

**TITLE 160. DEPARTMENT OF CONSUMER CREDIT  
CHAPTER 45. TRUTH IN LENDING RULES**

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 9. Special Rules for Certain Home Mortgage Transactions  
160:45-9-2 [AMENDED]

**AUTHORITY:**

Administrator of Consumer Credit; 14A O.S., §6-104(1)(e) and (2)

**DATES:**

**Adoption:**

January 27, 2010

**Effective:**

Immediately upon Governor's approval

**Expiration:**

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

The Administrator of Consumer Credit finds that there is a compelling public interest requiring emergency amendments to existing rules. The Federal Reserve Board published its annual adjustment of the dollar amount of fees that triggers additional disclosure requirements for home mortgage loans that bear rates or fees above a certain amount. The compelling public interest is maintaining Oklahoma's exemption from federal regulation.

**ANALYSIS:**

The amended rule incorporates the annual adjustment of the dollar amount of fees that triggers additional disclosure requirements for home mortgage loans that bear rates or fees above a certain amount.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):**

**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.

(xv) The dollar amount for 2010 is \$579.

(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 (including a refund calculated according to the rule of 78s) otherwise permitted by law if, under the terms of the loan:

- (A) The penalty will not apply after the two-year period following consummation;
- (B) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;
- (C) At consummation, the consumer's total monthly debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified 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.

## ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of additions to Chapter 45, Truth In Lending Rules, which were adopted by the Administrator on January 27, 2010, under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

I, the undersigned, do hereby attest that such rule was adopted in substantial compliance with the Administrative Procedures Act.

A handwritten signature in blue ink that reads "Roy John Martin". The signature is written in a cursive style and is positioned above a horizontal line.

Roy John Martin  
General Counsel  
Department of Consumer Credit  
February 1, 2010