

**TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 45. TRUTH IN LENDING RULES
SUBCHAPTER 1. GENERAL PROVISIONS**

160:45-1-1. Authority, purpose, coverage, organization, enforcement and liability

(a) **Authority.** This chapter, known as Regulation Z, conforms to the regulations issued by the Board to implement the federal Truth In Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 USC 1601 et seq.). This chapter does not contain fair credit billing provisions, because Oklahoma does not have an exemption from Chapter 4, Credit Billing, of the federal Truth In Lending Act, and Oklahoma does not have a Fair Credit Billing Act; thus, creditors in Oklahoma should recognize that regulation of fair credit billing requirements lies with federal authorities; as a convenience, the pertinent sections of the Code of Federal Regulations, 12 CFR 226, have been referenced.

(b) **Purpose.** The purpose of this chapter is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The chapter also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling and regulates certain credit card practices. The chapter does not govern charges for consumer credit. The chapter requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of 160:45-3-3 and mortgages that are subject to the requirements of 160:45-9-2. The chapter prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

(c) **Coverage.**

(1) In general, this chapter applies to each individual or business that offers or extends credit when four conditions are met:

(A) the credit is offered or extended to consumers;

(B) the offering or extension of credit is done regularly; **1/**

(C) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and

(D) the credit is primarily for personal, family or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of 160:45-3-3 apply to persons who are not creditors but who provide applications for home-equity plans to consumers.

(d) **Organization.** The chapter is divided into subchapters and appendices as follows:

(1) Subchapter 1 contains general information. It sets forth:

(A) the authority, purpose, coverage, and organization of the chapter;

(B) the definitions of basic terms;

(C) the transactions that are exempt from coverage; and

(D) the method of determining the finance charge.

(2) Subchapter 3 contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of 160:45-3-2 and 160:45-3-3, respectively.

(3) Subchapter 5 relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subchapter 7 contains rules on oral disclosures, language of disclosures, record retention, and rate limitations.

(5) Subchapter 9 contains special rules for mortgage transactions. 160:45-9-2 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. 160:45-9-3 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. 160:45-9-4 prohibits specific acts and practices in connection with mortgage transactions; that are subject to 160:45-9-2. 160:45-9-5 prohibits specific acts and practices in connection with higher-priced mortgage loans, as defined in 160:45-9-5(a). 160:45-9-6 prohibits specific acts and practices in connection with credit secured by a consumer's principal dwelling.

(6) Subchapter 11 relates to electronic communication.

(7) Several appendices contain information such as special rules for certain kinds of credit plans, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) **Enforcement and Liability.** Article 6 of the Code contains the administrative enforcement provisions. Sections 5-202, 5-203, 5-301 and 5-302 of the Code contain provisions relating to liability for failure to comply with the requirements of the Code and this chapter.

1/ The meaning of "regularly" is explained in the definition of "creditor" in 160:45-1-2(a).

160:45-1-2. Definitions and rules of construction

(a) **Definition.** For purposes of this chapter, the following definitions apply:

(1) **"Administrator"** means the Administrator of the Department.

(2) **"Advertisement"** means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) **"Billing cycle"** or **"cycle"** means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(4) **"Board"** means the Board of Governors of the Federal Reserve System.

(5) **"Business day"** means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under 160:45-3-13 and 160:45-5-7, and for purposes of 160:45-5-3(a)(1)(ii) and 160:45-9-1, the term means all calendar days except Sundays and the legal public holidays specified in 5 USC 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(6) **"Card issuer"** means a person that issues a credit card or that person's agent with respect to the card.

(7) **"Cardholder"** means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person.

(8) **"Cash price"** means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(9) **"Closed-end credit"** means consumer credit other than "open-end credit" as defined in this section.

(10) "**Code**" means the Uniform Consumer Credit Code beginning at §1-101 of Title 14A of the Oklahoma Statutes.

(11) "**Consumer**" means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under 160:45-3-13 and 160:45-5-7, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) "**Consumer credit**" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) "**Consummation**" means the time that a consumer becomes contractually obligated on a credit transaction.

(14) "**Credit**" means the right to defer payment of debt or to incur debt and defer its payment.

(15) "**Credit card**" means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. "**Charge card**" means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) "**Credit sale**" means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer -

(A) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(B) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) "**Creditor**" means:

(A) A person

(i) who regularly extends consumer credit ^{3/} that is subject to a finance charge or is payable by written agreement in more than four installments (not including a downpayment), and

(ii) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(B) For purposes of 160:45-1-4(c)(8) (Discounts) and 160:45-3-7(d) (Finance charge imposed at time of transaction), a person that honors a credit card.

(C) For purposes of subchapter 3, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(D) For purposes of subchapter 3 (except for the credit and charge card disclosures contained in 160:45-3-2 and 160:45-3-7(e) and (f), the finance-charge disclosures contained in 160:45-3-4(1) and 160:45-3-5(4) through (7) and the right of rescission set forth in 160:45-3-13) and subchapter 5, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

(18) "**Department**" means the Oklahoma State Department of Consumer Credit.

(19) "**Downpayment**" means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(20) "**Dwelling**" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(21) "**Open-end credit**" means consumer credit extended by a creditor under a plan in which -

(A) the creditor reasonably contemplates repeated transactions;

(B) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(C) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(22) "**Periodic rate**" means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(23) "**Person**" means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(24) "**Prepaid finance charge**" means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(25) "**Residential mortgage transaction**" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(26) "**Security interest**" means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under 160:45-3-4 and 160:45-5-2, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under 160:45-3-13 and 160:45-5-7, the term does include interests that arise solely by operation of law.

(27) "**State**" means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) **Rules of construction.** For purposes of this chapter, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words "obligation" and "transaction" are used in this chapter, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word "credit" is used in this chapter, it means "consumer credit" unless the context clearly indicates otherwise.

(3) Unless defined in this chapter, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the chapter.

(5) Where the word "amount" is used in this chapter to describe disclosure requirements, it refers to a numerical number.

2/ Reserved

3/ A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of 160:45-9-2) more than 25 times (or more than 5 times for

transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 160:45-9-2 or one or more such credit extensions through a mortgage broker.

SUBCHAPTER 3. OPEN-END CREDIT

160:45-3-14. Advertising

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following **36d/**

(1) Any minimum, fixed, transaction, activity or similar charge that could be imposed.

(2) Any periodic rate that may be applied expressed as an annual percentage rate as determined under 160:45-3-12(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(3) Any membership or participation fee that could be imposed.

(c) **Catalogs or other multiple-page advertisements; electronic advertisements**

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(A) The table or schedule is clearly and conspicuously set forth; and

(B) Any statement of terms set forth in 160:45-3-4 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) **Additional requirements for home-equity plans.**

(1) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4(1) or (2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of 160:45-3-3, the advertisement also shall clearly and conspicuously set forth the following:

(A) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(B) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under 160:45-3-12(b).

(C) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) **Discounted and premium rates.** If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state ~~the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage~~

rate that would have been in effect using the index and margin, with equal prominence and in close proximity to the initial rate:

(A) The period of time such initial rate will be in effect; and

(B) A reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) **Balloon payment.** ~~If an advertisement contains a statement about of any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result~~ and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement shall also state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable. **36e/** A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum period payment statement:

(A) That a balloon payment will result; and

(B) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

(4) **Tax implications.** An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(A) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) **Misleading terms.** An advertisement may not refer to a home-equity plan as "free money" or contain a similarly misleading term.

(6) Promotional rates and payments.

(A) Definitions. The following definitions apply for purposes of paragraph (d)(6) of this section:

(i) Promotional rate. The term "promotional rate" means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(ii) Promotional payment. The term "promotional payment" means:

(I) For a variable-rate plan, any minimum payment applicable for a promotional period that is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(II) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(iii) **Promotional period.** A “promotional period” means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(B) **Stating the promotional period and post-promotional rate or payments.** If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(i) The period of time during which the promotional rate or promotional payment will apply;

(ii) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in 160:45-3-3, or 160:45-3-14(b)(2) as applicable; and

(iii) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(C) **Envelope excluded.** The requirements in paragraph (d)(6)(B) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(e) **Alternative disclosures – television or radio advertisements.** An advertisement for a home-equity plan subject to the requirements of 160:45-3-3 made through television or radio stating any of the terms requiring additional disclosures under paragraph (b) or (d)(1) of this section may alternatively comply with paragraph (b) or (d)(1) of this section by stating the information required by paragraph (b)(2) of this section or paragraph (d)(1)(B) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

36d/ The disclosures given in accordance with 160:45-3-2 do not constitute advertising terms for purposes of the requirements of this section.

36e/ A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

SUBCHAPTER 5. CLOSED-END CREDIT

160:45-5-1. General disclosure requirements

(a) Form of disclosures.

(1) The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subchapter may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in

Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*). The disclosures required by 160:45-5-1(g), 160:45-5-3(b), and 160:45-5-8 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related ~~37/~~ to the disclosures required under 160:45-5-2. ~~38/~~ The itemization of the amount financed under 160:45-5-2(3)(A) must be separate from the other disclosures under 160:45-5-2.

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed under 160:45-5-2(4) and (5) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under 160:45-5-2(1).

(b) **Time of disclosures.** The creditor shall make disclosures before consummation of the transaction. In certain ~~residential~~-mortgage transactions, special timing requirements are set forth in 160:45-5-3(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in 160:45-5-3(b) and 160:45-5-4(c). In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) **Basis of disclosures and use of estimates.**

(1) The disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates and per-diem interest.**

(A) If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate.

(B) For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

(3) The creditor may disregard the effects of the following in making calculations and disclosures.

(A) That payments must be collected in whole cents.

(B) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(C) That months have different numbers of days.

(D) The occurrence of leap year.

(4) In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

(A) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(B) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(C) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6) Multiple advances.

(A) A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(B) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) Multiple creditors; multiple consumers. If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this chapter imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under 160:45-5-7, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) Effect of subsequent events. If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this chapter although new disclosures may be required under paragraph (f) of this section, 160:45-5-3, or 160:45-5-4.

(f) Early disclosures. If disclosures required by this subchapter are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation: (except that, for certain mortgage transactions, 160:45-5-3(a)(2) permits redisclosure no later than consummation or settlement, whichever is later). **39/**

~~(1) any changed term unless the term was based on an estimate in accordance with paragraph (e)(2) of this section and was labeled an estimate;~~

~~(2) all changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 160:45-5-6(a).~~

(g) Mail or telephone orders - delay in disclosures. If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(A) The circumstances under which the rate may increase.

(B) Any limitations on the increase.

(C) The effect of an increase.

(5) The terms of repayment.

(h) Series of sales - delay in disclosures. If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) **Interim student credit extensions.** For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under 160:45-5-2(4), the payment schedule under 160:45-5-2(7), the total of payments under 160:45-5-2(8), or the total sale price under 160:45-5-2(10).

37/ The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

38/ The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under 160:45-5-2(1), the variable-rate example under 160:45-5-2(6)(A)(iv), insurance or debt cancellation under 160:45-5-2(14), and certain security interest-charges under 160:45-5-2(15).

39/ For certain residential mortgage transactions, 160:45-5-3(a)(2) permits redisclosure no later than consummation or settlement, whichever is later.

160:45-5-3. Certain residential mortgage and variable-rate transactions

(a) Disclosure: Mortgage transactions subject to RESPA.

(1) Time of disclosures.

(i) In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 USC 2601 et seq.) that is secured by the consumer's principal dwelling, other than a home equity line of credit subject to 160:45-3-3, the creditor shall make good faith estimates of the disclosures required by 160:45-5-2 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.

(ii) **Imposition of fees.** Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on the consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(iii) **Exception to fee restriction.** A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is bona fide and reasonable in amount.

(2) **Redisclosure required.** If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 160:45-5-6, the creditor shall disclose all the changed terms no later than consummation or settlement.

(b) **Certain variable-rate transactions.** **45a/** If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier: **45b/**

(1) The booklet titled **Consumer Handbook on Adjustable Rate Mortgages** published by the Board and the Federal Home Loan Bank Board, or a suitable substitute.

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

(A) The fact that the interest rate, payment, or term of the loan can change.

(B) The index or formula used in making adjustments, and a source of information about the index or formula.

(C) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(D) A statement that the consumer should ask about the current margin value and current interest rate.

(E) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest-rate discount.

(F) The frequency of interest-rate and payment changes.

(G) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest-rate or payment limitations, negative amortization, and the interest-rate carryover.

(H) At the option of the creditor, either of the following:

(i) A historical example, based on a \$10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest-rate changes implemented according to the terms of the loan-program disclosure. The example shall reflect all significant loan-program terms, such as negative amortization, interest-rate carryover, interest-rate discounts, and interest-rate and payment limitations, that would have been affected by the index movement during the period.

(ii) The maximum interest rate and payment for a \$10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan-program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(I) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either -

(i) the most recent payment shown in the historical example in paragraph (b)(2)(H)(i) of this section; or

(ii) the initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(H)(ii) of this section.

(J) The fact that the loan program contains a demand feature.

(K) The type of information that will be provided in notices of adjustments and the timing of such notices.

(L) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) **Electronic disclosures.** For an application that is accessed by the consumer in electronic form, the disclosures required by paragraph (b) of this section may be provided to the consumer in electronic form on or with the application.

45a/ Information provided in accordance with variable-rate regulations of federal agencies may be substituted for the disclosures required by paragraph (b) of this section.

45b/ Disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application reaches the creditor by telephone, or through an intermediary agent or broker.

160:45-5-7. Right of rescission

(a) Consumer's right to rescind.

(1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. **47/**

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, **48/** whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with §5-204(1) of the Code.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) Notice of right to rescind.

(1) In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(A) The retention or acquisition of a security interest in the consumer's principal dwelling.

(B) The consumer's right to rescind the transaction.

(C) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(D) The effects of rescission, as described in paragraph (d) of this section.

(E) The date the rescission period expires.

(2) **Proper form of notice.** To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this chapter or a substantially similar notice.

(c) **Delay of creditor's performance.** Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) Effects of rescission.

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) **Consumer's waiver of right to rescind.** The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under 160:45-5-1(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under 160:45-5-4(a)(5).

(g) **Tolerances for accuracy.**

(1) **One-half of 1 percent tolerance.** Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) is understated by no more than 1/2 of 1 percent of the face amount of the note or \$100, whichever is greater; or

(B) is greater than the amount required to be disclosed.

(2) **One percent tolerance.** In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by 160:45-9-2), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) is understated by no more than 1 percent of the face amount of the note or \$100, whichever is greater; or

(B) is greater than the amount required to be disclosed.

(h) **Special rules for foreclosures.**

(1) **Right to rescind.** After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

(A) A mortgage broker fee that should have been included in the finance charge was not included; or

(B) The creditor did not provide the properly completed appropriate model form in Appendix H of this chapter, or a substantially similar notice of rescission.

(2) **Tolerance for disclosures.** After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) is understated by no more than \$35; or

(B) is greater than the amount required to be disclosed.

47/ For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

48/ The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in 160:45-9-2(c) and (d) and 160:45-9-5(b)(2).

160:45-5-8. Advertising

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) **Clear and conspicuous standard.** Disclosures required by this section shall be made clearly and conspicuously.

(bc) **Advertisement of rate of finance charge.** If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. ~~The~~ If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(ed) **Advertisement of terms that require additional disclosures.**

(1) **Triggering terms.** If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (ed)(2) of this section:

(A) The amount or percentage of any downpayment.

(B) The number of payments or period of repayment.

(C) The amount of any payment.

(D) The amount of any finance charge.

(2) **Additional terms.** An advertisement stating any of the terms in paragraph (ed)(1) of this section shall state the following terms, **49/** as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):

(A) The amount or percentage of the downpayment.

(B) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.

(C) The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

(de) Catalogs or other multiple-page advertisements; electronic advertisements.

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (ed)(2) of this section, it shall be considered a single advertisement if:

(A) The table or schedule is clearly and conspicuously set forth; and

(B) Any statement of terms of the credit terms in paragraph (ed)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with paragraph (ed)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(f) Disclosure of rates and payments in advertisements for credit secured by a dwelling.

(1) **Scope.** The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.

(2) **Disclosure of rates.**

(A) **In general.** If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

(i) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;

(ii) The period of time during which each simple annual rate of interest will apply; and

(iii) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in 160:45-5-1(c) and 160:45-5-6.

(B) **Clear and conspicuous requirement.** For purposes of paragraph (f)(2)(A) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(A)(i) through (iii) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(A)(iii) may be disclosed with greater prominence than the other information.

(3) **Disclosure of payments.**

(A) **In general.** In addition to the requirements of paragraph (c) of this section, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

(i) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined

based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;

(ii) The period of time during which each payment will apply; and

(iii) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

(B) Clear and conspicuous requirement. For purposes of paragraph (f)(3)(A) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(A)(i) and (ii) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(A)(iii) shall be disclosed with prominence and in close proximity to the advertised payments.

(4) Envelope excluded. The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(g) Alternative disclosures – television or radio advertisements. An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (d)(2) of this section may comply with paragraph (d)(2) of this section either by:

(1) Stating clearly and conspicuously each of the additional disclosures required under paragraph (d)(2) of this section; or

(2) Stating clearly and conspicuously the information required by paragraph (d)(2)(C) of this section and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

(h) Tax implications. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer’s principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(1) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(2) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(i) Prohibited acts or practices in advertisement for credit secured by a dwelling. The following acts or practices are prohibited in advertisements for credit secured by a dwelling:

(1) Misleading advertising of “fixed” rates and payments. Using the word “fixed” to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:

(A) In the case of an advertisement solely for one or more variable-rate transactions,

(i) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement before the first use of the word “fixed” and is at least as conspicuous as any use of the word “fixed” in the advertisement; and

(ii) Each use of the word “fixed” to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;

(B) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (e.g., a stepped-rate mortgage transaction with an initial lower

payment), each use of the word “fixed” to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or

(C) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,

(i) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as any use of the term “fixed,” “Fixed-Rate Mortgage,” or similar terms; and

(ii) Each use of the word “fixed” to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(B) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

(2) **Misleading comparisons in advertisements.** Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:

(A) **In general.** The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under 160:45-5-8(f)(2) and (3); and

(B) **Application to variable-rate transactions.** If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

(3) **Misrepresentations about government endorsement.** Making any statement in an advertisement that the product offered is a “government loan program”, “government supported loan”, or is otherwise endorsed or sponsored by an federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, state, or local government entity.

(4) **Misleading use of the current lender’s name.** Using the name of the consumer’s current lender in an advertisement that is not sent by or on behalf of the consumer’s current lender, unless the advertisement:

(A) Discloses with equal prominence the name of the person or creditor making the advertisement; and

(B) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer’s current lender.

(5) **Misleading claims of debt elimination.** Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer’s existing loan terms with, or obligations to, another creditor.

(6) **Misleading use of the term “counselor”.** Using the term “counselor” in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

(7) **Misleading foreign-language advertisements.** Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required

disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

~~49/ An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.~~[Reserved.]

SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

160:45-9-2. Requirements for certain closed-end home mortgages

(a) Coverage.

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(A) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount **50%**, or \$400; the \$400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(i) The dollar amount for 1996 is \$412.

(ii) The dollar amount for 1997 is \$424.

(iii) The dollar amount for 1998 is \$435.

(iv) The dollar amount for 1999 is \$441.

(v) The dollar amount for 2000 is \$451.

(vi) The dollar amount for 2001 is \$465.

(vii) The dollar amount for 2002 is \$480.

(viii) The dollar amount for 2003 is \$488.

(ix) The dollar amount for 2004 is \$499.

(x) The dollar amount for 2005 is \$510.

(xi) The dollar amount for 2006 is \$528.

(xii) The dollar amount for 2007 is \$547.

(xiii) The dollar amount for 2008 is \$561.

(xiv) The dollar amount for 2009 is \$583.

(2) This section does not apply to the following:

(A) A residential mortgage transaction.

(B) A reverse-mortgage transaction subject to 160:45-9-3.

(C) An open-end credit plan subject to subchapter 3 of this chapter.

(b) Definitions. For purposes of this subchapter, the following definitions apply:

(1) For purposes of paragraph (a)(1)(B) of this section, **points and fees** means:

(A) All items required to be disclosed under 160:45-1-4(a) and (b), except interest or the time-price differential;

(B) All compensation paid to mortgage brokers;

(C) All items listed in 160:45-1-4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect

compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) **Affiliate** means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) **Disclosures.** In addition to other disclosures required by this chapter, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) **Notices.** The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) **Annual percentage rate.** The annual percentage rate.

(3) **Regular payment; balloon payment.** The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) **Variable-rate.** For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under 160:45-7-4.

(5) **Amount borrowed.** For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than \$100 above or below the amount required to be disclosed.

(d) **Limitations.** A mortgage transaction subject to this section shall not include the following terms:

(1) **Balloon payment.**

(A) For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(B) **Exception.** The limitations in paragraph (d)(1)(A) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) **Negative amortization.** A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) **Advance payments.** A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) **Increased interest rate.** An increase in the interest rate after default.

(5) **Rebates.** A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) **Prepayment penalties.** Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 USC 1615(d).

(7) **Prepayment-penalty exception.** A mortgage transaction subject to this section may provide for a prepayment penalty ~~otherwise permitted by law~~ (including a refund calculated according to the rule of 78s) if otherwise permitted by law if, under the terms of the loan:

(A) ~~The penalty can be exercised only for the first five years~~will not apply after the two-year period following consummation;

(B) The penalty will not apply if the source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and

(C) At consummation, the consumer's total monthly ~~debts~~debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified ~~by the consumer's signed financial statement, a credit report, and payment records for employment income~~in accordance with 160:45-9-4(a)(4)(B); and

(D) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(8) **Due-on-demand clause.** A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(A) There is fraud or material misrepresentation by the consumer in connection with the loan;

(B) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(C) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

50/ Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to 160:45-5-2(2), and deducting any cost listed in 160:45-9-2(b)(1)(C) and 160:45-9-2(b)(1)(D) that is both included as points and fees under 160:45-9-2(b)(1) and financed by the creditor.

160:45-9-4. Prohibited acts or practices in connection with credit ~~secured by a consumer's dwellings~~ subject to 160:45-9-2

(a) **Prohibited acts or practices for loans subject to 160:45-9-2.** A creditor extending mortgage credit subject to 160:45-9-2 shall not:

(1) **Home improvement contracts.** Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by 160:45-9-2, other than:

(A) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(B) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) **Notice to assignee.** Sell or otherwise assign a mortgage subject to 160:45-9-2 without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of

this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

(3) **Refinancings within one-year period.** Within one year of having extended credit subject to 160:45-9-2, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to 160:45-9-2, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(4) **Repayment ability.** ~~Engage in a pattern or practice of extending~~Extend credit subject to 160:45-9-2 to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, current obligations, and employment, assets other than the collateral, current obligations, and mortgage-related obligations. ~~There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of making loans subject to 160:45-9-2 without verifying and documenting consumers' repayment ability.~~

(A) Mortgage-related obligations. For purposes of this paragraph (a)(4), mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in 160:45-9-5(b)(3)(A), and similar expenses.

(B) Verification of repayment ability. Under this paragraph (a)(4) a creditor must verify the consumer's repayment ability as follows:

(i) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(ii) Notwithstanding paragraph (a)(4)(B)(i), a creditor has not violated paragraph (a)(4)(B) if the amounts of income and assets that the creditor relied upon in determining repayment ability are not materially greater than the amounts of the consumer's income or assets that the creditor could have verified pursuant to paragraph (a)(4)(B)(i) at the time the loan was consummated.

(iii) A creditor must verify the consumer's current obligations.

(C) Presumption of compliance. A creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(i) Verifies the consumer's repayment ability as provided in paragraph (a)(4)(B);

(ii) Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(A); and

(iii) Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.

(D) Exclusions from presumption of compliance. Notwithstanding the previous paragraph, no presumption of compliance is available for a transaction for which:

(i) The regular periodic payments for the first seven years would cause the principal balance to increase; or

(ii) The term of the loan is less than seven years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.

(E) Exemption. This paragraph (a)(4) does not apply to temporary or “bridge” loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months.

(b) **Prohibited acts or practices for dwelling-secured loans; open-end credit.** In connection with credit secured by the consumer's dwelling that does not meet the definition in 160:45-1-2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of 160:45-9-2.

160:45-9-5. Prohibited acts or practices in connection with higher-priced mortgage loans

(a) Higher-priced mortgage loans.

(1) For purposes of this section, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer’s principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

(2) “Average prime offer rate” means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates.

(3) Notwithstanding paragraph (a)(1) of this section, the term “higher-priced mortgage loan” does not include a transaction to finance the initial construction of a dwelling, a temporary or “bridge” loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, a reverse-mortgage transaction subject to 160:45-9-3, or a home equity line of credit subject to 160:45-3-3.

(b) Rules for higher-priced mortgage loans. Higher-priced mortgage loans are subject to the following restrictions:

(1) Repayment ability. A creditor shall not extend credit based on the value of the consumer’s collateral without regard to the consumer’s repayment ability as of consummation as provided in 160:45-9-4(a)(4).

(2) Prepayment penalties. A loan may not include a penalty described by 160:45-9-2(d)(6) unless:

(A) The penalty is otherwise permitted by law, including 160:45-9-2(d)(7) if the loan is a mortgage transaction described in 160:45-9-2(a); and

(B) Under the terms of the loan:

(i) The penalty will not apply after the two-year period following consummation;

(ii) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

(iii) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(3) Escrows.

(A) Failure to escrow for property taxes and insurance. Except as provided in paragraph (b)(3)(B) of this section, a creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

(B) Exemptions for loans secured by shares in a cooperative and for certain condominium units.

(i) Escrow accounts need not be established for loans secured by shares in a cooperative; and

(ii) Insurance premiums described in paragraph (b)(3)(A) of this section need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

(C) Cancellation. A creditor or servicer may permit a consumer to cancel the escrow account required in paragraph (b)(3)(A) of this section only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.

(D) Definition of escrow account. For purposes of this section, "escrow account" means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a "trust account", "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term "escrow account" excludes any account that is under the borrower's total control.

(4) Evasion; open-end credit. In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in 160:45-1-2(21), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

160:45-9-6. Prohibited acts or practices in connection with credit secured by a consumer's principal dwelling

(a) Mortgage broker defined. For purposes of this section, the term "mortgage broker" means a person, other than an employee of a creditor, who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides the funds for the transaction at consummation out of the person's own resources, out of deposits held by the person, or by drawing on a bona fide warehouse line of credit.

(b) Misrepresentation of value of consumer's dwelling.

(1) Coercion of appraiser. In connection with a consumer credit transaction secured by a consumer's principal dwelling, no creditor or mortgage broker, and no affiliate of a creditor

or mortgage broker shall directly or indirectly coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

(A) Examples of actions that violate this paragraph (b)(1) include:

- (i) Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a consumer's principal dwelling;
- (ii) Excluding an appraiser from consideration for future engagement because the appraiser reports a value of a consumer's principal dwelling that does not meet or exceed a minimum threshold;
- (iii) Telling an appraiser a minimum reported value of a consumer's principal dwelling that is needed to approve the loan;
- (iv) Failing to compensate an appraiser because the appraiser does not value a consumer's principal dwelling at or above a certain amount; and
- (v) Conditioning an appraiser's compensation on loan consummation.

(B) Examples of actions that do not violate this paragraph (b)(1) include:

- (i) Asking an appraiser to consider additional information about a consumer's principal dwelling or about comparable properties;
- (ii) Requesting that an appraiser provide additional information about the basis for a valuation;
- (iii) Requesting that an appraiser correct factual errors in a valuation;
- (iv) Obtaining multiple appraisals of a consumer's principal dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;
- (v) Withholding compensation from an appraiser for breach of contract or substandard performance of services as provided by contract; and
- (vi) Taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.

(2) **When extension of credit prohibited.** In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of paragraph (b)(1) of this section in connection with an appraisal shall not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(3) **Appraiser defined.** As used in this paragraph (b), an appraiser is a person who engages in the business of providing assessments on the value of dwellings. The term "appraiser" includes persons that employ, refer, or manage appraisers and affiliates of such persons.

(c) **Servicing practices.**

(1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall:

- (A) Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(2) of this section;
- (B) Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period; or
- (C) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total

outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date.

(2) If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

(3) For purposes of this paragraph (c), the term "servicer" means the person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

(A) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and

(B) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the RTC; the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 USC §1701 et seq.) is assigned to HUD); the National Credit Union Administration (NCUA); the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA); and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(4) For purposes of this paragraph (c), the term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 USC §2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage, servicing includes making payments to the borrower.

(d) This section does not apply to a home equity line of credit subject to 160:45-3-3.