STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1829 By: Armes

AS INTRODUCED

An Act relating to consumer credit; amending 14A O.S. 2011, Sections 1-302, 3-104, as amended by Section 4, Chapter 172, O.S.L. 2012, 3-309, 3-309.1 and 5-203, as amended by Section 6, Chapter 172, O.S.L. 2012 (14A O.S. Supp. 2012, Sections 3-104 and 5-203), which relate to the Uniform Consumer Credit Code; modifying definition; updating citation; requiring creditor give additional information to the consumer if certain conditions exist; describing method for creditor to apply certain interest rates; providing for manner and placement of certain disclosures; prescribing a table format for certain disclosures; requiring certain information be given in the billing statement; directing Administrator to employ terminology that is easier to understand; requiring billing statement of certain accounts to include a 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 penalty during certain time period; requiring lender to disclose the right to cancel; prohibiting disbursement of funds within certain time period; directing Administrator to prevent duplicative disclosures; requiring private educational lender to annually provide certain information to the educational institution; providing for codification; providing an effective date; and declaring an emergency.

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

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

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

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

Section 1-302. In this ~~act~~ <u>title,</u> "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, including the amendments to the Federal Consumer Credit Protection Act in the Truth in Lending Simplification and Reform Act (Public Law 96-221; 94 Stat. 168-185) <u>and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 11-203)</u>, and includes regulations issued pursuant to those Acts <u>by the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, as applicable</u>.

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

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

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

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

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

(d) either the principal does not exceed Fifty Thousand Dollars ($50,000.00), unless the loan is a private education loan as that term is defined in ~~the Federal Consumer Credit Protection Act~~ Section 8 of this act, or the debt is secured by an interest in land. The dollar amount in this paragraph shall be adjusted annually as indicated by the Consumer Financial Protection Bureau by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of One Hundred Dollars ($100.00) or One Thousand Dollars ($1,000.00) as applicable.

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

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

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

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

(c) method of determining the amount of the loan finance charge including any minimum or fixed amount imposed as a finance charge, and where one or more periodic rates may be used to compute the loan finance charge, each such rate and the range of balances to which it is applicable;

(d) corresponding nominal annual percentage rate pursuant to subsection (3) of Section 3-304 of this title; if more than one corresponding nominal annual percentage rate may be used, each corresponding nominal annual percentage rate shall be stated;

(e) identification of additional charges which may be made and the method by which they will be determined;

(f) in cases where the creditor may retain or acquire a security interest in property to secure the balances resulting from credit extensions made pursuant to the revolving loan account, a statement that a security interest has been or will be taken in the property purchased as part of the credit transaction or property not purchased as part of the credit transaction identified by item or type;

(g) a statement in a form prescribed by and describing the protection provided by Sections 161 and 170 of the Federal Consumer Credit Protection Act to an obligor and the responsibility of a creditor under Sections

162 and 170 of the Federal Consumer Credit Protection Act; and

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

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

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

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

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

(b) the amount and date of each extension of credit made during the billing cycle and a brief identification of each extension of credit on or accompanying the statement in a form prescribed by regulations of the Administrator to enable the consumer to identify the transaction, or relate it to copies of sale vouchers or similar instruments previously furnished, except that a creditor’s failure to disclose information in accordance with this paragraph shall not be deemed a failure to comply with this part if the creditor maintains procedures reasonably adapted to procure and provide such information and the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount in accordance with Section 161 of the Federal Consumer Credit Protection Act. In lieu of complying with the requirements of the previous sentence and to the extent permitted by rule of the Administrator, in the case of any transaction in which the creditor and a seller are related persons as defined by the Administrator and the revolving loan account plan has fewer than fifteen thousand (15,000) accounts, the creditor may elect to provide only the amount and date of each extension of credit during the billing cycle and the seller’s name and location where the transaction took place if a brief identification of the transaction has been previously furnished and the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount in accordance with

Section 161 of the Federal Consumer Credit Protection Act;

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

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

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

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

(g) if the loan finance charge for the billing cycle exceeds fifty cents ($0.50) for a monthly or longer billing cycle, or the pro rata part of the fifty cents ($0.50) for a billing cycle shorter than monthly, the loan finance charge expressed as an annual percentage rate pursuant to paragraph (b) of subsection (2) of Section 3-304 of this title; if more than one periodic percentage is used to calculate the loan finance charge, the creditor, in lieu of stating a single annual percentage rate, may state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;

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

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

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

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

(l) a written statement in the following form: "Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance.”; and

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

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

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

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

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

In making the disclosures under this paragraph, the creditor shall apply the interest rate or rates in effect on the date on which the disclosure is made until the date on which the balance would be paid in full. If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date.

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

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

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

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

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

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

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

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

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

(d) in prescribing the form of the table under paragraph (b) of this subsection, the Administrator shall employ terminology which is different than the terminology which is employed in paragraph (m) of subsection (2) of this section, if such terminology is more easily understood and conveys substantially the same meaning.

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

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

(c) if the creditor, in the case of a credit card account referred to in paragraph (a) of this subsection, is a financial institution which maintains branches or offices at which payments on any such account are accepted from the obligor in person, the date on which the obligor makes a payment on the account at such branch or office shall be considered to be the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment.

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

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

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

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

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

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

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

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

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

(b) Any fee imposed for a late payment.

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

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

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

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

(i) the credit card issuer:

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

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

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

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

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

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

(i) the information:

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

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

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

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

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

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

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

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

(c) An application or solicitation described in paragraph (a) of this subsection meets the requirement of this paragraph if such application or solicitation:

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

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

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

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

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

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

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

(ii) the disclosures required by subsections (1) and (2) of this section included clearly and conspicuously, except that the provisions of subsections (5) through (8) of Section 3-302 of this title shall not apply; and

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

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

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

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

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

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

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

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

(ii) Any fee imposed for a late payment.

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

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

(i) the information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) (a) ~~Except as provided in paragraph (b) of this 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 ~~subsections~~ 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.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Closure or cancellation of an account by the obligor shall not constitute a default under an existing cardholder agreement, and shall not trigger an obligation to immediately repay the obligation in full or through a method that is less beneficial to the obligor than one of the methods described in 15 U.S.C. § 1661i-1(c)(2), or the imposition of any other penalty or fee.

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

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

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

(b) This subsection shall not apply to:

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

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

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

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

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

(c) A consumer may make or revoke the election referred to in paragraph (a) of this subsection orally, electronically, or in writing, pursuant to regulations prescribed by the Administrator. The Administrator shall prescribe regulations to ensure that the same options are available for both making and revoking such election.

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

(e) The Administrator shall prescribe regulations:

(i) governing disclosures under this subsection; and

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

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

(g) With respect to a credit card account under an open-end consumer credit plan, an over-the-limit fee may be imposed only once during a billing cycle if the credit limit on the account is exceeded, and an over-the-limit fee, with respect to such excess credit, may be imposed only once in each of the two subsequent billing cycles, unless the consumer has obtained an additional extension of credit in excess of such credit limit during any such subsequent cycle or the consumer reduces the outstanding balance below the credit limit as of the end of such billing cycle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) (i) (aa) in the case of an individual action twice the amount of the credit service or loan finance charge in connection with the transaction,

(bb) in the case of an individual action relating to a consumer lease twenty-five percent (25%) of the total amount of monthly payments under the lease but the liability 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 actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of Five Hundred Thousand Dollars ($500,000.00) or one percent (1%) of the net worth of the creditor;

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

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

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

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

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

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

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

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

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

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

(aa) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

(bb) the assignment to the assignee was voluntary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (a) of this subsection may not exceed:

(i) with respect to actions based upon a violation of this title, the amount specified in subsection (1) of this section; and

(ii) with respect to all other causes of action, the sum of:

(aa) the amount of all remaining indebtedness; and

(bb) the total amount paid by the consumer in connection with the transaction.

(c) The amount of damages that may be awarded under subparagraph (ii) of paragraph (b) of this subsection shall be reduced by the amount of any damages awarded under subparagraph (i) of paragraph (b) of this subsection.

(d) Any person who sells or otherwise assigns a mortgage referred to in subsection (10) of Section 1-301 of this title shall include a prominent notice of the potential liability under this subsection as determined by the Administrator.

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

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

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

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

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

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

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

(b) Gift does not include:

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

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

(iii) favorable terms, conditions, and borrower on a private education loan provided to a student employed by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student's employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in coordination with a covered educational institution, to the extent that such counseling or services are not undertaken to secure:

(aa) applications for private education loans or private education loan volume;

(bb) applications or loan volume for any loan made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(cc) the purchase of a product or service of a specific private educational lender;

(dd) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

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

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

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

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

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

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

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

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

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

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

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

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

(8) The term “revenue sharing” means an arrangement between a covered educational institution and a private educational lender under which:

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

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

(c) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

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

A private educational lender may not, directly or indirectly:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) fees or range of fees applicable to the private education loan;

(g) the term of the private education loan;

(h) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;

(i) payment deferral options;

(j) general eligibility criteria for the private education loan;

(k) an example of the total cost of the private education loan over the life of the loan:

(i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and

(ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments;

(l) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;

(m) that the borrower may qualify for federal student financial assistance through a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a nonfederal source;

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

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

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

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

(p) that before a private education loan may be consummated, the borrower must obtain from the relevant institution of higher education the form required under subsection (3) of this section, and complete, sign, and return such form to the private educational lender;

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

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

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

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

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

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

(d) the initial approved principal amount;

(e) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;

(f) fees or range of fees applicable to the private education loan;

(g) the maximum term under the private education loan program;

(h) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good-faith estimate thereof;

(i) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;

(j) payment deferral options applicable to the borrower;

(k) whether monthly payments are graduated;

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

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

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

(m) that the borrower:

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

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

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

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

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

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

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

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

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

(c) subsection (7) of this section.

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

(a) Model forms developed under this subsection shall:

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

(ii) provide for clear and conspicuous disclosures;

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

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

(b) Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this section.

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

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

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

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

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

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

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

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

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

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

54-1-5840 EK 01/14/13