or
11 consideration provided to such private educational
12 lender related to its private educational loan
13 activities; or

14 (b) engage in revenue sharing with a covered educational
15 institution.

16 SECTION 10. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3-704 of Title 14A, unless there
18 is created a duplication in numbering, reads as follows:

19 (1) A private educational lender may not use the name, emblem,
20 mascot, or logo of the covered educational institution, or other
21 words, pictures, or symbols readily identified with the covered
22 educational institution, in the marketing of private education loans
23 in any way that implies that the covered educational institution
24

1 endorses the private education loans offered by the private
2 educational lender.

3 (2) Any person who is employed in the financial aid office of a
4 covered educational institution, or who otherwise has
5 responsibilities with respect to private education loans or other
6 financial aid of the institution, and who serves on an advisory
7 board, commission, or group established by a private educational
8 lender or group of such lenders shall be prohibited from receiving
9 anything of value from the private educational lender or group of
10 lenders. Nothing in this subsection prohibits the reimbursement of
11 reasonable expenses incurred by an employee of a covered educational
12 institution as part of their service on an advisory board,
13 commission, or group described in this subsection.

14 (3) It shall be unlawful for any private educational lender to
15 impose a fee or penalty on a borrower for early repayment or
16 prepayment of any private education loan.

17 (4) An institution of higher education shall publicly disclose
18 any contract or other agreement made with a card issuer or creditor
19 for the purpose of marketing a credit card.

20 (5) No card issuer or creditor may offer to a student at an
21 institution of higher education any tangible item to induce such
22 student to apply for or participate in an open-end consumer credit
23 plan offered by such card issuer or creditor, if such offer is made:

24 (a) on the campus of an institution of higher education;

1 (b) near the campus of an institution of higher education,
2 as determined by rule of the Administrator; or

3 (c) at an event sponsored by or related to an institution
4 of higher education.

5 SECTION 11. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3-705 of Title 14A, unless there
7 is created a duplication in numbering, reads as follows:

8 (1) In any application for a private education loan, or a
9 solicitation for a private education loan without requiring an
10 application, the private educational lender shall disclose to the
11 borrower, clearly and conspicuously:

12 (a) the potential range of rates of interest applicable to
13 the private education loan;

14 (b) whether the rate of interest applicable to the private
15 education loan is fixed or variable;

16 (c) limitations on interest rate adjustments, both in
17 terms of frequency and amount, or the lack thereof, if
18 applicable;

19 (d) requirements for a co-borrower, including any changes
20 in the applicable interest rates without a co-
21 borrower;

22 (e) potential finance charges, late fees, penalties, and
23 adjustments to principal, based on defaults or late
24 payments of the borrower;

- 1 (f) fees or range of fees applicable to the private
2 education loan;
- 3 (g) the term of the private education loan;
- 4 (h) whether interest will accrue while the student to whom
5 the private education loan relates is enrolled at a
6 covered educational institution;
- 7 (i) payment deferral options;
- 8 (j) general eligibility criteria for the private education
9 loan;
- 10 (k) an example of the total cost of the private education
11 loan over the life of the loan:
- 12 (i) which shall be calculated using the principal
13 amount and the maximum rate of interest actually
14 offered by the private educational lender; and
- 15 (ii) calculated both with and without capitalization
16 of interest, if an option exists for postponing
17 interest payments;
- 18 (l) that a covered educational institution may have
19 school-specific education loan benefits and terms not
20 detailed on the disclosure form;
- 21 (m) that the borrower may qualify for federal student
22 financial assistance through a program under Title IV
23 of the Higher Education Act of 1965 (20 U.S.C. 1070 et
24

1 seq.), in lieu of, or in addition to, a loan from a
2 nonfederal source;

3 (n) the interest rates available with respect to such
4 federal student financial assistance through a program
5 under Title IV of the Higher Education Act of 1965 (20
6 U.S.C. 1070 et seq.);

7 (o) that, as provided in subsection (6) of this section:

8 (i) the borrower shall have the right to accept the
9 terms of the loan and consummate the transaction
10 at any time within thirty (30) calendar days (or
11 such longer period as the private educational
12 lender may provide) following the date on which
13 the application for the private education loan is
14 approved and the borrower receives the disclosure
15 documents required under this subsection for the
16 loan; and

17 (ii) except for changes based on adjustments to the
18 index used for a loan, the rates and terms of the
19 loan may not be changed by the private
20 educational lender during the period described in
21 subparagraph (i) of this paragraph;

22 (p) that before a private education loan may be
23 consummated, the borrower must obtain from the
24 relevant institution of higher education the form

1 required under subsection (3) of this section, and
2 complete, sign, and return such form to the private
3 educational lender;

4 (q) that the consumer may obtain additional information
5 concerning such federal student financial assistance
6 from their institution of higher education, or at the
7 website of the United States Department of Education;
8 and

9 (r) such other information as the Administrator shall
10 prescribe, by rule, as necessary or appropriate for
11 consumers to make informed borrowing decisions.

12 (2) Contemporaneously with the approval of a private education
13 loan application, and before the loan transaction is consummated,
14 the private educational lender shall disclose to the borrower,
15 clearly and conspicuously:

16 (a) the applicable rate of interest in effect on the date
17 of approval;

18 (b) whether the rate of interest applicable to the private
19 education loan is fixed or variable;

20 (c) limitations on interest rate adjustments, both in
21 terms of frequency and amount, or the lack thereof, if
22 applicable;

23 (d) the initial approved principal amount;
24

- 1 (e) applicable finance charges, late fees, penalties, and
2 adjustments to principal, based on borrower defaults
3 or late payments, including limitations on the
4 discharge of a private education loan in bankruptcy;
- 5 (f) fees or range of fees applicable to the private
6 education loan;
- 7 (g) the maximum term under the private education loan
8 program;
- 9 (h) an estimate of the total amount for repayment, at both
10 the interest rate in effect on the date of approval
11 and at the maximum possible rate of interest offered
12 by the private educational lender and applicable to
13 the borrower, to the extent that such maximum rate may
14 be determined, or if not, a good-faith estimate
15 thereof;
- 16 (i) any principal and interest payments required while the
17 student for whom the private education loan is
18 intended is enrolled at a covered educational
19 institution and unpaid interest that will accrue
20 during such enrollment;
- 21 (j) payment deferral options applicable to the borrower;
- 22 (k) whether monthly payments are graduated;
- 23 (l) that, as provided in subsection (6) of this section:
24

1 (i) the borrower shall have the right to accept the
2 terms of the loan and consummate the transaction
3 at any time within thirty (30) calendar days (or
4 such longer period as the private educational
5 lender may provide) following the date on which
6 the application for the private education loan is
7 approved and the borrower receives the disclosure
8 documents required under this subsection for the
9 loan; and

10 (ii) except for changes based on adjustments to the
11 index used for a loan, the rates and terms of the
12 loan may not be changed by the private
13 educational lender during the period described in
14 subparagraph (i) of this paragraph;

15 (m) that the borrower:

16 (i) may qualify for federal financial assistance
17 through a program under Title IV of the Higher
18 Education Act of 1965 (20 U.S.C. 1070 et seq.),
19 in lieu of, or in addition to, a loan from a
20 nonfederal source; and

21 (ii) may obtain additional information concerning such
22 assistance from their institution of higher
23 education or the website of the United States
24 Department of Education;

1 (n) the interest rates available with respect to such
2 federal financial assistance through a program under
3 Title IV of the Higher Education Act of 1965 (20
4 U.S.C. 1070 et seq.);

5 (o) the maximum monthly payment, calculated using the
6 maximum rate of interest actually offered by the
7 private educational lender and applicable to the
8 borrower, to the extent that such maximum rate may be
9 determined, or if not, a good-faith estimate thereof;
10 and

11 (p) such other information as the Administrator shall
12 prescribe, by rule, as necessary or appropriate for
13 consumers to make informed borrowing decisions.

14 (3) Before a private educational lender may consummate a
15 private education loan with respect to a student attending an
16 institution of higher education, the lender shall obtain from the
17 applicant for the private education loan the form developed by the
18 Secretary of the United States Department of Education under Section
19 155 of the Higher Education Act of 1965, signed by the applicant, in
20 written or electronic form. No other provision of this section
21 shall be construed to require a private educational lender to
22 perform any additional duty under this subsection, other than
23 collecting the form required under this subsection.
24

1 (4) Contemporaneously with the consummation of a private
2 education loan, a private educational lender shall make to the
3 borrower each of the disclosures described in:

4 (a) paragraph (a) of subsection (2) of this section
5 (adjusted, as necessary, for the rate of interest in
6 effect on the date of consummation, based on the index
7 used for the loan);

8 (b) paragraphs (b) through (k) and (m) through (p) of
9 subsection (2) of this section; and

10 (c) subsection (7) of this section.

11 (5) The Administrator shall publish model forms that may be
12 used, at the option of the private educational lender, for the
13 provision of disclosures required under this section.

14 (a) Model forms developed under this subsection shall:

15 (i) be comprehensible to borrowers, with a clear
16 format and design;

17 (ii) provide for clear and conspicuous disclosures;

18 (iii) enable borrowers easily to identify material
19 terms of the loan and to compare such terms among
20 private education loans; and

21 (iv) be succinct, and use an easily readable type
22 font.

23 (b) Any private educational lender that elects to provide
24 a model form developed under this subsection that

1 accurately reflects the practices of the private
2 educational lender shall be deemed to be in compliance
3 with the disclosures required under this section.

4 (6) With respect to a private education loan, the borrower
5 shall have the right to accept the terms of the loan and consummate
6 the transaction at any time within thirty (30) calendar days (or
7 such longer period as the private educational lender may provide)
8 following the date on which the application for the private
9 education loan is approved and the borrower receives the disclosure
10 documents required for the loan, and the rates and terms of the loan
11 may not be changed by the private educational lender during that
12 period. Except for changes based on adjustments to the index used
13 for a loan, the rates and terms of the loan may not be changed by
14 the private educational lender prior to the earlier of:

15 (a) the date of acceptance of the terms of the loan and
16 consummation of the transaction by the borrower, as
17 described in this subsection; or

18 (b) the expiration of the period described in this
19 subsection.

20 (7) With respect to a private education loan, the borrower may
21 cancel the loan, without penalty to the borrower, at any time within
22 three (3) business days of the date on which the loan is
23 consummated, and the private educational lender shall disclose such
24

1 right to the borrower in accordance with subsection (4) of this
2 section.

3 (8) No funds may be disbursed with respect to a private
4 education loan until the expiration of the three-day period
5 described in subsection (7) of this section.

6 (9) In issuing regulations under this section, the
7 Administrator shall prevent, to the extent possible, duplicative
8 disclosure requirements for private educational lenders that are
9 otherwise required to make disclosures under this title, except that
10 in any case in which the disclosure requirements of this section
11 differ or conflict with the disclosure requirements of any other
12 provision of this title, the requirements of this section shall be
13 controlling.

14 (10) Each private educational lender that has a preferred
15 lender arrangement with a covered educational institution shall
16 annually provide to the covered educational institution such
17 information as the Administrator determines to include in the model
18 form developed under subsection (5) of this section for each type of
19 private education loan that the lender plans to offer to students
20 attending the covered educational institution, or to the families of
21 such students, for the next award year (as that term is defined in
22 Section 481 of the Higher Education Act of 1965).

23 SECTION 12. This act shall become effective July 1, 2013.
24

1 SECTION 13. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
6 April 4, 2013 - DO PASS
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