

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

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 1. General Provisions

160:45-1-1 [AMENDED]

160:45-1-2 [AMENDED]

160:45-1-3 [AMENDED]

Subchapter 5. Closed-End Credit

160:45-5-1 [AMENDED]

Subchapter 13. Special Rules for Private Education Loans [NEW]

160:45-13-1 through 160:45-13-3 [NEW]

Appendix H. Closed-end Model Forms and Clauses [REVOKED]

Appendix H. Closed-end Model Forms and Clauses [NEW]

**AUTHORITY:**

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

**DATES:**

**Adoption:**

November 18, 2009

**Effective:**

February 14, 2010

**Expiration:**

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 1. General Provisions

160:45-1-2 [AMENDED]

Subchapter 5. Closed-End Credit

160:45-5-1 [AMENDED]

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**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 approved final rules that revise the disclosure requirements for private education loans. The compelling public interest is maintaining Oklahoma's exemption from federal regulation.

**ANALYSIS:**

The amended rules incorporate federal changes that revise the disclosure requirements for private education loans.

**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), WITH A LATER EFFECTIVE DATE OF FEBRUARY 14, 2010:**

**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, and provides a means for fair and timely resolution of credit billing disputes. 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. The chapter also regulates certain practices of creditors who extend private education loans as defined in 160:45-13-1(b)(5).

(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.~~ Subchapter 13 relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

(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), 160:45-5-3(a)(2), ~~and 160:45-9-1, and 160:45-13-1(d)(4)~~, 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.

### 160:45-1-3. Exempt transactions

This chapter does not apply to the following: 4/

(1) **Business, commercial, agricultural or organizational credit.**

(A) An extension of credit primarily for a business, commercial or agricultural purpose.

(B) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(2) ~~Credit over \$45,000 not secured by real property or a dwelling.~~ An extension of credit ~~not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer,~~ in which the amount financed exceeds \$45,000 or in which there is an express written commitment to extend credit in excess of \$45,000-, unless the extension of credit is:

(A) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(B) A private education loan as defined in 160:45-13-1(b)(5).

(3) **Public utility credit.** An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including

extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(4) **Securities or commodities accounts.** Transaction in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(5) **Home fuel budget plans.** An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(6) **Pawnbrokers.** An extension of credit by a pawnbroker engaging in pawn transactions as defined in the Oklahoma Pawnshop Act beginning at §1501 of Title 59 of the Oklahoma Statutes.

(7) **Student loan programs.** Loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 USC 1070 et seq.) or comparable Oklahoma law.

4/ Reserved

## 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 or 160:45-13-2. ~~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, except for private education loan disclosures made in compliance with 160:45-13-2.

(2) ~~The~~Except for private education loan disclosures made in compliance with 160:45-13-2, 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). For private education loan disclosures made in compliance with 160:45-13-2, the term "annual percentage rate," and the corresponding percentage rate must be less conspicuous than the term "finance charge" and corresponding amount under 160:45-5-2(4), the interest rate under 160:45-13-2(b)(1)(A) and (c)(1), and the notice of the right to cancel under 160:45-13-2(c)(4).

(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). For private education

loan disclosures made in compliance with 160:45-13-2, special timing requirements are set forth in 160:45-13-1(d). 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, or 160:45-13-3(c)(4).

(f) **Early disclosures.** ~~If~~Except for private education loan disclosures made in compliance with 160:45-13-2, 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).~~(subject to the provisions of 160:45-5-3(a)(2) and 160:45-5-3(a)(5)(C): 39/

(1) Any changed term unless the term was based on an estimate in accordance with 160:45-5-1(c)(2) 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~~Except for private education loan disclosures made in compliance with 160:45-13-2, 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~~transactions involving an interim credit extension under a student credit program for which an application is received prior to

February 14, 2010, 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) at the time the credit is actually extended. The creditor must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under 160:45-5-2.

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.~~Reserved

### **SUBCHAPTER 13. SPECIAL RULES FOR PRIVATE EDUCATION LOANS**

#### **160:45-13-1. Special disclosure requirements for private education loans**

##### **(a) Coverage.**

(1) The requirements of this subchapter apply to private education loans as defined in 160:45-13-1(b)(5). A creditor may, at its option, comply with the requirements of this subchapter for an extension of credit subject to 160:45-5-1 and 160:45-5-2 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(2) **Relation to other subchapters in this chapter.** Except as otherwise specifically provided, the requirements and limitations of this subchapter are in addition to and not in lieu of those contained in other subchapters of this chapter.

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

###### **(1) "Covered educational institution" means:**

(A) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(B) Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) "**Institution of higher education**" has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and the implementing regulations published by the U.S. Department of Education.

(3) "**Postsecondary educational expenses**" means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 10871l), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(4) "Preferred lender arrangement" has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(5) "Private education loan" means an extension of credit that:

(A) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. );

(B) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(C) Does not include open-end credit any loan that is secured by real property or a dwelling; and

(D) Does not include an extension of credit in which the covered educational institution is the creditor if:

(i) The term of the extension of credit is 90 days or less; or

(ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(c) Form of disclosures.

(1) Clear and conspicuous. The disclosures required by this subchapter shall be made clearly and conspicuously.

(2) Transaction disclosures.

(A) The disclosures required under 160:45-13-2(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under 160:45-13-2(b) and (c), which include the disclosures required under 160:45-5-2.

(B) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under 160:45-5-2(a), insurance or debt cancellation under 160:45-5-2(n), and certain security interest charges under 160:45-5-2(o).

(C) The term "finance charge" and corresponding amount, when required to be disclosed under 160:45-4-2(d), and the interest rate required to be disclosed under 160:45-13-2(b)(1)(A) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under 160:45-5-2(a).

(3) Electronic disclosures. The disclosures required under 160:45-13-2(b) and (c) 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 160:45-13-2(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under 160:45-13-3(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) Timing of disclosures.

(1) Application or solicitation disclosures.

(A) The disclosures required by 160:45-13-2(a) shall be provided on or with any application or solicitation. For purposes of this subchapter, the term solicitation means an offer of credit that does not require the consumer to complete an application. A "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) is a solicitation for purposes of this section.

(B) The creditor may, at its option, disclose orally the information in 160:45-13-2(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in 160:45-13-2(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in 160:45-13-2(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the 160:45-13-2(a) disclosures.

(C) Notwithstanding paragraph (d)(1)(A), for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by 160:45-13-2(a).

(2) **Approval disclosures.** The creditor shall provide the disclosures required by 160:45-13-2(b) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form in accordance with 160:45-13-1(d)(3); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.

(3) **Final disclosures.** The disclosures required by 160:45-13-2(c) shall be provided after the consumer accepts the loan in accordance with 160:45-13-3(c)(1).

(4) **Receipt of mailed disclosures.** If the disclosures under paragraphs (d)(1), (d)(2) or (d)(3), are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

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

(1) **Legal obligation.** Disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates.** 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, and shall state clearly that the disclosure is an estimate.

(f) **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 will 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.

(g) **Effect of subsequent events.**

(1) **Approval disclosures.** If a disclosure under 160:45-13-2(b) 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 160:45-13-3(c).

(2) **Final disclosures.** If a disclosure under 160:45-13-2(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this chapter.

### **160:45-13-2. Content of disclosures**

(a) **Application or solicitation disclosures.** A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan.

#### (1) **Interest Rates.**

(A) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

(B) Whether the interest rates applicable to the loan are fixed or variable.

(C) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(A) of this section, if applicable; and, if the limitation is determined by applicable law, that fact.

(D) Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

#### (2) **Fees and default or late payment costs.**

(A) An itemization of the fees or range of fees required to obtain the private education loan.

(B) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

#### (3) **Repayment terms.**

(A) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(B) A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

(C) For each payment deferral option applicable while the student is enrolled at a covered educational institution:

(i) Whether interest will accrue during the deferral period; and

(ii) If interest accrues, whether payment of interest may be deferred and added to the principal balance.

(D) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(4) **Cost estimates.** An example of the total cost of the loan calculated as the total of payments over the term of the loan:

(A) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;

- (B) Using an amount financed of \$10,000, or \$5000 if the creditor only offers loans of this type for less than \$10,000; and
- (C) Calculated for each payment option.
- (5) **Eligibility.** Any age or school enrollment eligibility requirements relating to the consumer or co-signer.
- (6) **Alternatives to private education loans.**
- (A) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
- (B) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) and whether the rates are fixed or variable.
- (C) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.
- (D) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.
- (7) **Rights of the consumer.** A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.
- (8) **Self-certification information.** A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.
- (b) **Approval disclosures.** On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under 160:45-5-2 and the following information:
- (1) **Interest rate.**
- (A) The interest rate applicable to the loan.
- (B) Whether the interest rate is fixed or variable.
- (C) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.
- (2) **Fees and default or late payment costs.**
- (A) An itemization of the fees or range of fees required to obtain the private education loan.
- (B) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.
- (3) **Repayment terms.**
- (A) The principal amount of the loan for which the consumer has been approved.
- (B) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.
- (C) A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time.
- (D) Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.
- (E) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(F) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(G) An estimate of the total amount of payments calculated based on:

(i) The interest rate applicable to the loan. Compliance with 160:45-5-2(h) constitutes compliance with this requirement.

(ii) The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%.

(iii) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed under paragraph (b)(3)(G)(ii) of this section is an estimate and will be higher if the applicable interest rate increases.

(H) The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

**(4) Alternatives to private education loans.**

(A) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(B) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and whether the rates are fixed or variable.

(C) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

**(5) Rights of the consumer.**

(A) A statement that the consumer may accept the terms of the loan until the acceptance period under 160:45-13-3(c)(1) has expired. The statement must include the specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(B) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(A) of this section.

**(c) Final disclosures.** After the consumer has accepted the loan in accordance with 160:45-13-3(c)(1), the creditor shall disclose to the consumer the information required by 160:45-5-2 and the following information:

**(1) Interest rate.** Information required to be disclosed under 160:45-13-2(b)(1).

**(2) Fees and default or late payment costs.** Information required to be disclosed under 160:45-13-2(b)(2).

**(3) Repayment terms.** Information required to be disclosed under 160:45-13-2(b)(3).

**(4) Cancellation right.** A statement that:

(A) The consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under 160:45-13-3(d) expires, and

(B) Loan proceeds will not be disbursed until after the cancellation period under 160:45-13-3(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of 160:45-13-1(c)(2)(C).

### **160:45-13-3. Limitations on private education loans**

#### **(a) Co-branding prohibited.**

(1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) **Endorsed lender arrangements.** If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

#### **(c) Consumer's right to accept.**

(1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under 160:45-13-2(b).

(2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under 160:45-13-2(b) and (c) may not be changed by the creditor prior to the earlier of:

(A) The date of disbursement of the loan; or

(B) The expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.

#### **(3) Exceptions not requiring re-disclosure.**

(A) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:

(i) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;

(ii) Changing the interest rate based on adjustments to the index used for a loan;

(iii) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or

(iv) Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.

(B) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under 160:45-13-2(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.

**(4) Exceptions requiring re-disclosure.**

(A) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

(B) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under 160:45-13-2(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under 160:45-13-3(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

**(d) Consumer's right to cancel.** The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by 160:45-13-2(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

**(e) Self-certification form.** For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

**(f) Provision of information by preferred lenders.** A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under 160:45-13-2(a)(1) through (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of

the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.