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Oklahoma

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated:	Date:	Initials:
By:	12/22/20	BH
Reviewed:	4/1/19	RFL
Coded:		
By:	12/31/2020	SA
Reviewed:		

LAW: "Oklahoma Home Ownership and Equity Protection Act" a/k/a subsection 10 mortgages (14A O.S. 2001, Section 1-301)

LOAN AMOUNT COVERED: No limitation

BORROWERS COVERED:

- | | |
|-------------------------------------------------|--------------------------------------------|
| <input checked="" type="checkbox"/> Individuals | <input checked="" type="checkbox"/> Trusts |
| <input type="checkbox"/> Organizations | <input type="checkbox"/> Other: |

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS: Not defined, we use Section 32/HCML definition for calculations

- | | |
|----------------------------------------------------------------------------|--------------------------------------|
| <input type="checkbox"/> Loan Amount as defined in HOEPA 226.32 | <input type="checkbox"/> Note Amount |
| <input checked="" type="checkbox"/> Loan Amount as defined in HCML 1026.32 | <input type="checkbox"/> Other: |

LOAN TYPES COVERED:

- | | |
|--------------------------------------------------|-----------------------------------------|
| <input checked="" type="checkbox"/> Conventional | <input checked="" type="checkbox"/> FHA |
| <input checked="" type="checkbox"/> VA | <input checked="" type="checkbox"/> RHS |
| <input type="checkbox"/> Other: | |

LOAN PURPOSES COVERED:

- | | |
|-----------------------------------------------------|-----------------------------------------------------------------|
| <input type="checkbox"/> Purchase | <input checked="" type="checkbox"/> Construction to Perm |
| <input type="checkbox"/> Builder | <input checked="" type="checkbox"/> Refinance |
| <input checked="" type="checkbox"/> Equity Out | <input checked="" type="checkbox"/> Home Equity Closed End |
| <input type="checkbox"/> One Time Closing | <input type="checkbox"/> Modification |
| <input type="checkbox"/> Purchase Plus Improvements | <input checked="" type="checkbox"/> Refinance Plus Improvements |
| <input type="checkbox"/> Lot Loan | <input checked="" type="checkbox"/> Home Improvement |
| <input type="checkbox"/> Borrower Interim | <input type="checkbox"/> One Time Closing with Modification |
| <input type="checkbox"/> HELOC | <input type="checkbox"/> Assumption |

BRIDGE LOANS COVERED

- | | |
|-----------------------------------------|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|-----------------------------------------|-----------------------------|

PROPERTY OCCUPANCY COVERED:

- | | |
|-------------------------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> Primary Residence | <input type="checkbox"/> Second Home |
| <input type="checkbox"/> Investment | <input type="checkbox"/> Raw Land |

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APR THRESHOLDS: <https://www.ok.gov/okdocc/documents/1.%20Title%2014A%20UCCC%2009.pdf> and <http://www.oklegislature.gov/osStatuesTitle.html>

APR Unteased APR Other:

First Lien: > 8 %

Subordinate Lien: > 10 %

APR COMPARED AGAINST: 14A O.S. 2001, Section 1-301

APOR APR Itself
 Treasury Yield Other:

DATE FOR APR TEST:

Application Closing
 Other: 15th day of the month prior to application

FEE TEST METHOD: 14A O.S. 2001, Section 1-301

Use HC Flag
 Use APR & Paid To (§1026.32)
 Use APR & Paid To, except: do not include interest

FEE TEST THRESHOLDS: 14A O.S. 2001, Section 1-301

All liens: Exceeding greater of 8% or \$1,103

ADJUSTMENTS:

No Yes | How: Every January 1 according to 1026.32(a)(1)(ii)

IF LOAN IS STATE HIGH-COST, THEN MUST MEET FOLLOWING REQUIREMENTS:

- Payments to Contractors prohibited under home improvement, unless payable to borrower or jointly (borrower and contractor); or at the election of borrower, by a 3rd party escrow agent per agreement between borrower, lender and contractor before pymt date.
- No Advance Payments – may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.
- Single Premium Credit Insurance requires “Insurance Notice to Obligor” disclosure.
- No Balloon Payment in less than 5 years
- No Negative Amortization
- No Default Interest Rate
- No Rebate of Interest – a rebate of interest arising from a loan acceleration due to default must be calculated by a method not less favorable than the actuarial method.
- No loan acceleration provision (except via fraud, default, or other action/inaction that adversely affects collateral or right of the lender in that security).
- No Prepayment penalties after 2 years, and limited before that.

FEEES INCLUDED IN TEST: 14A O.S. 2001, Section 1-301

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- (i) all items included in the finance charge, except interest or the time-price differential;
- (ii) all compensation paid to mortgage brokers;
- (iii) each of the charges listed in 15 U.S.C., Section 1605(e), except an escrow for future payment of taxes, unless:
 - (aa) the charge is reasonable;
 - (bb) the creditor receives no direct or indirect compensation; and
 - (cc) the charge is paid to a third party unaffiliated with the creditor;
- (iv) 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; and
- (v) such other charges as the Administrator determines to be appropriate.

SPECIAL NOTES: 14A O.S. 2001, Section 1-301

Subsection 10 Mortgages

In addition to regulating consumer credit in Oklahoma, the Uniform Consumer Credit Code (UCCC) imposes lending restrictions on mortgage loans that meet the definition of a "subsection 10 mortgage." The provisions of the UCCC addressing subsection 10 mortgages are Okla. Stat. Ann. tit. 14A, [§1-301](#); [§3-309.4](#); [§3-401](#); [§3-410](#); [§3-411](#); [§4-113](#); [§5-202](#); [§5-203](#).

Definitions

"Subsection 10 mortgage" means a consumer credit transaction that is secured by the consumer's principal dwelling if:

- (1) 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 junior lien loans, the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application was received by the lender; or
- (2) the total points and fees payable by the consumer at or before closing will exceed the greater of:
 - (A) 8% of the total loan amount; or
 - (B) the dollar amount adjusted annually under the Truth in Lending Act.

Okla. Stat. Ann. tit. 14A, [§1-301\(10\)](#); Okla. Admin. Code [§160:45-9-2\(a\)](#).

"Subsection 10 mortgage" does not include:

- (1) a purchase money mortgage;
- (2) a reverse mortgage; or
- (3) an open-end credit plan.

"Points and fees" means:

- (1) all items included in the finance charge, except interest or the time-price differential;
- (2) all compensation paid to mortgage brokers;
- (3) each of the charges listed in the Truth in Lending Act, [15 U.S.C. §1605\(e\)](#), except an escrow for future payment of taxes, unless:
 - (A) the charge is reasonable;
 - (B) the lender receives no direct or indirect compensation; and
 - (C) the charge is paid to a third party unaffiliated with the lender;
- (4) 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; and
- (5) other charges as the Administrator determines to be appropriate.

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Okla. Stat. Ann. tit. 14A, [§1-301\(10\)](#).

For purposes of the points and fees test, the total loan amount is calculated by taking the amount financed and deducting any cost listed in items (3) and (4) above that is both:

- (1) included as points and fees; and
- (2) financed by the creditor.

Okla. Admin. Code [§160:45-9-2](#).

The amount financed is calculated by:

- (1) determining the principal loan amount or the cash price (subtracting any down payment);
- (2) adding any other amounts that are financed by the creditor and are not part of the finance charge; and
- (3) subtracting any prepaid finance charge.

Okla. Admin. Code [§160:45-5-2\(2\)](#).

Evasion of Subsection 10 Mortgage Requirements

In connection with credit secured by the borrower's dwelling that does not meet the definition of open-end credit defined at [12 C.F.R. §1026.2\(a\)](#), a lender may not structure a home-secured loan as an open-end plan to evade the UCCC requirements pertaining to subsection 10 mortgages. Okla. Stat. Ann. tit. 14A, [§3-410\(2\)](#).

Borrower Repayment Ability

A lender extending subsection 10 mortgage loans may not engage in a pattern or practice of extending credit to a borrower based on the borrower's collateral without regard to the borrower's repayment ability, including the borrower's current and expected income, current obligations, and employment. There is a presumption that a lender has violated this requirement if the lender engages in a pattern or practice of making subsection 10 mortgages without verifying and documenting borrowers' repayment ability.

A borrower will be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the total monthly debts of the borrower, including amounts owed under the loan, do not exceed 55% of the monthly gross income of the borrower as verified by the credit application, the financial statement of the borrower, a credit report, or financial information provided to the lender by or on behalf of the borrower. However, no presumption of inability to make the scheduled payments to repay the obligation will arise solely from the fact that the borrower's total monthly debts, including amounts owed under the loan, exceed 55% of the monthly gross income of the borrower..

Okla. Stat. Ann. tit. 14A, [§3-410\(2\)](#).

Recommending Default

A lender is prohibited from recommending or encouraging default on an existing loan or other debt by a borrower before or in connection with the closing of a subsection 10 mortgage that refinances all or any portion of the existing loan or debt. Okla. Stat. Ann. tit. 14A, [§3-410\(2\)](#).

Home Improvement Contracts

A lender may not make a payment to a contractor under a home improvement contract from amounts extended as credit under a subsection 10 mortgage, other than:

- (1) in the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor; or
- (2) at the election of the borrower, by a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor before the date of payment.

Okla. Stat. Ann. tit. 14A, [§3-309.4\(8\)](#).

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Advance Payments

A subsection 10 mortgage may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower. Okla. Stat. Ann. tit. 14A, [§3-309.4\(7\)](#).

Credit Insurance

A lender may not sell any individual or group credit life, accident and health or unemployment insurance product on a prepaid single premium basis in conjunction with a subsection 10 mortgage unless the lender also offers the borrower the option of purchasing the insurance on a monthly premium basis, if this option is available. Okla. Stat. Ann. tit. 14A, [§4-113\(a\)](#).

A lender who sells credit life, accident and health or unemployment insurance products on a prepaid single premium basis must additionally provide an "Insurance Notice to Obligor" no later than the time of closing. Okla. Stat. Ann. tit. 14A, [§4-113\(b\)](#); see also "Credit Insurance Disclosure" below.

These requirements do not apply to credit life, accident and health or unemployment insurance sold by the lender for which the borrower chooses the beneficiary and it is someone other than the lender. Okla. Stat. Ann. tit. 14A, [§4-113\(c\)](#).

Refinancing Restrictions

A lender may not replace or consolidate a zero interest rate or other low-rate loan made by a governmental or nonprofit lender with a subsection 10 mortgage within the first 10 years of the zero interest or other low-rate loan unless the current holder of the loan consents in writing to the refinancing. A "low-rate loan" is a loan that carries a current interest rate 2 percentage points or more below the current yield on U.S. Treasury securities with a comparable maturity.

A lender may not refinance any consumer loan to the same borrower into a subsection 10 mortgage, unless the refinancing is in the borrower's interest. Okla. Stat. Ann. tit. 14A, [§3-411](#). Within 1 year of extending a subsection 10 mortgage loan, a lender may not refinance any loan to the same borrower into another subsection 10 mortgage loan, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit may not, for the remainder of the 1-year period following the date of origination of the credit, refinance any loan to the same borrower into another subsection 10 mortgage loan, unless the refinancing is in the borrower's interest. A lender or assignee is prohibited from engaging in acts or practices to evade these restrictions.

Okla. Stat. Ann. tit. 14A, [§3-410\(2\)](#).

Factors to be considered in determining whether a refinancing is in the borrower's interest include, but are not limited to, whether:

- (1) the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;
- (2) there is a change in the amortization period of the new loan;
- (3) the borrower receives cash in excess of the costs and fees of refinancing;
- (4) the borrower's note rate of interest is reduced;
- (5) there is a change from an adjustable to a fixed-rate loan, taking into account costs and fees; or
- (6) the refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.

Okla. Stat. Ann. tit. 14A, [§3-411](#).

A lender may not engage 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 lenders, or modifying a loan

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agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee. Okla. Stat. Ann. tit. 14A, [§3-410\(2\)](#); [§3-411](#).

Balloon Payments

A subsection 10 mortgage having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance. Okla. Stat. Ann. tit. 14A, [§3-309.4\(5\)](#).

Negative Amortization

A subsection 10 mortgage may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due. Okla. Stat. Ann. tit. 14A, [§3-309.4\(6\)](#).

Increased Interest Rate

A subsection 10 mortgage may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. If the date of maturity of a subsection 10 mortgage is accelerated due to default and the borrower is entitled to a rebate of interest, that rebate must be computed by any method that is not less favorable than the actuarial method. Okla. Stat. Ann. tit. 14A, [§3-309.4\(4\)](#).

Call Provision

A subsection 10 mortgage may not contain a demand feature that permits the lender to terminate the loan in advance of the original maturity date and demand repayment of the entire outstanding balance, except when:

- (1) there is fraud or material misrepresentation by the borrower in connection with the loan;
- (2) the borrower fails to meet the repayment terms of the agreement for any outstanding balance; or
- (3) there is any action or inaction by the borrower that adversely affects the lender's security for the loan or, any right of the lender in security.

Okla. Stat. Ann. tit. 14A, [§3-410\(1\)](#).

Prepayment Penalties

A subsection 10 mortgage may contain a prepayment penalty, including terms calculating a refund by a method that is not prohibited under [15 U.S.C. §1615](#) only if:

- (1) at the time the subsection 10 mortgage is consummated:
 - (A) the borrower is not liable for an amount of monthly indebtedness payments, including the amount of credit extended or to be extended under the transaction, that is greater than 50% of the monthly gross income of the borrower; and
 - (B) the income and expenses of the borrower are verified by a financial statement signed by the borrower, by a credit report, and in the case of employment income, by payment records or by verification from the employer of the borrower, which verification may be in the form of a copy of a pay stub or other payment record supplied by the borrower;
- (2) the penalty applies only to a prepayment made with amounts obtained by the borrower by means other than a refinancing by the lender under the subsection 10 mortgage, or an affiliate of that lender;
- (3) the penalty does not exceed in the aggregate more than:
 - (A) 2% of the loan amount prepaid in the first 12 months after the subsection 10 mortgage is consummated, or
 - (B) 1% of the loan amount prepaid in the second 12 months after the subsection 10 mortgage is consummated;
- (4) the penalty does not apply after the end of the 2-year period beginning on the date on which the subsection 10 mortgage is consummated; and

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(5) the penalty is not prohibited under other applicable law.

Notwithstanding the above restrictions, a subsection 10 mortgage consummated with funds advanced directly or indirectly from a Federal Home Loan Bank may contain a prepayment penalty.

Okla. Stat. Ann. tit. 14A, [§3-309.4\(3\)](#).

Mandatory Arbitration

A subsection 10 mortgage may not contain a mandatory arbitration provision that:

(1) does not comply with rules set forth by a nationally recognized arbitration organization such as the American Arbitration Association;

(2) does not require the arbitration proceeding to be conducted within the federal judicial district in which the subject property is located, the city nearest the borrower's residence where a federal district court is located, or at the other location as may be mutually agreed upon by the parties;

(3) does not require the lender to contribute at least 50% of the amount of any filing fee, and

(4) does not require the lender to pay standard daily arbitration fees, both its own and those of the borrower, for at least the first day of arbitration.

Okla. Stat. Ann. tit. 14A, [§3-410\(f\)](#).

Reporting Payment History

A lender or its servicer must report at least quarterly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a subsection 10 mortgage to a nationally recognized consumer credit reporting agency. However, a lender or its servicer may agree with the borrower not to report payment history information in the event of a resolved or unresolved dispute with the borrower. This requirement does not apply to subsection 10 mortgages held or serviced by a lender for less than 90 days. Okla. Stat. Ann. tit. 14A, [§3-410\(g\)](#).

Disclosures

For disclosure requirements with respect to predatory lending, see [Section VII.C.: Predatory Lending Disclosures](#).

Regulations and Orders of the Administrator

The Administrator will, by regulation or order, prohibit acts or practices in connection with:

(1) subsection 10 mortgage loans that the Board of Governors of the Federal Reserve System has found to be unfair, deceptive, or designed to evade the provisions regarding subsection 10 mortgage loans; and

(2) refinancing of subsection 10 mortgage loans that the Board of Governors of the Federal Reserve System has found to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

The Administrator may, by regulation or order, exempt specific subsection 10 mortgage products or categories of subsection 10 mortgages from certain prohibitions if the Administrator finds that the exemption:

(1) is in the interest of the borrowing public; and

(2) will apply only to products that maintain and strengthen home ownership and equity protection.

Okla. Stat. Ann. tit. 14A, [§3-309.4\(11\)](#).

Penalties

A lender or servicer who fails to comply with any requirement for subsection 10 mortgages, with respect to any person is liable to that person in an amount equal to the sum of all finance charges and fees paid by the borrower, unless the lender demonstrates that the failure to comply is not material. No action may be

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brought more than 1 year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred. Okla. Stat. Ann. tit. 14A, [§5-202\(3\)](#).

Assignee Liability

A person who purchases or is otherwise assigned a subsection 10 mortgage will be subject to all claims and defenses with respect to the mortgage that the borrower could assert against the lender of the mortgage. Relief provided as a result of any action made against a purchaser or assignee may not exceed:

- (1) with respect to actions based upon a violation of the UCCC, the amount specified in Okla. Stat. Ann. tit. 14A, [§5-203\(1\)](#); and
- (2) with respect to all other causes of action, the sum of:
 - (A) the amount of all remaining indebtedness; and
 - (B) the total amount paid by the borrower in connection with the transaction.

A purchaser or assignee will not be held liable if the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due could not determine that the mortgage was a subsection 10 mortgage based on the required documentation, the itemization of the amount financed, and other disclosure of disbursements.

Okla. Stat. Ann. tit. 14A, [§5-203\(11\)](#).

State Preemption

A county, city, town, school district, or other local governmental or public entity, located within Oklahoma, may not enact any ordinance, resolution, local regulation, rule or law that, directly or indirectly:

- (1) regulates the brokering, originating, making, servicing or collecting of mortgage loans subject to the UCCC;
- (2) regulates the terms of mortgage loans subject to the UCCC;
- (3) makes the eligibility of any person or entity to do business with the political subdivision dependent on the terms of mortgage loans subject to the UCCC originated or serviced by the person or entity; or
- (4) imposes any reporting requirements or other obligations on a person, or its subsidiaries or affiliates engaged in the brokering originating, making, servicing or collecting of mortgage loans subject to the UCCC.

This prohibition does not invalidate or prohibit any ordinance, resolution, regulation, rule or law by a political subdivision:

- (1) to establish and administer voluntary neighborhood reinvestment programs in furtherance of the goals and purposes of the Community Reinvestment Act of 1977, [12 U.S.C. §2901](#); or
- (2) that is required to meet the criteria for adequacy of law established by HUD in order to obtain certification as a fair housing assistance program.

Okla. Stat. Ann. tit. 14A, [§3-410](#).