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**VIA E-MAIL**

August 24, 2021

State of California  
Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, 15<sup>th</sup> floor  
Los Angeles, CA 90013

Attention: Commissioner  
Email: regulations@dfpi.ca.gov

Cc: Jesse Mattson  
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Cc: Charles Carriere  
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STATE OF CALIFORNIA  
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3  
REVISED TEXT FOR ITS PROPOSED COMMERCIAL FINANCING DISCLOSURE  
REGULATIONS (PRO 01/18 - SB 1235).

Equipment Leasing and Finance Association Comments on revised text

Scott Riehl  
Vice President, State Government Relations  
Equipment Leasing and Finance Association

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Dear Commissioner:

On behalf of the Equipment Leasing and Finance Association (“ELFA”), please find below our further comments on the August 9, Second Modification To Commercial Financing Disclosure Regulations (PRO 01/18 - SB 1235). We appreciate the opportunity to provide comments to the DFPI concerning the second modification text and look forward to continuing the productive dialogue on matters that we believe will add clarity, result in better disclosures to equipment finance and leasing customers, and facilitate more uniform disclosures across the equipment finance and leasing industry. We appreciate very much your consideration of our prior input and hope you find these comments helpful as well.

Our general comments are below:

ELFA Comments 08/24/2021 (in green)

STATE OF CALIFORNIA  
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

CALIFORNIA CODE OF  
REGULATIONS TITLE 10,  
CHAPTER 3

Second Modifications

Modified: August 9,  
2021

(Additions shown by single underline and deletions shown by single strikethrough. Double strikethrough reflects that the language has been moved to a new location. Double underline reflects that the language was moved from another location.)

The Department of Financial Protection and Innovation hereby adopts the following new provisions to be added to Title 10, Chapter 3 of the California Code of Regulations:

**§ 2057. Definitions.**

(a) The following terms used in these rules shall have the following meanings:

- (1) "Approved advance limit" means the maximum advance that a financier may provide to a recipient or on the recipient's behalf in exchange for assignment of outstanding, unpaid legally enforceable claims under a factoring agreement, ~~not including any previous distributions advanced to a recipient or on the recipient's behalf, to the extent~~ those distributions have been repaid. The approved advance limit does not include reserve amounts or any other amount not advanced to the recipient at the time of assignment. If a factoring agreement ~~requires~~ provides for the financier to pay different maximum advances for different types of legally enforceable claims, and advances with respect to one type of legally enforceable claim do not reduce the maximum advances for other types of legally enforceable claims under the agreement, the approved advance limit means the sum of the different maximum advances for different types of legally enforceable claims.
- (2) "Approved credit limit" means the maximum advance that a financier may provide to a recipient or on the recipient's behalf under a commercial open-ended credit plan agreement or asset-based lending transaction agreement, ~~not including any previous distributions advanced to a recipient or on a recipient's behalf, to the extent those distributions have been repaid~~ . Where the commercial open-ended credit plan agreement or asset-based lending transaction agreement requires the financier to pay different maximum advances for different categories of advance (such as advances secured by inventory, accounts receivable, or others), and advances

with respect to one category of advance do not reduce the maximum advance for another category of advance, the approved credit limit means the sum of the different maximum advances for different ~~types of legally enforceable claims~~ categories of advance.

- (3) "Asset-based lending transaction" as set forth in section 22800, subdivision (c) of the Code only includes transactions that are loans under California law.

(A) “Forwarding payments,” as it pertains to the definition of “Asset-based lending transaction” set forth in section 22800, subdivision (c) of the Code, includes:

i. Arrangements in which a recipient and the financier create an account in which third party obligors deposit payments;

ii. Arrangements in which a recipient repays advances with the proceeds the recipient collects from the sale or disposition of goods or services financed with such advances; or

iii. Arrangements in which the recipient directs third party obligors to make payments directly to the financier.

(4) “At the time of extending a specific commercial financing offer” under section 22802 of the Code means:

(A) Any time a ~~specific(i)~~ periodic payment ~~or amount~~, irregular payment amount, or financing amount, and (ii) any rate, price, or price, cost of financing (including, without limitation, any total repayment amount), in connection with a commercial financing, is quoted in writing to a recipient, based upon information from, or about, the recipient; ~~and~~

ELFA: The required disclosures can only be made at the time of a final offer in writing because that is the only time that all of the information necessary to make a compliant disclosure can be made. Prior to the final offer certain elements of the proposed transaction may be conveyed in writing but other elements may not have been determined at that time, making it impossible to provide a compliant and meaningful disclosure. This should revert to the original proposed language that the disclosure is made at the time of the final offer. This also is more consistent with the new provision below (which ELFA supports).

~~(B) Within one business day of any time a specific periodic payment or irregular payment amount, rate or price, in connection with a commercial financing, is verbally quoted to a recipient, based upon information from, or about, the recipient, and before the commercial financing transaction is consummated; and~~

However, if a provider simultaneously presents multiple periodic payment amounts, irregular payment amounts, or financing amounts, and rates, prices, or costs of financing (including, without limitation, any total repayment amounts) to the recipient, representing different financing offers and allows the recipient to select from among those options, then “at time of extending a specific commercial financing offer” occurs at the time that the recipient selects a preferred option. Information “about the recipient” includes information about the recipient that informs the provider’s quote to the recipient, such as the recipient’s financial or credit information, but not the recipient’s name, address, or general interest in financing.

ELFA: Once the selection is made by the recipient, there will need to be some allowance for processing time to prepare the disclosure pursuant to the selection made. We suggest that the regulations include a reasonable period of time for the disclosure to be made after the selection, e.g. 2 business days.

~~(C)(B)~~ Any ~~subsequent~~ time when the terms of ~~an existing~~ consummated commercial financing contract are amended, supplemented, or changed, prior to the recipient agreeing to the changes, if the resulting changes to the contract would result in an increase to the finance charge or annual percentage rate, regardless of whether those terms were previously disclosed to the recipient. The requirement of this subparagraph does not apply to changes made to resolve a recipient's default on a financing contract.

~~(D)(C)~~ Notwithstanding subdivisions (a)(4)(A) ~~through~~ and (a)(4) ~~(CB)~~, at the time a ~~specific~~ (i) periodic payment ~~or irregularly payment amount, irregular~~ payment amount, or financing amount, and (ii) any rate ~~or~~, price, or cost of financing (including, without limitation, any total repayment amount), in connection with a commercial financing, is quoted in writing to a recipient ~~in~~ writing, based upon information from, or about, the recipient, ~~or within one business day of the time when a specific periodic payment or irregularly payment amount, rate or price is quoted to a recipient verbally based upon information from, or about, the recipient, and before the draw or purchase occurs, in connection with~~ in connection with each draw on an open-end credit plan if:

i. draws occur at the time that a recipient purchases products or services from a retailer or supplier; ~~and~~

ii. the rate or price varies based upon the retailer or supplier the recipient selects, or the products or services the recipient purchases; ~~and~~

iii. the provider chooses to provide disclosures under Section 2061 in connection with each draw pursuant to this subparagraph rather than a disclosure under Section 2062.

(5) "Benchmark rate" means a rate index (such as the ~~London Interbank Offered Secured~~ Overnight Financing Rate (~~LIBORSOFR~~), Prime Rate, WSJ Prime Rate, 1, 3, or 5 year Treasury Constant Maturity, etc.), based upon general market conditions, that is commonly used to calculate the interest rate in adjustable-rate transactions in the credit industry.

~~(6) "Broker" means any person other than a financier who communicates a financing payment amount, rate or price relating to a commercial financing to a recipient based upon information from, or about, the recipient.~~

(6) "Broker" means any person other than a financier or recipient who does any of the

following: participates in any financing negotiation; counsels or advises the recipient about financing options; participates in the preparation of any financing documents, including financing applications; contacts the financier on behalf of the recipient other than to refer the recipient; gathers financing application documentation or delivers the documentation to the financier; communicates financing decisions or inquiries from the financier to the recipient; or obtains the recipient's signature on financing documents.

ELFA: This definition is too broad and is inconsistent with customary industry understanding of brokerage activities and regulatory guidance previously provided by the DBO relating to the definition of broker activities. For example, an outside law firm preparing documents, and/or communicating with the provider and/or recipient would be a "broker" under this definition. Entities that simply deliver documentation such as the USPS, UPS, FedEx and other delivery services would be brokers.

The CA CFL defines broker as a company engaged in the business of "negotiating" or "performing any act as broker" in connection with "loans made by a finance lender." DBO guidance in 2016 was more nuanced in defining these activities, stating that certain activities would "always" be broker activities (i.e., actually negotiating loans or counseling or advising borrowers about a loan); while other activities might be broker activity, depending on facts and circumstances. These activities included

- Participating in the preparation of any loan documents, including credit applications.
- Contacting the licensee on behalf of the borrower other than to refer the borrower.
- Gathering loan documentation from the borrower or delivering the documentation to the licensee.
- Communicating lending decisions or inquiries to the borrower.
- Participating in establishing any sales literature or marketing materials.
- Obtaining the borrower's signature on documents.

We suggest that the previous guidance be included in the regulations and also that the definition of broker exclude representatives, employees, and agents of the provider or the recipient.

- (7) "Code" means the California Financial Code.
- (8) "Closed-end transaction" means a transaction in which credit is extended only once over a specific term (including contracts that include an option in which the recipient may extend the term), and is repaid:
  - (A) in regular predetermined payments of a specified amount over a fixed period of time; or
  - (B) in the case of sales-based financing, in payments calculated as a percentage of sales or income but with a minimum requirement payment or payments such that the recipient is eventually required to repay the amount advanced regardless of the sales or income the

recipient collects.

- (9) “Draw period” means the length of time during which a recipient may make draws under an open-ended credit plan or general factoring or asset-based lending agreement.
- (10) “Finance charge” means the amount of any and all costs of the financing, represented as a dollar amount, as more specifically described in section 3010 of these rules.
- (11) “Financer” means the person who provides or will provide the commercial financing to the recipient or any nondepository institution which enters into a written agreement with a depository institution to arrange for the extension of commercial financing by the depository institution to a recipient via an online lending platform administered by the nondepository institution.
- (12) “Initial interest rate” means, in a credit transaction with an interest rate that changes over time and that cannot be calculated in advance for the entire term of the transaction, the rate that would be in effect at the time a disclosure is made, assuming the recipient accepted the financing offer.
- (13) “Interest rate” means the periodic rate at which interest accrues on the outstanding principal balance and (if interest is compounded) on accrued but unpaid interest in a commercial financing.

~~(14)~~

~~(15)~~(14) “Irregular payment” means any payment made to the financer that is not a periodic payment.

~~(16)~~(15) “Margin” means, in a commercial financing with an adjustable interest rate, the adjustment amount added to or subtracted from the benchmark rate used to calculate the interest rate.

~~(17)~~(16) “Maximum non-interest finance charge” means:

- (A) For all commercial financing except factoring, the maximum amount of the finance charge other than interest accrued that a recipient may be required to pay if the recipient chooses to prepay the outstanding balance due under a commercial financing agreement.
- (B) For factoring, the maximum amount of the finance charge, other than interest accrued since the time the financer purchased the legally enforceable claim, that the recipient may be required to pay if the recipient repurchases the account receivable before the account receivable is due for payment by the account debtor.

~~(18)~~(17) “Particular payment channel or mechanism” means, with respect to sales-based financing, the payment channel(s) or mechanism(s) that will be used to determine the amount of a recipient’s payment or a true-up. This may include, for example, income flowing through a deposit account or accounts, or payments received through a recipient’s payment processor.

~~(19)~~(18) “Periodic payment” means any payment made to the financer at regular intervals.

~~(20)~~(19) “Provider” means the definition set forth in section 22800, subdivision (m) of the Code with the following clarifications:

- (A) A provider includes a financier when the financier communicates a specific amount, rate or price, in connection with a commercial financing, based upon information from, or about, a recipient, either directly to a recipient, or to a broker with the expectation that the information will be shared with a recipient.
- (B) The phrase “administered by” excludes arrangements where a nondepository institution provides technology or support services for a depository institution’s commercial financing program, provided that the nondepository institution has no interest, or arrangement or agreement to purchase any interest in the commercial financing extended by the depository institution in connection with such program, and the commercial financing program is not branded with a trademark owned by the nondepository institution.

~~(21)~~(20) The phrase “person who is presented with a specific commercial financing offer” in the definition of “Recipient” set forth under section 22800, subdivision (n), means the expected ~~primary-borrowers~~borrower on a commercial loan, open-ended credit plan, or asset-based lending transaction, ~~seller~~seller in accounts receivable purchase transactions (including factoring), and ~~lessees~~lessee in lease financing transactions.

~~(22)~~(21) “Retrospective annualized rate” is the actual annualized rate, determined after the specific financing contract has been fully repaid to the financier, when the dates and amounts of all payments and fees are known.

~~(23)~~(22) “Sales-based financing” means a commercial financing transaction that is repaid by a recipient to the financier as a percentage of sales or income, in which the payment amount increases and decreases according to the volume of sales made or income received by the recipient. Sales-based financing also includes commercial financing transactions with a true-up mechanism.

~~(24)~~(23) “Specified payment amount” means the periodic pre-set amount stated in the contract described in subdivision (a)(28)(A) of this section.

~~(25)~~(24) “Split rate” means, with respect to sales-based financing, the percentage used by the financier to calculate the payment amounts to be paid to the financier or true-ups.

~~(26)~~(25) “Term” means:

- (A) With respect to factoring disclosures made pursuant to section 22802, subdivision (b)(3), the length of time between when the recipient receives payment from the financier for the legally enforceable claim and the date the legally enforceable claim becomes due and payable.
- (B) With respect to factoring disclosures made pursuant to section 22803, subdivision (a)(3), a sample term reasonably expected to be within the range of the terms expected to be used during the life of the master agreement.
- (C) With respect to closed-end transactions and commercial open-end credit plans, the contracted length of time necessary for the recipient to fulfill its obligations under the financing agreement with respect to a particular loan advance; and
- (D) With respect to asset-based lending disclosures made in accordance with section 22803 of the code and section 3021 of these rules, the length of time



necessary for the recipient to fulfill its obligations under the financing contract given the assumptions specified by section 3021, subdivisions (a)(2) and (a)(3);

- (E) With respect to all other commercial financing, the length of time that it is anticipated will be necessary for the recipient to fulfill its obligations under a financing agreement;

subject, in each case, to the rules with respect to term specified in sections 2089 through 2092, 3001, and 3003, as applicable.

~~(27)~~(26) “True-up” means any payment made to a recipient, any charge assessed to a recipient, and any adjustment to recipient’s periodic payments pursuant to a true-up mechanism.

~~(28)~~(27) “Reasonably anticipated true-up” means any true-up that the financing provider has a reasonable basis to expect will be made during the term of the contract, accounting for past performance of similar contracts (both those made to the recipient and other similar recipients) and the policies and procedures of the financier.

~~(29)~~(28) “True-up mechanism” means, with respect to sales-based financing, a contractual arrangement with all the following elements:

- (A) The financier receives periodic payments based upon a pre-set amount (or amounts) stated in the contract;
- (B) The contract allows the recipient to request, or the financier to initiate, adjustments to the payment amount, credits to the recipient, or charges to the recipient after execution of the contract, so that the total amount paid by the recipient more closely reflects a split rate listed in the contract.

~~(30)~~(29) With respect to factoring transactions:

- (A) “Account debtor” means the debtor with the primary obligation to pay the legally enforceable claim assigned by the recipient.
- (B) “Purchase price” means the amount that the financier agrees to pay the recipient for assignment of a legally enforceable claim.
- (C) “Factoring fee” means any fee charged by the financier to process the transaction plus the difference between the face value of a legally enforceable claim and the purchase price that the financier agrees to pay the recipient for assignment of that legally enforceable claim.
- (D) “Original advance amount” means the amount that a financier issues to a recipient or on the recipient’s behalf upon receipt of a legally enforceable claim for payment.
- (E) “Reserve amount” means, in a reserve factoring transaction, the difference between the purchase price for a legally enforceable claim and the original advance amount, that is held in reserve to secure the financier in the event of non-payment of the legally enforceable claim, or to secure the financier in the event of nonpayment of other legally enforceable claims assigned or to be assigned by the recipient to the financier.
- (F) “Reserve factoring transaction” means a factoring transaction where, upon receipt of a legally enforceable claim for payment, a financier pays an original advance amount to the recipient that is less than the purchase price and holds

the difference between the original advance amount and the purchase price to secure the financier against deficiencies on amounts paid by the account debtor on the legally enforceable claim or other legally enforceable claims assigned or to be assigned by the recipient to the financier.

~~(31)~~(30) “Amount financed” means:

(A) With respect to ~~a closed-end transaction or~~ sales-based financing, the amount of funds to be provided by the financier to the recipient or on the recipient’s behalf, minus any prepaid finance charge.

(B) With respect to a closed-end transaction, the principal amount, plus any other amounts that are financed by the financier and are not part of the finance charge, minus any prepaid finance charge.

ELFA: This will be confusing to the provider and recipient. The “amount financed” is the principal amount. The reference to “plus any other amounts that are financed by the financier” is not accurate since those amounts will be part of the principal amount by definition.

~~(B)~~(C) With respect to a commercial open-end credit plan, the approved credit limit, minus any prepaid finance charge.

~~(C)~~(D) With respect to a factoring transaction disclosure made pursuant to section 22802 of the Code, the original advance amount, minus any prepaid finance charge.

~~(D)~~(E) With respect to a factoring transaction disclosure made pursuant to section 22803 of the Code, the approved advance limit, ~~less any reserve amounts that would be withheld if an amount equal to the approved advance limit were disbursed to the recipient or on the recipient’s behalf,~~ minus any prepaid finance charge.

~~(E)~~(F) With respect to asset-based lending disclosures made pursuant to section 22803 of the Code and section 3021 of these rules, the amount described in section 3021, subdivision (a)(2)(A) or (a)(3)(A-), minus any prepaid finance charge.

~~(F)~~(G) With respect to a lease transaction:

i. If the financier does not select, manufacture or supply the goods to be leased, the net cost to the financier to acquire the property to be leased, including any related costs and charges financed as a part of such transaction, which may include, without limitation, installation charges, delivery costs, software license fees, sales and use taxes, and similar charges, minus any prepaid finance charge.

ii. If the financier selects, manufactures or supplies the goods to be leased, the price that the financier would sell the goods in a cash transaction, ~~minus~~ including any related costs and charges financed as a part of such

transaction, which may include, without limitation, installation charges, delivery costs, software license fees, sales and use taxes, and similar charges, minus any prepaid finance charge and any down payment or other deposit to be paid by the recipient.

~~(32)~~(31) “Recipient funds” means the ~~part of the net amount financed that will be made available to be given~~ directly to the recipient. in the form of cash, check, or electronic funds transfer to an account the recipient controls. Recipient funds excludes, without limitation, funds paid to brokers and funds paid to other third parties. Recipient funds also excludes any part of the amount financed used to pay off other financings, ~~funds paid to brokers and funds paid to other third parties.~~ if known by the provider at the time the disclosure is provided. For the purposes of calculating recipient funds, where part of the amount financed will be used to pay off other financing(s), a provider may assume that the amount due under the other financing(s) is the amount due at the time the disclosure is provided.

~~(33)~~(32) “Funds paid to brokers” means the total amount of the amount financed that will be paid to any broker.

(33) “Average monthly cost” means the average total amount paid in a month under the term of the contract.

(34) “Estimated monthly cost” means the estimated average total amount paid in a month under the estimated term of the contract.

(35) “Prepaid finance charge” means any finance charge paid separately to the financier in cash, check or electronic funds transfer before or at consummation of a transaction, or withheld from the proceeds of the financing at any time.

(b) Unless otherwise stated, all references to “average” within these regulations refer to “the arithmetic mean”.

(c) All terms used in these rules which are defined in Division 9.5, section 22800 of the Code but not defined in these rules shall have the meanings ascribed to them in Division 9.5, section 22800 of the Code.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22801, 22802, 22803 and 22804, Financial Code.

#### **§ 2060. General Requirements.**

(a) Disclosures provided in accordance with sections 22800 through 22804 of the Code shall comply with the following requirements:

(1) At the top of the disclosure, centered on the page or other display medium, the provider shall print “OFFER SUMMARY ~~FOR~~” in bold font, followed by a one- to five-word description of the type of product offered (e.g. “Merchant Cash Advance”) which may include the financier’s branding terminology.

(2) ~~At~~For any disclosure required to comply with Section 2070, subdivision (a), at the bottom of the disclosure, below any other information required by this Article, the provider shall print the following statement: “California law requires this information to be provided to you to help you make an informed decision. By signing below, you are confirming that you received this information.” Below the statement, the provider shall include a space for the recipient to sign the form labeled “Recipient Signature” and a space for the recipient to write the date of their

signature, labeled "Date."

(3) If the term or estimated term of a transaction is:

(A) One year or less, the term or estimated term shall be disclosed in days;

(B) Greater than one year, the term or estimated term shall be disclosed in units of years and months, with any remaining days expressed as a portion of a month to the nearest two decimal points.

(4) For the purposes of these disclosures, a provider shall assume that there are 30 days in every month and 360 days in a year. For example, a term of 400 days would be disclosed as “1 year, 1.33 months”.

(5) The annual percentage rate shall be expressed to the nearest ten basis points.

(4)(6) The disclosures shall be presented to the recipient as a separate document from any other contract, agreement, or other disclosure document provided to the recipient, but may be mailed or transmitted in a package that contains other documents.

(5)(7) Fonts

(A) The provider may present the required disclosure in fonts and colors that are clear, complete, conspicuous, easy to compare with other disclosures, and consistent with the requirements of this Chapter. A provider shall not use colors and fonts that make any enumerated terms required by section 22802, subdivision (b) of the Code more clear or conspicuous than any other term required by that subdivision.

(B) A provider shall use fonts for the disclosures substantially similar in size to:

- i. Times New Roman 12- to 14-point font, for information appearing in the first and second columns where those columns are not combined with other columns.
- ii. Times New Roman 10- to 12-point font, for information appearing in the third column, information appearing in cells where the second and third columns are combined, and information appearing in cells where the first, second, and third columns are combined.
- iii. Times New Roman 16-point font for the content required by subdivision (a)(1) of this section.

(C) Notwithstanding subdivision (a)(5)(B), a provider may use a font substantially similar in size to Times New Roman 16-point font for “OFFER SUMMARY ~~FOR~~” and content appearing in the first and second columns of the disclosure where those columns are not combined with other columns.

(D) A provider may deviate from the font requirements described in subdivisions (a)(7)(B)

and (C) if the provider makes a good faith determination that deviating from the standards is necessary to comply with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.).

(6)(8) A provider shall ensure that the width of the columns in the required disclosure is such that the disclosure does not unnecessarily extend onto multiple pages. A provider that formats the columns in the required disclosure such that the ratio between the first, second and third columns is 3:3:7 complies with the requirements of this subdivision.

(7)(9) Where a provider is required or permitted to provide a “short explanation” under this subchapter, the provider shall provide an explanation of not more than 60 words.

(8)(10) Each of the cells in the required disclosures shall be outlined.

(9)(11) If disclosures are provided to a recipient electronically, the provider shall include a method for the recipient to submit an electronic signature that complies with Civil Code section 1633.2, subdivision (h) and automatic date stamp to comply with subdivision (a)(2) of this section and provide the recipient with the ability to receive a copy of the disclosure in a format that the recipient may keep. A format the recipient may keep includes hard copy disclosures,

and electronic documents containing the required disclosures that the customer can save indefinitely for future reference.

~~(10)~~(12) Except with respect to sales-based financing, if a provider must make estimates or assumptions to provide any disclosure required by this chapter, the provider shall:

- (A) Base those estimates or assumptions on the best information reasonably available to the provider at the time of the disclosure;
- (B) State clearly that any disclosure based upon an estimate or assumption is an “Estimate” by adding the word “Estimate” to the descriptive language of any required disclosure under this chapter; and
- (C) State clearly any assumptions or estimates used as the basis for the disclosure in any explanation or description associated with the disclosure.

~~(11)~~(13) When making the disclosures required by this Chapter, for transactions where the applicable interest rate adjusts over time and the interest rate applicable for the entire term of the transaction cannot be calculated in advance, the provider shall assume that the applicable interest rate is the initial interest rate for any period of time when the interest rate cannot be calculated in advance.

~~(12)~~(14) Numerical values, including but not limited to percentages, dates, and dollar amounts, shall be expressed numerically, such as “23” and not alphabetically, such as “twenty-three.”

~~(13)~~(15) If a provider issues a disclosure where the amount financed includes funds used to pay down or pay off ~~a preexisting financing~~ another financing agreement, and the amount due under that ~~preexisting~~ other financing agreement changes prior to consummation of the agreement between the financier and the recipient, the provider need not provide a new disclosure to the recipient solely because the amount due under the ~~preexisting~~ other financing agreement has changed.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22801, 22802, 22803 and 22804, Financial Code.

### § 2061 Closed-End Transaction Formatting and Content Requirements.

(a) Disclosures for closed-end transactions provided in accordance with section 22802 of the Code, and open-end credit plans described in section 2057, subdivision (a)(4)(D), shall comply with the following requirements unless the closed-end transaction meets the definition of sales-based financing:

- (1) The provider shall present the disclosures in a table consisting of eight rows and three columns.
- (2) The first row of the table shall include only the following information:
  - (A) In the first column, ~~the following language:~~ “Funding Provided”.
  - (B) In the second column, the amount financed.
  - (C) In the third column, the following in the order listed and in one paragraph:
    - (i) “This is how much funding [name of financier] will provide.”
    - (ii) If the amount financed is ~~less~~ greater than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on what amounts will be

deducted, please review the attached document "~~Funding You Will Receive~~Itemization of Amount Financed."

(iii) If the amount financed is ~~less~~greater than the funds available to the recipient, and the amount financed includes funds paid to brokers: "We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay ["a broker"/ "brokers"]. For more information on what amounts will be deducted, please review the attached document "~~Funding You Will Receive~~Itemization of Amount Financed."

~~(iv)~~ If any portion of the amount owed will be used to satisfy obligations under another financing, and the amount due under the other financing is known to the provider, the provider shall also include ~~the following statement: "Because this financing will be used to ["pay down"/ "pay off"] another financing contract, and the amount due under a short explanation that contract may change,~~ the amount ~~we pay you~~paid directly to the recipient may change if the amount due under the other financing changes.

~~(iv)~~(v) If, as a condition of the financing, a recipient's other financing agreements with

third parties must be satisfied, and the amount due under other financing agreements is not known to the provider, the provider shall also include a short

explanation that the amount paid directly to the recipient may change," based upon the required disbursements to satisfy other obligations.

(3) The second row of the table shall include only the following information:

(A) In the first column:

- (i) If the contract provides for a fixed interest rate or rates that are predetermined by the contract, or no interest rate, ~~the following language:~~ "Annual Percentage Rate (APR)".
- (ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract, ~~the following language:~~ "Estimated Annual Percentage Rate (APR)".

(B) In the second column, the annual percentage rate calculated in accordance with section 3001 of these rules.

(C) In the third column:

- (i) The following language, if the contract provides for a single, fixed interest rate:

"APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make.

Your APR is not an interest rate. Your interest rate is [interest rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges." The following language, if the contract provides for a multiple pre-determined interest rates that change

over time:



“APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make.

Your APR is not an interest rate. Your initial interest rate is [initial interest rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.”

- (ii) The following language, if the contract provides for an adjustable interest rate or rates that are not predetermined by the contract.

“APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make.

APR is not an interest rate. Your initial interest rate is [initial interest rate]. Although your interest rate will adjust over time, for the purposes of calculating this APR estimate, we have used the initial interest rate for future periods where the interest rate is not preset by the contract. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.”

- iii. The following language, if no part of the finance charge is based upon an interest rate:

APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, fees you pay and the payments you make.

Your APR is not an interest rate, and your loan does not have an interest rate.”

- (4) The third row of the table shall include only the following information:

- (A) In the first column:

- (i) If the contract provides for a fixed interest rate or rates that are predetermined by the contract, or no part of the finance charge is based upon an interest rate, ~~the following language~~: “Finance Charge”.
- (ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract, ~~the following language~~: “Estimated Finance Charge”.

- (B) In the second column, the total finance charge, calculated in accordance with section 3010 of these rules.

- (C) In the third column:

- (i) “This is the dollar cost of your financing.”

- (ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract: “The interest rate under your contract will adjust over time, so your actual finance charge may vary.”
- (5) The fourth row of the table shall include only the following information:
  - (A) In the first column:
    - (i) If, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total payments the recipient will make during the contract’s term: “Total ~~Payments.~~ Payment Amount”.
    - (ii) If, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total payments the recipient will make during the contract’s term: “Estimated Total ~~Payments.~~ Payment Amount”.
  - (B) The total dollar amount of payments or total estimated dollar amount of payments the recipient will make during the term of the contract if the recipient makes minimum required payments.
  - (C) In the third column:
    - (i) If, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total dollar amount of payments the recipient will make during the term of the contract: “This is the total dollar amount of payments you will make during the term of the contract.”
    - (ii) If, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total dollar amount of payments the recipient will make during the term of the contract: “This is our estimate of the total dollar amount of payments you will make during the term of the contract.”
- (6) The fifth row of the table shall include only the following information:
  - (A) In the first column:
    - (i) If the periodic payments will not vary over the term of the transaction or the periodic payments during the term of the transaction will vary and it is possible to calculate the payment amounts in advance, ~~the following language:~~ “Payment”.
    - (ii) If the periodic payment amounts will vary over the term of the transaction and it is not possible to calculate the payment amounts in advance (e.g. due to an adjustable interest rate using a benchmark rate and a margin), ~~the following language:~~ “Initial Payment”.
  - (B) If periodic payments during the term of the transaction will not vary:
    - (i) In the second column, the amount of each periodic payment followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.) followed by the date and amount of any irregular payments listed in chronological order.
    - (ii) In the third column, a short explanation of the payment frequency and any irregular payments. The provider may also include a short explanation describing when each periodic payment will become due.

- (C) If periodic payments during the term of the transaction vary and it is possible to calculate the payment amounts in advance, the second and third columns in the fourth row shall be combined and the provider shall list the periodic payment amounts and when each amount will become due followed by the date and amount of any irregular payments in listed chronological order. For example:

Months 1-12: \$600/month  
Months 13-24: \$1200/month

Maintenance Fee Due 2/1/2021:  
\$500. Maintenance Fee Due  
8/1/2022: \$300.

Or

Payments 1-23: \$600/month  
Payment 24: \$2000.

Maintenance Fee Due 2/1/2021:  
\$500. Maintenance Fee Due  
8/1/2022: \$300.

- (D) If periodic payments during the term of the transaction vary and it is not possible to calculate all payment amounts in advance:
- (i) In the second column, the initial periodic payment amount followed by a forward slash (/) and the frequency of each periodic payment followed by the date, followed by the date and amount of any irregular payments listed in chronological order.
  - (ii) In the third column: "This is your initial periodic payment. Your periodic may adjust over time."
- (7) The sixth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:
- (A) In the first column, ~~the following language:~~ "Term".
  - (B) In the second column, the term of the transaction.
- (8) In the first column, the seventh and eight rows shall be combined and shall include only the following language: "Prepayment."
- (9) In the seventh row, the second and third columns shall be combined and include only:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay charges other than interest accrued since the recipient's last payment, the following statement: "If you pay off the financing early, you will still need to pay all or portion of the finance charge, up to \$[maximum non-interest finance charge]."
  - (B) In all other cases, "If you pay off the financing early, you will not need to pay any portion of the finance charge other than unpaid interest accrued." ~~(if applicable).~~
- (10) In the eighth row, the second and third columns shall be combined and shall include only:

- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: "If you pay off the financing early you must also pay the following additional fees:" followed by the amounts and descriptions of each additional fees and charges.
  - (B) In all other cases, the following statement: "If you pay off the financing early you will not pay additional fees."
- (11) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the fourth row, and the additional row shall include only the following information:
- (A) In the first column: "Average Monthly Cost".
  - (B) In the second column, the average monthly cost that the recipient will pay over the term of the transaction.
  - (C) In the third column: "Although this financing does not have monthly payments, this is our calculation of your average monthly cost for comparison purposes."
- (12) If the contract provides for multiple payment options, then the provider shall insert one additional row above the first row, and in that row, all three columns shall be combined, resulting in a single cell. In that cell, the provider shall include the following: "This financing has multiple payment options. This disclosure assumes you will make the minimum payments permitted under the contract."

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802 and 22804, Financial Code.

**§ 2062. Commercial Open-End Credit Plan Disclosure Formatting.**

- (a) Disclosures for commercial open-end credit plans provided in accordance with section 22802 of the Code, except open-end credit plans described in section 2057, subdivision (a)(4)(D), shall comply with the following requirements:
  - (1) The provider shall present the disclosures in a table consisting of ten rows and three columns.
  - (2) In the first row, the first, second and third columns shall be combined, and the resulting cell shall have only the following language, in italics:
    - (A) If the contract allows only for a single payment option: "The calculations below are based on an initial draw of your full Approved Credit Limit of [approved credit limit] and assume that you will pay off the draw entirely according to the agreed payment schedule, that you miss no payments, and that you do not re-draw on this line. Actual costs may differ substantially."
    - (B) If the contract allows for multiple payment options: "The calculations below are based on an initial draw of your full Approved Credit Limit of [approved credit limit] and assume that you will choose to make minimum payments, that you miss no payments, and that you do not re-draw on this line. Actual costs may

differ substantially.” If the amount borrowed is payable on demand, the provider shall disclose that amounts borrowed are payable on demand and that the estimate assumes a term of one year. If an alternate maturity date is stated in the legal obligation between the parties, then the provider shall state that the disclosure is based upon that maturity date.

(3) The second row of the table shall include only the following information:

(A) In the first column, ~~the following language:~~ “Funding Provided:”

(B) In the second column, the amount financed.

(C) In the third column, in the order listed and in one paragraph:

(i) “This is the maximum amount of funding [name of financier] may provide.”

(ii) If the amount financed is ~~less~~ greater than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly if you request the maximum amount is [recipient funds]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~ Itemization of Amount Financed.””

(iii) If the amount financed is ~~less~~ greater than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be provided to you directly if you request the maximum amount is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [“a broker”/ “brokers”]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~ Itemization of Amount Financed.””

~~(iv)~~ (v) If any portion of the amount owed will be used to satisfy obligations under another financing, ~~the provider may also include the following statement: “Because this financing will be used to [“pay down”/ “pay off”] another financing contract, and the amount due under that contract may change~~ the other financing is known to the provider, the provider shall also include a short explanation that the amount we pay you paid directly to the recipient may change if the amount due under the other financing changes.

~~(iv)(v)~~ (v) If, as a condition of the financing, a recipient’s other financing agreements with third parties must be satisfied, and the amount due under other financing agreements is not known to the provider, the provider shall also include a short explanation that the amount paid directly to the recipient may change.” based upon the required disbursements to satisfy other obligations.

(4) The third row of the table shall include the following information:

(A) In the first column:

- (i) If the contract provides for a fixed interest rate or rates that are predetermined by the contract, ~~the following language~~: “Annual Percentage Rate (APR)”.
  - (ii) If the contract provides for an adjustable interest rate and it is not possible to calculate the interest rates throughout the term of the transaction in advance, ~~the following language~~: “Initial Annual Percentage Rate (APR)”.
- (B) In the second column, the provider’s calculation of the annual percentage rate calculated in accordance with section 3001 of these rules.
- (C) In the third column:
- (i) If the contract provides for a single, fixed interest rate, ~~the following language~~:

“APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make.

APR is not an interest rate. Your interest rate is [interest rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.”

- (ii) If the contract provides for multiple pre-determined interest rates that change over time, ~~the following language~~:

“APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make.

Your APR is not an interest rate. Your initial interest rate is [initial interest rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.”

- (iii) If the contract provides for an adjustable interest rate and it is not possible to calculate the interest rates throughout the term of the transaction in advance, ~~the following language~~:

“APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make.

APR is not an interest rate. Your initial interest rate is [initial interest rate]. Although your interest rate will adjust over time, for the purposes of calculating this APR estimate, we have used the initial interest rate for future periods where the interest rate is not preset by the contract. Your

APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.”

- (5) The fourth row of the table shall include only the following information:
- (A) In the first column ~~the following language~~: “Estimated Finance Charge”.
  - (B) In the second column, the total finance charge calculated in accordance with section 3010 of these rules.
  - (C) In the third column:
    - (i) “This is the dollar cost of our financing based upon the assumptions described ~~above~~ at the top of this disclosure.”
    - (ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract: “The interest rate under your contract will adjust over time, so your actual finance charge may vary.”
- (6) The fifth row of the table shall include only the following information:
- (A) In the first column: “Estimated Total Payments”.
  - (B) In the second column, the total estimated payments the recipient will make during the term of the contract if the recipient makes minimum required payments.
  - (C) In the third column: “This is the total dollar amount of payments you will make during the term of the contract based upon the assumptions described ~~above.~~ at the top of this disclosure.”
- (7) The sixth row of the table shall include only the following information:
- (A) In the first column: “Estimated Payment”.
  - (B) If periodic payments during the term of the transaction will not vary over the term of the transaction:
    - (i) In the second column, the amount of the periodic payment followed by a forward slash (/) and the frequency of each periodic payment followed by the date and amount of any irregular payments listed in chronological order.
    - (ii) In the third column, a short explanation of when each payment will become due.
  - (C) If periodic payments during the term of the transaction vary and it is possible to calculate the payment amounts in advance, the second and third columns in the fifth row shall be combined and the provider shall list the periodic payment and when each amount will become due followed by the date and amount of any irregular payments in listed chronological order and any assumptions made when calculating the payment amounts. For example:

Months 1-12: \$600/month

Months 13-24: \$1200/month

Maintenance Fee Due 2/1/2021:

\$500. Maintenance Fee Due

8/1/2022: \$300.

- (D) If periodic payments during the term of the transaction vary and it is not possible to calculate all payment amounts in advance because the transaction has an adjustable interest rate that cannot be calculated in advance:
  - (i) In the second column, a periodic payment amount calculated using the initial interest rate followed by the date and amount of any reasonably anticipated irregular payments listed in chronological order.
  - (ii) In the third column, a short explanation that the periodic payment amount disclosed is based upon the initial interest rate, and that the actual rate may change over time. The provider may also include a short explanation describing when the payment will adjust and how it will be calculated.
- (E) If periodic payments of principal during the term of the transaction do not vary but periodic payments of interest during the term of the transaction vary, and it is not possible to calculate all interest payment amounts in advance, because the transaction has an adjustable interest rate that cannot be calculated in advance:
  - (i) In the second column, the phrase "Initial Interest Payment:" followed by an interest payment amount calculated using the initial interest rate, followed by a forward slash (/) and the frequency of each periodic interest payment.
  - (ii) In the second column, beneath the disclosure required by subdivision (6)(E)(i), the phrase "Principal Payment Amount:" followed by the amount of each periodic principal payment, followed by a forward slash (/) and the frequency of each periodic principal payment.
  - (iii) In the third column, a short explanation that the Initial Interest Payment Amount disclosed is based upon the initial interest rate, and that the actual rate may change over time.
  - (iv) In the third column, beneath the statement explaining the Initial Interest Payment Amount and at the same height as the disclosure required under subdivision (6)(E)(iii), a short explanation of the principal payment amount and frequency.
- (8) The seventh row of the table shall include only the following information:
  - (A) In the first column, ~~the following language:~~ "Draw Period:     ."
  - (B) In the second column, the draw period for the transaction.
  - (C) In the third column, a short explanation of the draw period for the transaction.
- (9) The eighth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:
  - (A) In the first column, ~~the following language:~~ "Term:     ."
  - (B) In the second column, the term of the transaction.
- (10) In the first column, the ninth and tenth rows shall be combined and shall include only the following language: "Prepayment."
- (11) In the ninth row, the second and third columns shall be combined and shall include only:



- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient's last payment, the following statement: "If you pay off the financing early you will need pay all or portion of the finance charge, up to \$[maximum non-interest finance charge]."
  - (B) In all other cases, "If you pay off the financing early, you will not need to pay any portion of the finance charge other than unpaid interest accrued (if applicable)."
- (12) In the tenth row, the second and third columns shall be combined and shall include only:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: "If you pay off the financing early you must also pay the following additional fees: " followed by the amounts and descriptions of the additional fees and charges.
  - (B) In all other cases, the following statement: "If you pay off the financing early you will not pay additional fees."
- (13) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the fifth row, and the additional row shall include only the following information:
- (A) In the first column, ~~the following language:~~ "Average Monthly Cost:\_\_\_".
  - (B) In the second column, the average monthly cost that the recipient will pay over the term of the transaction.
  - (C) In the third column: "Although this financing does not have monthly payments, this is our calculation of your average monthly cost for comparison purposes."

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### § 2063. Factoring Disclosure Format

- (a) Disclosures for factoring transactions provided in accordance with section 22802 of the Code shall comply with the following requirements:
  - (1) The provider shall present the required disclosures in a table consisting of six rows and three columns.
  - (2) The first row of the table shall include only the following information:
    - (A) In the first column, ~~the following language:~~ "Funding Provided".
    - (B) In the second column, the amount financed.
    - (C) In the third column, in the order listed and in one paragraph:
      - (i) "This is how much [name of financier] will pay when you assign [description of legally enforceable claim, e.g. "the invoice"] to [name of financier]."

- (ii) If the amount financed is ~~less~~greater than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~Itemization of Amount Financed.””
- (iii) If the amount financed is ~~less~~greater than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [“a broker”/ “brokers”]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~Itemization of Amount Financed.””
- ~~(iv)~~ If any portion of the amount owed will be used to satisfy obligations under another financing, ~~the provider may also include the following statement:~~  
~~“Because part of the funding we provide will be used to [“pay down”/ “pay off”] another financing contract,~~ and the amount due under the other financing is known to the provider, the provider shall also include a short explanation that contract may change, the amount ~~we pay you~~paid directly to the recipient may change if the amount due under the other financing changes.
- ~~(iv)~~(v) If, as a condition of the financing, a recipient’s other financing agreements with third parties must be satisfied, and the amount due under other financing agreements is not known to the provider, the provider shall also include a short explanation that the amount paid directly to the recipient may change.” based upon the required disbursements to satisfy other obligations.

- (3) The second row of the table shall include only the following information:
  - (A) In the first column, ~~the following language:~~ “Estimated Annual Percentage Rate (APR)”.
  - (B) In the second column, the estimated annual percentage rate calculated in accordance with sections 3001 and 3002 of these rules.
  - (C) In the third column, ~~the following language:~~
    - i. “APR is estimated cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, fees you pay, and payments made to [name of financier].”
    - ii. A short explanation of the assumptions relating to payment timing that the provider used to calculate the estimate. For example: “This estimate assumes the account debtor will pay the invoice on the invoice due date.”
    - iii. If no part of the finance charge is based upon an interest rate, ~~the following language~~ in addition to the language required by subdivision (3)(C)(i) of this section: “APR it is not an interest rate and the amount of the factoring fee we charge is not based upon an interest rate.”
- (4) The third row of the table shall include the following information:

- (A) In the first column, ~~the following language:~~ “Finance Charge”.
  - (B) In the second column, the total finance charge calculated in accordance with section 3010 of these rules.
  - (C) In the third column, the provider’s calculation of the finance charge, with the amount and description of each expense that is included in the finance charge.
- (5) The fourth row of the table shall include only the following information:
- (A) In the first column, ~~the following language:~~ “Payment”.
  - (B) In the second column, ~~the following language:~~ “NA” or “Not applicable”.
  - (C) In the third column, a short explanation describing why the recipient is not ordinarily required to make payments under the contract. For example: “You are selling an invoice to us, so you will not be required to make any payments to us unless your customer fails to pay the invoice and we find that you breached your warranty to us by failing to deliver the invoiced goods to your customer.”
- (6) The fifth row of the table shall include only the following information:
- (A) In the first column, ~~the following language:~~ “Estimated Term”.
  - (B) In the second column, the term of the transaction.
  - (C) In the third column, a short explanation describing how the provider calculated the term. For example: “The invoice is due for payment 30 days from today, so we have estimated a term of 1 month. The invoice may be paid sooner or later than the due date.”
- (7) The sixth row of the table shall include only the following information:
- (A) In the first column, ~~the following language:~~ “Repurchase Costs.”.
  - (B) The second and third columns shall be combined, and:
    - (i) If the recipient is permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting combined cell shall be divided vertically into two cells by a horizontal line, and:
      - (a) If at any time during the term of the transaction, repurchase of the legally enforceable claim will result in the recipient paying finance charges other than interest since the advance was made, the top cell shall include the following statement: “If you repurchase the [description of legally enforceable claim] before the due date you still must pay all or a portion of the finance charge, which could be as high as \$[maximum non-interest finance charge].”
      - (b) In all other cases, the top cell shall include the following statement, “If you repurchase the [description of legally enforceable claim] before the due date you will not pay any portion of the finance charge other than unpaid interest accrued since disbursement.”
      - (c) If, at any time during the term of the transaction, repurchase of the legally enforceable claim will require the recipient to pay additional fees and charges not included in the finance charge, the bottom cell shall include the following statement: “If you repurchase the [description of legally enforceable claim] before the due date, you

must pay additional fees and charges that are not part of the finance charge, including [amount and description of fees].”

- (d) In all other cases, the bottom cell shall state: “If you repurchase the [description of legally enforceable claim] before the due date, you will not be required to pay any additional fees and charges.”
- (ii) If the recipient is not permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting cell shall include the following statements:
  - (a) “You are not permitted to pay the amount due on the [description of legally enforceable claim] before your customer’s due date.”
  - (b) If applicable: “The finance charge will not decrease if your customer pays the [description of legally enforceable claim] before the due date.”

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

#### **§ 2064. Factoring Disclosure Format for Example Transactions**

- (a) Disclosures for factoring transactions provided in accordance with section 22803 of the Code shall comply with the following requirements:
  - (1) The provider shall present the required disclosures in a table consisting of seven rows and three columns.
  - (2) All three columns of the first row of the table shall be combined, and within the cell created, the provider shall include only the following language, in italics:
    - (A) If the finance charge, annual percentage rate and term do not vary for different classes of legally enforceable claim: “The calculations below are based upon a hypothetical [description of legally enforceable claims to be assigned, e.g. “invoice”] of [value calculated in accordance with section 3022 of these rules], assigned to [insert name of financier] with a due date [term] from the date of assignment. Actual costs may differ substantially.”
    - (B) If the finance charge, annual percentage rate or term will vary for different classes of legally enforceable claims with different characteristics, the following in the order listed:
      - (i) “The calculations below are based upon a hypothetical [description of legally enforceable claims to be assigned, e.g. “invoice”] of [insert value calculated in accordance with section 3022 of these rules], assigned to [name of financier] with a due date [term] from the date of assignment.”
      - (ii) A short explanation of the class of the legally enforceable claim for which the disclosure applies. For example: “These calculations further assume that the account debtor on the invoice is [name of account debtor].”
      - (iii) “Actual costs may differ substantially.”

(3) The second row of the table shall include only the following information:

(A) In the first column, ~~the following language:~~ "Funding Provided".

(B) In the second column, the amount financed.

(C) In the third column, in the order listed and in one paragraph:

(i) "This is how much [name of financier] will pay when you assign [description of legally enforceable claim, e.g. "the invoice"] to [name of financier]."

(ii) If the amount financed is ~~less~~ greater than the funds available to the recipient and the amount financed does not include funds paid to brokers: "Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on what amounts will be deducted, please review the attached document "Funding You Will Receive~~Itemization of Amount Financed.~~"

(iii) If the amount financed is ~~less~~ greater than the funds available to the recipient, and the amount financed includes funds paid to brokers: "We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay ["a broker"/ "brokers"]. For more information on what amounts will be deducted, please review the attached document "Funding You Will Receive~~Itemization of Amount Financed.~~"

~~(iv)~~ (v) If any portion of the amount owed will be used to satisfy obligations under another financing, and the amount due under the other financing is known to the provider, the provider shall also include ~~the following statement:~~ "~~Because part of the funding we provide will be used to ["pay down"/ "pay off] another financing contract, and the amount due under a short explanation that contract may change,~~ the amount ~~we pay you~~ paid directly to the recipient may change if the amount due under the other financing changes.

~~(iv)~~ (v) If, as a condition of the financing, a recipient's other financing agreements with third parties must be satisfied, and the amount due under other financing agreements is not known to the provider, the provider shall also include a short explanation that the amount paid directly to the recipient may change." based upon the required disbursements to satisfy other obligations.

(4) The third row of the table shall include only the following information:

(A) In the first column, ~~the following language:~~ "Annual Percentage Rate (APR).~~"~~".

(B) In the second column, the provider's calculation of the annual percentage rate of the transaction calculated in accordance with sections 3001 and 3002 of these rules.

(C) In third column, ~~the following language:~~

"This is the estimated cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, fees you pay, and payments made to [name of financier]. This estimate assumes that you will assign the [description of legally

enforceable claim assigned, e.g. “invoice”) to [name of financier] today, the [description of legally enforceable claim assigned] is due in [term] and your customer will pay the [name of legally enforceable claim assigned, e.g. “invoice”] in full on the due date.”

- (D) If no part of the finance charge is based upon an interest rate, ~~the following language~~ in addition to the language required by subdivision (4)(C) of this section: “APR is not an interest rate and the amount of the finance charge is not based upon an interest rate.”
- (5) The fourth row of the table shall include the following information:
- (A) In the first column, ~~the following language~~: “Finance Charge: ~~”~~”.
  - (B) In the second column, the total finance charge calculated in accordance with section 3010 of these rules.
  - (C) In the third column, the provider’s calculation of the finance charge, with the amount and a description of each expense (e.g. factoring fee, origination fee, etc.) that is included in the finance charge.
- (6) The fifth row of the table shall include only the following information:
- (A) In the first column, ~~the following language~~: “Payment Amount”.
  - (B) In second column, ~~the following language~~: “NA” or “Not applicable: ~~”~~”.
  - (C) In the third column, a short explanation describing why the recipient is not ordinarily required to make payments under the contract. For example: “You are selling an invoice to us, so you will not be required to make any payments to us unless your customer fails to pay the invoice and we find that you breached your warranty to us by failing to deliver the invoiced goods to your customer.”
- (7) The sixth row of the table shall include only the following information:
- (A) In the first column, ~~the following language~~: “Estimated Term: ~~”~~”.
  - (B) In the second column, the term of the transaction.
  - (C) In the third column, a short explanation describing how the provider calculated the term. For example: “You are permitted to assign us invoices that are due a maximum of 60 days from the invoice date, so we have estimated a term of 2 months. The invoice may be paid sooner or later than the due date.”
- (8) The seventh row of the table shall include only the following information:
- (A) In the first column, ~~the following language~~: “Prepayment: ~~”~~”.
  - (B) The second and third columns shall be combined, and:
  - (C) If the recipient is permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting combined cell shall be divided vertically into two cells by a horizontal line, and:
    - (i) If at any time during the term of the transaction, repurchase of the legally enforceable claim will result in the recipient paying finance charges other than interest since the advance was made, the top cell shall include the following statement: “If you repurchase the [description of legally enforceable claim] before the due date, you still must pay all or a portion of the finance charge, which could be as high as \$[maximum non-interest finance charge].”

- (ii) In all other cases, the top cell shall include the following statement, “If you repurchase the [description of legally enforceable claim] before the due date, you will not pay any portion of the finance charge other than unpaid interest accrued since disbursement.”
  - (iii) If, at any time during the term of the transaction, repurchase of the legally enforceable claim will require the recipient to pay additional fees and charges not included in the finance charge, the bottom cell shall include the following statement: “If you repurchase the [description of legally enforceable claim] before the due date, you must pay additional fees and charges, including [amount and description of fees].”
  - (iv) In all other cases, the bottom cell shall state: “If you repurchase the [description of legally enforceable claim] before the due date, you will not be required to pay any additional fees and charges .”
- (D) If the recipient is not permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting cell shall include the following statements:
- (i) “You are not permitted to pay the amount due on the [description of legally enforceable claim] before your customer’s due date.”
  - (ii) If applicable: “The finance charge will not decrease if your customer pays the [description of legally enforceable claim] before the due date.”

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

#### § 2065. Sales-Based Financing Disclosure Formatting

- (a) Disclosures for all sales-based financing provided in accordance with section 22802 of the Code, except for asset-based lending that meets the definition of sales-based financing, shall comply with the following requirements:
  - (1) The provider shall present the required disclosures in a table consisting of nine rows and three columns.
  - (2) The first row of the table shall include only the following information:
    - (A) In the first column, ~~the following language:~~ “Funding Provided.”
    - (B) In the second column, the amount financed.
    - (C) In the third column, in the order listed and in one paragraph:
      - (i) “This is how much funding [name of financier] will provide.”
      - (ii) If the amount financed is ~~less~~ greater than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~ Itemization of Amount Financed.””

(iii) If the amount financed is ~~less~~greater than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [“a broker”/ “brokers”]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~Itemization of Amount Financed.””

~~(iv)~~ If any portion of the amount owed will be used to satisfy obligations under another financing, ~~the provider may also include the following statement: “Because this financing will be used to [“pay down”/ “pay off”] another financing contract,~~ and the amount due under the other financing is known to the provider, the provider may include a short explanation that contract may change, the amount ~~we pay you~~paid directly to the recipient may change if the amount due under the other financing changes.

~~(iv)~~(v) If, as a condition of the financing, a recipient’s other financing agreements with third parties must be satisfied, and the amount due under other financing agreements is not known to the provider, the provider shall also include a short explanation that the amount paid directly to the recipient may change.” based upon the required disbursements to satisfy other obligations.

(3) The second row of the table shall include only the following information:

- (A) In the first column, ~~the following language:~~ “Estimated Annual Percentage Rate (APR).”
- (A) In the second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
- (B) In the third column, ~~the following language:~~

“APR is the estimated cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, and the periodic payments you make. This calculation assumes your estimated average monthly income through [description of particular payment channel or mechanism] will be [average monthly income estimate determined in accordance with sections 2091 or 2092 of these rules]. Since your actual income may vary from our estimate, your effective APR may also vary.”

- (C) If no part of the finance charge is based upon an interest rate, ~~the following language~~ in addition to the language required by subdivision (3)(C) of this section: “APR ~~is~~ is not an interest rate. The cost of this financing is based upon fees charged by [financer] rather than interest that accrues over time.”

(4) The third row of the table shall include only the following information:

- (A) In the first column, ~~the following language:~~ “Finance Charge”.



(B) In the second column, the finance charge calculated in accordance with section 3010 of these rules.

~~(C) In the third column, the provider's calculation of the finance charge, with the amount and description of each expense that is included in the finance charge.:~~ (i)

~~“This is the dollar cost of your financing.”~~

~~(ii)~~ In addition, if the finance charge will not increase under any circumstance if repayment takes longer than estimated, the provider may include the following statement: “Your finance charge will not increase if you take longer to pay off what you owe.”

(5) The fourth row of the table shall include only the following information:

(A) In the first column: “Estimated Total ~~Payments~~ Payment Amount”.

(B) The total dollar amount of estimated payments the recipient will make during the term of the contract.

(C) In the third column: “This is the total dollar amount of payments we estimate you will make under the contract.”

(6) The fifth row of the table shall include only the following information:

(A) In the first column, ~~the following language~~: “Estimated Payment”.

(B) The second and third columns shall be combined, and contain the following information:

(i) The average amount of estimated periodic payments calculated in accordance with section 3003 of these rules, followed by a forward slash (/) and the frequency of periodic payments.

(ii) The date and amount of any irregular payments listed in chronological order.

(iii) The date and amount of any reasonably anticipated true-ups.

(7) The sixth row of the table shall include only the following information:

(A) In the first column, ~~the following language~~: “Payment Terms-”.

(B) The second and third columns shall be combined, and contain the following information:

(i) If the contract provides for daily periodic payments, a short explanation of when daily payments will be required. For example, on weekdays or every calendar day.

(ii) If applicable, a short explanation of how the financier will use the split rate to calculate the recipient's required payments and/or that the financing does not have a fixed payment schedule or minimum payments. For example: “Each business day, your credit card processor will remit 15% of your gross receipts to us, and send any remaining amounts to you. This financing does not have a fixed payment schedule and there is no minimum payment amount.”

(iii) If the contract contains a true-up mechanism,

(a) A short explanation of how the provider calculated the pre-set periodic payment(s) described in Section 2057, subdivision (a)(28)(A). For example: “We based your preset daily payment of \$75 upon our

estimate of 15% of your total income, based upon average monthly income of \$15,000 for the last three months.”

(b) A short explanation of the true-up mechanism, and a reference to the part of the contract that describes the terms of the true-up mechanism, if available. For example: “You have the right to receive refunds of all or part of your payments if you demonstrate that your payments have exceeded 15% of your total income during any given month. For more details on your rights, see paragraph 5 of your contract.”

(iv) A short explanation of any minimum payment terms under the contract. For example: “You must pay us a minimum of \$2,000 per month under the contract.”

(8) The seventh row of the table shall include only the following information:

(A) In the first column, ~~the following language:~~ “Estimated Term”.

(B) In the second column, the estimated term of the transaction, calculated in accordance with section 3003 of these rules.

(C) In the third column, a short explanation stating that the estimated term is based upon assumptions about the recipient’s income. For example:

“This is our estimate of how long it will take to collect amounts due to us under the contract based upon the assumption that you will receive \$6,000 in monthly income through your BrownPay account.”

(9) In the first column, the seventh and eighth rows shall be combined and shall include the following language: “Prepayment.”

(10) In the seventh row, the second and third columns shall be combined and shall include only:

(A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient’s last payment, the following statement, “If you pay off the financing faster than required, you still must pay all or a portion of the finance charge, up to \$[maximum non-interest finance charge] based upon our estimates.”

(B) In all other cases, the following statement: “If you pay off the financing faster than required, you will not be required to pay any portion of the finance charge other than unpaid interest accrued.”

(11) In the eighth row, the second and third columns shall be combined and shall include:

(A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: “If you pay off the financing faster than required, you must pay additional fees of [amount and description of fees].”

(B) In all other cases, the following statement: “If you pay off the financing faster than required, you will not be required to pay additional fees .”

(12) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the fourth row, and the additional row shall include only the following information:

- (A) In the first column, ~~the following language~~: “Estimated Monthly Cost.”
- (B) In the second column, the estimated monthly cost that the recipient will pay over the term of the transaction calculated in accordance with section 3003 of these rules. If the provider anticipates that the estimated monthly cost will vary over the term of the transaction, either due to changes in the recipient’s income through the particular payment channel, a change in the split rate, or some other reason provided for in the contract, the provider shall list the estimated monthly costs and the time periods when those estimates apply. For example:

Months 1-2:  
\$600/month

Months 3-6:  
\$1200/month

Month 7:  
\$1000/month

- (C) In the third column, a short explanation of how the provider calculated the estimated monthly cost. For example: “Although you do not make payments on a monthly basis, this is our calculation of your average monthly cost based upon the payment amounts disclosed below.”

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802 and 22804, Financial Code.

**§ 2066. Formatting and Content Requirements for Lease Financing.**

- (a) Disclosures for lease financing provided in accordance with section 22802 of the Code shall comply with the following requirements:
  - (1) The provider shall present the disclosures in a table consisting of eight rows and three columns.
  - (2) The first row of the table shall include only the following information:
    - (A) In the first column, ~~the following language~~: “Funding Provided:””.
    - (B) In the second column, the amount financed.
    - (C) In the third column: “This is how much funding [name of financier] will provide.”
  - (3) The second row of the table shall include only the following information:
    - (A) In first column the following language: “Annual Percentage Rate (APR)”.
    - (B) In second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
    - (C) In the third column, ~~the following language~~:

“APR is the cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, the periodic

payments you make, and the anticipated cost for you to acquire the property at the end of the lease term.

Your APR is not an interest rate.”

- (4) The third row of the table shall include only the following information:
- (A) In first column the following language: “Finance Charge”.
  - (B) In second column, the total finance charge, calculated in accordance with section 3010 of these rules.
  - (C) In the third column, the provider’s calculation of the finance charge, with the amount and description of each expense included in the finance charge.
- (5) The fourth row of the table shall include only the following information:
- (A) In the first column: “Total ~~Payments~~ Payment Amount”.
  - (B) In the second column, the total dollar amount of payments the recipient will make during the term of the contract if the recipient makes minimum required payments and exercises the purchase option under the agreement.
  - (C) In the third column: “This is the total dollar amount of payments you will make during the term of the contract (including the cost of the purchase option).”
- (6) The fifth row of the table shall include only the following information:
- (A) In the first column the following language: “Payment”.
  - (B) If periodic payments during the term of the transaction will not vary:
    - (i) In the second column, the amount of each periodic payment followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.), followed by the date and amount of any irregular payments listed in chronological order, followed by the price of the purchase option.
    - (ii) In the third column, a short explanation of the payment and purchase option. For example: “This is how much you will pay each month, the \$300 maintenance fee due 12 months after you receive funding, and the purchase price you may pay at the end of the lease to acquire the property.” The provider may also include a short explanation describing when each payment will become due. For example: “Your monthly payments are due on the 1<sup>st</sup> day of every month.”
  - (C) If periodic payments during the term of the transaction vary, the second and third column in the fourth row shall be combined and the provider shall list the periodic payment amounts and when each amount will become due, followed by the date and amount of any irregular payments listed in chronological order, followed by the price of the purchase option. For example:

Months 1-12: \$600/month

Months 13-24: \$1200/month

Maintenance Fee Due 2/1/2021:

\$500. Maintenance Fee Due

8/1/2022: \$300.

Purchase Price: \$1000.

Or

Payments 1-23: \$600/month

Payment 24: \$2000.

Maintenance Fee Due 2/1/2021:

\$500. Maintenance Fee Due

8/1/2022: \$300.

Purchase Price: \$1000.

- (7) The sixth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:
- (A) In first column, ~~the following language:~~ "Term".
  - (B) In second column, the term of the transaction.
- (8) In the first column, the seventh and eighth rows shall be combined and shall include the following language: "Prepayment".
- (9) In the seventh row, the second and third columns shall be combined and include only:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient's last payment, the following statement: "If you pay off the financing before the end of the Term, you will be required to pay all or a portion of the finance charge other than accrued and unpaid interest, up to \$[maximum non-interest finance charge]."
  - (B) In all other cases, the following statement: "If you pay off the financing before the end of the Term, you will not be required to pay any portion of the finance charge other than unpaid interest accrued."
- (10) In the eighth row, the second and third columns shall be combined and shall include only:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: "If you pay off the financing before the end of the term, you must pay additional fees or charges, including" followed by a description of any prepayment charges.
  - (B) In all other cases, the following statement: "If you pay off the financing before the end of the term, you will not be required to pay additional fees or charges"
- (11) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the fourth row, and the additional row shall include only the following information:
- (A) In the first column, ~~the following language:~~ "Average Monthly Cost: ~~---~~".
  - (B) In the second column, the average monthly cost that the recipient will pay over the term of the transaction.

- (C) In the third column, language explaining that the recipient will not be required to make monthly payments and explaining how the provider has calculated the monthly cost. For example: “Although you do not make payments on a monthly basis, this is our calculation of your average monthly cost based upon the payment amounts disclosed below.”

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802 and 22804, Financial Code.

### § 2067 General Asset-Based Lending Transaction Disclosure Formatting.

- (a) Disclosures for asset-based lending transactions, provided in accordance with section 22803 of the Code and section 3021 of these rules, shall comply with the following formatting requirements:
- (1) The provider shall present the required disclosures in a table consisting of nine rows and three columns.
  - (2) All three columns of the first row of the table shall be combined, and within the cell created, the provider shall provide an explanation, in italics, of all assumptions used to calculate the disclosures, and a notice, if applicable, that actual costs may differ substantially from those disclosed. For example: “The calculations below assume you draw [amount calculated in accordance with Section 3021] at origination, you maintain an outstanding balance of that amount for [length of draw period or “one year”, whichever is less], and that the amount owed us is paid off thereafter according to the terms of the contract. Actual costs may differ substantially.”
  - (3) The second row of the table shall include only the following information:
    - (A) In the first column, ~~the following language~~: “Funding Provided:”.
    - (B) In the second column, the amount financed.
    - (C) In the third column, in the order listed and in the same paragraph:
      - (i) “This is the maximum amount of funding [name of financier] will provide.”
      - (ii) If the amount financed is ~~less~~greater than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly if you request the maximum amount is [recipient funds]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~Itemization of Amount Financed.””
      - (iii) If the amount financed is ~~less~~greater than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be provided to you directly if you request the maximum amount is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [“a broker”/ “brokers”]. For more information on what amounts will be deducted, please review the attached document “~~Funding You Will Receive~~Itemization of Amount Financed.””

(iv) If any portion of the amount owed will be used to satisfy obligations under another financing, ~~the provider may also include the following statement:~~

~~“Because this financing will be used to [“pay down”/“pay off”] another financing contract, and the amount due under the other financing is known to the provider, the provider may include a short explanation that contract may change, the amount we pay you paid directly to the recipient may change if the amount due under the other financing changes.~~

~~(iv)(v) If, as a condition of the financing, a recipient’s other financing agreements with third parties must be satisfied, and the amount due under other financing agreements is not known to the provider, the provider shall also include a short explanation that the amount paid directly to the recipient may change.” based upon the required disbursements to satisfy other obligations.~~

- (4) The third row of the table shall include only the following information:
- (A) In the first column, ~~the following language: “Estimate: “Estimated Annual Percentage Rate (APR)-”.~~
  - (B) In the second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
  - (C) In the third column, ~~the following language~~ in the order listed:
    - (i) “APR is the estimated cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, and the payments we collect. APR is not an interest rate.”
    - (ii) A short explanation of the applicable interest rate or rates for the transaction, if applicable.
- (5) The fourth row of the table shall include only the following information:
- (A) In the first column, ~~the following language: “Estimated Finance Charge”.~~
  - (B) In the second column, the finance charge calculated in accordance with section 3010 of these rules.
  - (C) In the third column:
    - (i) “This is the dollar cost of your financing.”
    - (ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract: “The interest rate under your contract will adjust over time, so your actual finance charge may vary.”
- (6) The fifth row of the table shall include only the following information:
- (A) (A) In the first column, ~~the following language: “Payment”.~~
  - (B) The second and third columns shall be combined, and in the resulting cell, the provider shall provide a short explanation of how balances on the account are repaid.
- (7) The sixth row of the table shall include only the following information:
- (A) In the first column, ~~the following language: “Draw Period-”.~~
  - (B) In the second column, the draw period for the transaction.
  - (C) In the third column, a short explanation of the draw period for the transaction.

- (8) The seventh row of the table shall include no information in the third column, and the remaining columns shall include only the following information:
- (A) In the first column, ~~the following language:~~ "Term."".
  - (B) In the second column, the term of the transaction.
- (9) In the first column, the eighth and ninth rows shall be combined and shall include the following language: "Prepayment."".
- (10) In the eighth row, the second and third columns shall be combined and shall include only:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient's last payment, the following statement: "If you pay off the financing faster than required, you still must pay all or a portion of the finance charge, up to \$[maximum non-interest finance charge] based upon our estimates."
  - (B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay any portion of the finance charge other than unpaid interest accrued."
- (11) In the ninth row, the second and third columns shall be combined and shall include:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: "If you pay off the financing faster than required, you must pay additional fees of [amount and description of fees]."
  - (B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay additional fees."

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### § 2068 Disclosure Formatting for All Other Transactions

- (a) Disclosures for commercial financing that does not meet the definition of a closed-end transaction, sales-based financing, commercial open-end credit plan, factoring transaction, lease financing, or asset-based lending transaction shall comply with the following formatting requirements:
- (1) The provider shall present the required disclosures in a table consisting of eight rows and three columns.
  - (2) The first row of the table shall include only the following information:
    - (A) In the first column, ~~the following language:~~ "Funding Provided."".
    - (B) In the second column, the amount financed.
    - (C) In the third column, the following in the order listed and in one paragraph:
      - (i) "This is how much funding [name of financier] will provide."
      - (ii) If the amount financed is ~~less~~ greater than the funds available to the recipient and the amount financed does not include funds paid to brokers: "Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on what



amounts will be deducted, please review the attached document “Funding You Will Receive Itemization of Amount Financed.””

(iii) If the amount financed is ~~less~~greater than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [“a broker”/ “brokers”]. For more information on what amounts will be deducted, please review the attached document “Funding You Will Receive Itemization of Amount Financed.””

(iv) If any portion of the amount owed will be used to satisfy obligations under another financing, and the amount due under the other financing is known to the provider ~~may~~, the provider shall include a short explanation that the amount paid directly to the recipient may change if the amount due under the other financing changes.

~~(iv)~~(v) If, as a condition of the financing, a recipient’s other financing agreements with third parties must be satisfied, and the amount due under other financing agreements is not known to the provider, the provider shall also include the following statement: “Because this financing will be used to [“pay down”/ “pay off”] another financing contract, and the amount due under that contract may change, the amount we pay you directly a short explanation that the amount paid directly to the recipient may change.” based upon the required disbursements to satisfy other obligations.

(3) The second row of the table shall include only the following information:

- (A) In the first column, ~~the following language:~~ “Annual Percentage Rate (APR).”
- (B) In the second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
- (C) In the third column, the following in order:
  - (i) “APR is the cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, and payments paid by you or on your behalf to [financer]. APR is not an interest rate.”
  - (ii) A short explanation of any assumptions made by the provider to calculate APR.

(4) The third row of the table shall include only the following information:

- (A) In the first column, ~~the following language:~~ “Finance Charge”.
- (B) In the second column, the finance charge calculated in accordance with section 3010 of these rules.
- (C) In the third column, the provider’s calculation of the finance charge, with the amount and description of each expense that is included in the finance charge.

(5) The fourth row of the table shall include only the following information:

- (A) In the first column:
  - (i) If, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total payments the

recipient will make during the contract's term: "~~Total Payments~~Payment Amount".

(ii) If, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total payments the recipient will make during the contract's term: "~~Total Estimated Total Payments~~Payment Amount".

(B) The total dollar amount of payments or total dollar amount of estimated payments the recipient will make during the term of the contract if the recipient makes minimum required payments.

(C) In the third column:

(i) If, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total dollar amount of payments the recipient will make during the term of the contract: "This is the total dollar amount of payments you will make during the term of the contract."

(ii) If, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total dollar amount of payments the recipient will make during the term of the contract: "This is our estimate of the total dollar amount of payments you will make during the term of the contract."

(6) The fourth row of the table shall include only the following information:

(A) In the first column, ~~the following language~~: "Payment".

(B) The second and third columns shall be combined, and shall contain the following information in order:

(i) The amount of each periodic payment, followed by a forward slash (/) and the frequency of each periodic payment. If the provider anticipates that the periodic payment amount will vary over the term of the transaction, the provider shall list all periodic payment amounts and the time periods when those payments apply. For example:

Months 1-2:

\$20/day

Months 3-7:

\$40/day

(ii) The date and amount of any irregular payments listed in chronological order.

(7) The fifth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:

(A) In the first column, ~~the following language~~: "Term".

(B) In the second column, the term of the transaction.

- (8) In the first column, the sixth and seventh rows shall be combined and shall include the following language: "Prepayment-~~""~~."
- (9) In the sixth row, the second and third columns shall be combined and shall include only:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient's last payment, the following statement, "If you pay off the financing faster than required, you still must pay all or a portion of the finance charge, up to \$[maximum non-interest finance charge]."
  - (B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay any portion of the finance charge other than unpaid interest accrued."
- (10) In the seventh row, the second and third columns shall be combined and shall include:
- (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: "If you pay off the financing faster than required, you must pay additional fees of [amount and description of fees]."
  - (B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay additional fees."
- (11) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the third row, and the additional row shall include only the following information:
- (A) In the first column, ~~the following language:~~ "Monthly Cost-~~""~~."
  - (B) In the second column, the monthly cost that the recipient will pay over the term of the transaction. If the provider anticipates that the estimated monthly cost will vary over the term of the transaction, the provider shall list the estimated monthly costs and the time periods when those estimates apply. For example:

Months 1-2:  
\$600/month

Months 3-6:  
\$1200/month

Month 7:  
\$1000/month

- (C) In the third column, a short explanation of how the provider calculated the monthly cost. For example: "Although you do not make payments on a monthly basis, this is our calculation of your average monthly cost based upon the payment amounts disclosed below."
- (12) If the contract provides for multiple payment options, the provider shall insert one additional row above the first row, and in that row, all three columns shall be combined, resulting in a single cell. In that cell, the provider shall include a short explanation of how

the provider has based the disclosure on the minimum payment permitted under the contract.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

#### § 2070. Signatures.

- (a) Prior to consummating a commercial financing, a financier shall obtain a copy of the disclosures made pursuant to sections 22802 and 22803 of the Code that are signed by the recipient. Where the recipient is not a natural person, a natural person authorized to sign on behalf of the legal entity may sign the disclosure, provided that the natural person is not a broker. Such disclosures may be transmitted between the recipient and the provider via electronic transmission and utilizing electronic signatures, regardless of whether subsequent financing agreements, amendments and supplements are provided to the recipient in person, by mail or electronically.
- (b) If a commercial financing transaction is consummated electronically, a provider may obtain a recipient's signature on the required disclosures electronically or by facsimile.
- (c) A provider is not required to obtain the recipient's signature on any disclosure for a commercial financing transaction that is not consummated. When a provider provides multiple disclosures to a recipient during the negotiation of a commercial financing transaction that is ultimately consummated, the provider need only obtain the recipient's signature on the final disclosure that corresponds to the consummated transaction.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

#### § 2071. Thresholds for Disclosure

- (a) For the purpose of determining whether the amount of a commercial financing offer is equal to or less than \$500,000, a provider shall:
  - (1) For an open-end credit ~~plan~~plan, use the approved credit limit.
  - (2) For an asset-based lending transaction:
    - (A) Use the approved credit limit, if transaction meets all of the following requirements:
      - (i) The provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transaction that will occur under the agreement;
      - (ii) The approved credit limit exceeds \$500,000; and
      - ~~(iii)~~ ~~—~~The parties to the asset-based lending transaction agree in writing ~~prior to execution of their agreement (and prior to the amendment of an existing agreement)~~ that an amount exceeding \$500,000 is reasonably expected to be unpaid advanced to the recipient and outstanding at

some point during the agreement. and such agreement is made in writing before the execution of the financing agreement, before any amendment to an agreement entered into before the effective date of these regulations, or before any amendment increasing the approved credit limit for a consummated financing agreement to an amount exceeding \$500,000.

- (B) If the asset-based lending transaction does not meet all of the requirements listed in subdivision (a)(2)(A) above, the commercial financing offer shall be considered less than or equal to \$500,000.
- (3) For a factoring transaction,
- (A) Use the approved advance limit, if the transaction meets all of the following requirements:
    - (i) The provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transaction that will occur under the agreement;
    - (ii) The approved advance limit exceeds \$500,000; and
    - (iii) The parties to the factoring transaction agree in writing ~~prior to execution of their agreement (and prior to the amendment of an existing agreement)~~ that at some point during the agreement, that an amount exceeding \$500,000 is reasonably expected to be advanced to the recipient and outstanding for legally enforceable claims that have not yet been paid. at some point during the agreement and such agreement is made in writing before the execution of the financing agreement, before any amendment to an agreement entered into before the effective date of these regulations, or before any amendment increasing the approved advance limit for a consummated agreement to an amount exceeding \$500,000.
  - (B) If the factoring transaction does not meet all of the requirements listed in subdivision (a)(3)(A) above, the commercial financing offer shall be considered less than or equal to \$500,000.
- (4) For lease financing:
- (A) If the financier does not select, manufacture or supply the goods to be leased, use the net cost to the financier to acquire the property to be leased;
  - (B) If the financier selects, manufactures or supplies the goods to be leased, use the price that the financier would sell the goods for in a cash transaction, minus any down payment or other deposit to be paid by the recipient.
- (5) In all other transactions, use the total amount of funds to be provided by the provider to the recipient or by the provider on behalf of the recipient in connection with the commercial financing (including amounts used to pay off other financings).

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800 and 22804, Financial Code.

**§ 2089. Commercial Financings with Multiple Payment Options; Balances Payable on Demand.**

- (a) For commercial financings that offer multiple payment options to the recipient, the provider shall calculate required disclosures based upon the minimum payments allowed under the contract.
- (b) For commercial financings where the balance due is payable on demand, the provider shall calculate required disclosures based upon an assumed term of one year unless the provider reasonably anticipates that the balance will be repaid more quickly. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

**§ 2091. Estimates – Sales-Based financing – Historical Method.**

- (a) This section shall apply only to sales-based financing.
- (b) With respect to any assumptions about a recipient’s future monthly sales, income, or receipts necessary to calculate the disclosures required by this chapter, a provider shall use the “estimated monthly sales, income, or receipts projection” described below:
  - (1) The estimated monthly sales, income, or receipts projection shall be calculated as the recipient’s historical average of:
    - A. The monthly sales, income or receipts volume received through the particular payment channel or mechanism; and
    - B. The monthly sales, income, or receipts received through any other payment channel or mechanism that the financing contract would have required recipients to redirect to the particular payment channel or mechanism had the financing contract been operative previously.
  - (2) A provider shall fix the number of months ~~considered used~~ to ~~determine~~calculate the recipient’s average monthly historical sales, income, or receipts for all transactions, or by recipient industry or ~~loan~~ sizefinancing amount (or both), provided that the period of historical data used by the provider shall not be less than four (4) months or more than twelve (12) months.
  - (3) When a recipient has not been in operation for the number of months set by the provider as described in subdivision (b)(2) of this section, the provider may calculate the recipient’s historical average sales volume, income, or receipts using an average from the months the recipient has been in operation.
  - (4) A~~Notwithstanding subdivision (b)(2), a~~ provider may exclude from the average calculation required by subdivision (b)(1):
    - (A) the monthly sales, income, or receipts from any month that is less than the average monthly sales, income, or receipts of the months required to be considered under subdivisions (2) and (3), if the provider determines that the decreased monthly sales, income or receipts

volume in that month arose from a cause, such as a natural disaster or uncommon business interruption, that is unlikely to recur during performance of the contract. A provider shall have no liability for failing to exercise the option permitted under this subdivision.

~~(5) — A provider may exclude from the average calculation required by subdivision (1)(B) the monthly sales, income, or receipts from any month for which the recipient failed to provide documentation of average monthly sales, income, or receipts following the provider’s request.~~

~~(C) the monthly sales, income, or receipts from any number of months at the beginning of the period (starting with the oldest month) set by the provider under paragraph (2), if the provider does not require and receive monthly sales, income, or receipts documentation from those months from the recipient.~~

(5) In addition to the months considered pursuant to subdivision (b)(2) of this section, a provider may include in its average calculation all or none of the additional months for which the recipient has provided sales, income or receipts documentation, excluding any months in which the recipient was not in operation.

(6) When a provider fixes the number of months it will consider pursuant to subdivision (2), the provider shall record this decision in an internal document that includes the effective date of the provider’s decision. If the provider modifies the months fixed pursuant to subdivision (2), the provider shall create a new version of the document required by this subdivision. The provider shall maintain a copy of every version of the document while it is in effect and for a period of four years thereafter.

(c) If a provider must make additional estimates or assumptions other than a recipient’s estimated monthly sales, income, or receipts projection to provide disclosures required by this chapter, the provider shall:

- (1) Base those estimates or assumptions on the best information reasonably available to the provider at the time of the disclosure;
- (2) State clearly that any disclosure based upon an estimate or assumption is an “Estimate” by adding the word “Estimate” to the descriptive language of any required disclosure under this chapter.
- (3) State clearly any assumptions or estimates used as the basis for the disclosure in any description associated with the disclosure.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

#### **§ 2092. Estimates – Sales-based financing – Underwriting Method.**

(a) This section shall apply only to sales-based financing:

- (1) With respect to any assumptions about a recipient's future sales, income or receipts, and as an alternative to the methods described in Section 2091 for calculating disclosures required by this chapter, a provider may elect to calculate the required disclosures in accordance with this section.
- (2) A provider shall calculate the disclosures using an "internal estimated sales, income, or receipts projection" through the particular payment channel or mechanism designated in the contract.
- (3) The "internal estimated sales, income, or receipts projection" through the particular payment channel or mechanism shall be calculated using the best information reasonably available to the provider.
- (4) Once every four months, a provider who makes disclosures based upon internal estimated sales projections shall conduct an audit of its commercial financings.
  - (A) The audit shall cover all sales-based financings paid off during the previous four-month period where the provider made disclosures based upon internal estimated sales projections, including transactions with contractually required true-up payments, but excluding transactions where:
    - (i) The provider or financier initiated legal action against the recipient in court or arbitration for breach of the contract or to collect amounts due under the contract;
    - (ii) The provider or financier stopped collection of amounts due under a contract after determining that the recipient had violated the terms of the contract; or
    - (iii) The provider modifies the contract terms pursuant to an agreement with a recipient.
  - (B) The provider shall calculate the retrospective annualized rate for each sales-based financing in the audit. With respect to financing where a lump sum payment is used to pay off the financing faster than required by the contract, a provider may calculate the retrospective annualized rate by ignoring the lump sum payment and assuming that the contract would have been repaid in periodic payments that are an average of the past periodic payments under the contract.
  - (C) The provider shall calculate the percentage of the difference between the disclosed annualized rate and the retrospective annualized rate for each sales-based financing in the audit. The provider shall subtract the disclosed annualized rate from the retrospective annualized rate for each sales-based financing in the audit, divide the resulting amount by the disclosed annualized rate, and multiply that number by 100. The percentage resulting from this calculation shall be called the "APR spread".
  - (D) The provider shall find the median APR spread for all sales-based financings in the audit. The median shall be called the "audited APR spread."
- (5) After completing its audit, the provider shall calculate the weighted average of the audited APR spreads for the last three audits, the last five audits, and the last seven audits using the total number of transactions used to calculate the audited APR spreads for each audit period. This subdivision does not require a provider to calculate a



weighted average for the last three audits if the provider has not conducted three audits, the weighted average for the last five audits if the provider has not conducted five audits, or the weighted average for the last seven audits if the provider has not conducted seven audits.

- (A) If the weighted average for the last three audits is greater than 15%, the provider shall not utilize the method described in this section to calculate the required disclosure terms for 24 months, but shall instead employ the methods described in Section 2091 unless the provider determines that the method described in Section 2091 would have yielded a higher weighted average.
  - (B) If the weighted average for the last five audits is greater than 10%, the provider shall not utilize the method described in this section to calculate the required disclosure terms for 24 months, but shall instead employ the method described in Section 2091 unless the provider determines that the method described in Section 2091 would have yielded a higher weighted average.
  - (C) If the weighted average for the last seven audits is greater than 5%, the provider shall not utilize the method described in this section to calculate the required disclosure terms for 24 months, but shall instead employ the method described in Section 2091 unless the provider determines that the method described in Section 2091 would have yielded a higher weighted average.
  - (D) If the weighted average for the last three audits is 5% or less, the provider may reduce the frequency of the audit process required by subdivision (4) to once every twelve months. For any audit conducted twelve months following the previous audit pursuant to this subdivision, the provider shall review all sales-based financings paid off during the previous twelve-month period, rather than the previous four-month period, but shall otherwise comply with the process required by subdivision (4).
- (6) Following the end of the 24-month period described in part (5) above, the provider may begin calculating estimated payments, term and annual percentage rate in accordance with this section only if the provider has made a good-faith effort to modify its method for calculating internal estimated sales projection to make its disclosures more accurate.
- (7) If a provider must make additional estimates or assumptions other than an estimate of a recipient's future sales, income or receipts in order to provide disclosures required by this chapter, the provider shall:
- (A) Base those estimates or assumptions on the best information reasonably available to the provider at the time of the disclosure;
  - (B) State clearly that any disclosure based upon an estimate or assumption is an "Estimate" by adding the word "Estimate" to the descriptive language of any required disclosure under this chapter; and
  - (C) State clearly any assumptions or estimates used as the basis for the disclosure in any description associated with the disclosure.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

**~~§ 3000. Annualized Rate Disclosure.~~**

~~(a) Any provider who extends a specific offer of commercial financing to a recipient shall, at the time of extending the specific commercial financing, disclose to the recipient the annual percentage rate.~~

~~Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.~~

**§ 3001. Calculation of Annual Percentage Rate.**

- (a) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the recipient to the amount and timing of payments made to the provider. For purposes of this subchapter, the annual percentage rate shall be determined in accordance with either the United States Rule method or the actuarial method, as both are set forth in Appendix J, 12 C.F.R. Part 1026 (effective December 30, 2011), and which is incorporated herein by this reference.
- (b) The annual percentage rate calculation shall include all finance charges as that term is defined in section 3010 of these rules.

(c) When calculating the annual percentage rate, a provider may assume that it can collect contractually required payments on every calendar day, regardless of bank holidays, weekends,

or other days that would otherwise delay or accelerate the provider's collection of a payment. (c)(d) When calculating the required disclosures for commercial open-ended credit plans

made pursuant to Section 2062, the provider shall assume that the recipient borrows the approved credit limit at origination and makes no subsequent draws and that minimum on-time payments are made pursuant to the contract.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

**§ 3002. Additional Assumptions for Factoring Transactions**

- (a) When calculating the required disclosures in accordance with section 3000 of these rules for factoring transactions, to provide a disclosure based upon a single transaction as described by section 22802 of the Code, the provider shall assume that it will receive full payment of the legally enforceable claim upon the date that legally enforceable claim becomes due and payable.
- (b) When calculating the required disclosures in accordance with section 3000 of these rules for factoring transactions, to provide a disclosure based upon an example transaction as described by section 22803 of the Code, the provider shall assume that it will receive full payment of the legally enforceable claim upon the date that results from adding the term to the date the disclosure is made.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

**§ 3003. Estimated Annual Percentage Rate – Sales-based financing**

- (a) When calculating the estimated payments and reasonably anticipated true-ups for sales-based financing, a provider shall use the estimated monthly sales, income or receipts projection described in subdivision (b) of section 2091 of these rules or the internal estimated sales, income, or receipts projection described in subdivision (a)(3) of section 2092 of these rules, accounting for:
- (1) Specified payment amounts;
  - (2) Changes to the split rate over time;
  - (3) Contractual provisions requiring a minimum payment amount; and
  - (4) Penalty payments required when a payment or series of payments falls below a contracted threshold.
  - (5) Any other finance charges that may be reasonably anticipated based upon the estimated monthly sales, income, or receipts projection or the provider's internal estimated sales, income, or receipts projection.
- (b) When calculating estimated monthly cost, finance charge, term, and annual percentage rate for the sales-based financing, a provider shall use the estimated monthly, income or receipts sales projection described in subdivision (b) of section 2091, or internal estimated sales, income, or receipts projection described in subdivision (a)(3) of section 2092 of these rules, accounting for the following:
- (1) Specified payment amounts;
  - (2) Changes to the split rate over time;
  - (3) Contractual provisions requiring a minimum payment amount;
  - (4) Penalty payments required when a payment or series of payments falls below a contracted threshold;
  - (5) Reasonably anticipated true-ups; and
  - (6) Any other finance charges that may be reasonably anticipated based upon the estimated monthly sales, income, or receipts projection or the provider's internal estimated sales, income, or receipts projection

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### **3010. Finance Charge.**

- (a) The "finance charge" for a commercial credit transaction is the sum of:
- (1) For all commercial financing transactions, all charges that would be included in the finance charge under 12 C.F.R. part 1026.4 (effective April 1, 2019), if the transaction were a consumer credit transaction and the financier were a creditor under federal law. This paragraph is intended to require finance charges to include any charge that would be a finance charge under 12 C.F.R. part 1026.4, regardless of whether the transaction is question would be considered an "extension of credit" under federal law and regardless of whether the financier would be considered a "creditor" under federal law;
  - (2) In any accounts receivable purchase transaction that is not a factoring transaction, the discount taken on the face value of the accounts receivable;
  - (3) In a factoring transaction, the ~~difference between~~ the face value on the invoice ~~and~~ minus the amount paid directly to the recipient upon assignment of the legally enforceable claim

to the financier, but excluding reserve amounts. For the purposes of the calculation described in the preceding sentence, if the transaction involves a reserve amount, the reserve amount shall also be subtracted from the face value on the invoice only if the financier reasonably anticipates that it will return all reserve amounts to the recipient once it has been paid for the legally enforceable claim or claims assigned by the recipient or upon termination of the contractual relationship between the financier and the recipient, properly crediting payments made by account debtors and previous collections by the financier from the recipient, all amounts held in reserve, and payments by insurers on defaulted accounts. In determining what the financier can reasonably anticipate, the financier shall consider past performance of similar contracts (both those made to the recipient and other similar recipients) and the policies and procedures of the financier; and

- (4) In any lease financing transaction, the sum of lease payments (including any regular periodic payments and irregular payments) and price of the purchase option that the lessee may pay to acquire the leased goods at the end of the lease, minus the amount of funds provided that is disclosed to the recipient in accordance with subdivision (a)(2)(B) of section 2066 of these rules.
- (b) For products where any part of the finance charge is based upon interest that accrues on the outstanding principal balance owed by the recipient, the interest charge adjusts over time, and it is not possible to calculate the interest charges in advance for the entire term of the transaction because the charge adjusts based upon a benchmark rate plus a margin, the provider shall calculate the interest charges for periods of time when the interest charge cannot be calculated in advance based upon the benchmark rate in effect at the time of disclosure and the margin.
- (c) For the purposes of the calculation required by subdivision (a) of this section, a charge or amount that meets the requirements of subdivision (a)(1) and subdivisions (a)(2), (a)(3), or (a)(4) shall not be counted twice.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### **§ 3021. Asset-based lending; Example transaction.**

(a) The alternative disclosures to a recipient under section 2062 of these rules shall be made using an example transaction and in accordance with the formatting requirements of section 2067 of these rules. The example transaction shall be based on the proposed agreement governing the actual transaction between the provider and recipient with the following parameters, as applicable:

- (1) For asset-based lending transactions where the finance charge, annual percentage rate, or term varies based upon the type of advance received, where the provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transactions that will occur under the agreement, and where the financier provides disclosures based upon an example of a transaction that could occur under the agreement under section 22803 of the Code, the provider shall give the recipient a separate disclosure for each type of advance.
- (2) If the agreement between a financier and recipient permits an advance of funds to the recipient up to and including an approved credit limit, the example transaction used in making the disclosures shall assume:

- (A) The recipient borrows up to the approved credit limit at origination;
- (B) The recipient maintains a balance equal to the approved credit limit by reborrowing up to the approved credit limit for a time equal to the draw period or one year, whichever is less; and
- (C) At the end of the time specified under subdivision (a)(2)(B), the financier is repaid according to the terms specified in the contract.

(3) If the agreement between a provider and recipient does not specify a maximum approved credit limit, the example transaction used in making the disclosures shall assume:

- (A) The recipient has drawn \$10,000;
- (B) The recipient maintains a balance equal to \$10,000 by reborrowing up to the approved credit limit for a time equal to the draw period or one year, whichever is less; and
- (C) At the end of the time specified under subdivision (a)(3)(B), the financier is repaid according to the terms specified in the contract.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### **§ 3022. Factoring; Example Transaction.**

- (a) For factoring transactions where the finance charge, annual percentage rate, or term varies based upon the type of the legally enforceable claim assigned, where the provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transactions that will occur under the agreement, and where the financier provides disclosures based upon an example of a transaction that could occur under the agreement under section 22803 of the Code, the provider shall give the recipient a separate disclosure table under section 2064 of these rules for each type of legally enforceable claim.
- (b) Maximum draw amount. If the agreement between a financier and recipient permits an advance of funds to the recipient up to and including a maximum aggregate purchase price for legally enforceable claims that have not yet been paid by the account debtor, the example transaction used in making the disclosures shall be equal to the maximum aggregate purchase price.
- (c) No maximum draw amount. If the agreement between a provider and recipient does not specify a maximum aggregate purchase price for legally enforceable claims that have not yet been paid by the account debtor, the example transaction used in making the disclosures shall assume the recipient has drawn \$10,000.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### **§ 3023. Duties of Financiers and Brokers.**

- (a) A financier shall:
- (1) Provide a copy of compliant disclosures to a broker, whenever a financier provides a broker with a (A) periodic payment amount, irregular payment amount, or financing amount, and (B) any rate or price quote for, or cost of financing (including, without limitation, any total repayment amount), in connection with a commercial financing relating to a recipient, in writing, based upon information from, or about, the recipient, ~~the financier; and.~~
  - (2) Maintain a copy of each disclosure that it generates pursuant to this chapter for a period of at least four years following the date that the disclosure is presented to the recipient or provided to a broker.
  - (3) Maintain a copy of the evidence of transmission of the disclosures provided by a broker to the financier in compliance with subdivision (b) for a period of at least four years following the date that the disclosure is presented to the recipient.
  - (4) Develop procedures reasonably designed to ensure that recipients receive the disclosures compliant with provided pursuant to subdivision (a)(1) of this chapter section at the time that the a broker provides in writing to a recipient any (A) periodic payment amount, irregular payment amount, or financing amount, and (B) any rate or price quote is provided to the recipient by the broker, if the financier communicates, or cost of financing amount, rate or price quotes to brokers. (including, without limitation, any total repayment amount), in connection with a commercial financing, based upon information from, or about, the recipient. These procedures shall include:
    - (A) Contractual requirements that brokers timely provide to the financier documentation of transmission of the disclosure (including timing of transmission) to the recipient;
    - (B) Timely investigation of facts that would give a financier reasonable notice that a broker has not provided disclosures to recipients as required by subdivision (b); and
    - (C) Discontinuation of relationships with any broker who the financier has found has not complied with subdivision ~~(b)~~ of this section.
- (b) A broker shall not provide ~~a recipient with a specific~~ (A) periodic payment amount, irregular payment amount, or financing amount, and (B) any rate, or price quote for commercial financing, or cost of financing (including, without limitation, any total repayment amount), based upon information from, or about, the a recipient, in connection with a commercial financing, in writing to a recipient, until the broker transmits the disclosures required by subdivision (a)(1) of this section, unaltered, to the recipient. After a broker transmits disclosures to the recipient, the broker shall provide evidence of transmission of the disclosures to the financier, including the time of transmission.
- (c) This section shall not be construed to:
- (1) Require a broker to evaluate the accuracy of the disclosures provided by the financier;
  - (2) Create any liability for a broker if the disclosures that the financier provides do not comply with this Chapter or Division 9.5 of the Code; or
  - (3) Limit any liability that may arise when a broker makes representations concerning the commercial financing.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

**§ 3024. Other Laws.**

(a) The rules of this Chapter are not intended to:

- (1) Clarify or interpret existing California law with respect to the definitions of loan, sale, and lease, as those terms may apply to the commercial financing transactions regulated by this Chapter.
- (2) Affect the Department of Financial Protection and Innovation's authority to regulate any person or transaction under other laws under its jurisdiction, except to the extent permitted by section 22805 of the Code.

~~(b) A provider's mere use of any of the following words as required by this Chapter shall not constitute evidence that a financier's contract with a recipient is or is not a loan under California law: term or estimated term, interest, interest rate, payment or estimated payment, Annual Percentage Rate (APR) or Estimated Annual Percentage Rate, prepayment or pay off. This subdivision shall not preclude a trier of fact from considering a provider's statements in the disclosures required by this Chapter when assessing whether a transaction, based upon the totality of the circumstances, is a loan under California law.~~

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800 and 22804, Financial Code.

### § 3025. Recipient's Relationship to California

- (a) The requirement of section 22802, subdivision (a), of the Code, applies only to recipients whose business is principally directed or managed from California.
- (b) For the purpose of determining whether a recipient's business is "principally directed or managed from California" as described in subdivision (a), a provider may rely upon (i) any written representation by the recipient as to whether it is principally directed or managed from California, or (ii) the business address provided by the recipient to the provider in the application for financing.

ELFA: For clarity we suggest that clause (b)(ii) include, after "provider" the words "or broker".

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### § 3026. Tolerances.

- (a) An annual percentage rate disclosed pursuant to ~~Section 3000~~these rules shall be considered accurate if:
  - (1) It is not more than 1/8 of 1 percentage point below the annual percentage rate determined in accordance with paragraph (a) of Section 3001; or
  - (2) In an irregular transaction, it is not more than ¼ of 1 percentage point below the annual percentage rate determined in accordance with paragraph (a) of section 3001. For purposes of this paragraph, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).



(3) The percentage difference between the annual percentage rate determined in accordance with paragraph (a) of Section 3001 section and the annual percentage rate disclosed pursuant to Section 3000 is 2.5% or less. The percentage difference shall be calculated as follows: The annualized rate disclosed pursuant to Section 3000 shall be subtracted from the annualized rate determined in accordance with paragraph (a) of Section 3001, and the resulting difference shall be divided by rate disclosed pursuant to Section 3000 and multiplied by 100.

- (b) A provider and financier shall have no liability under this Subchapter for any inadvertent error in a disclosure to a recipient that does not comply with this Subchapter, if within sixty days after discovering the error through the provider's or financier's own procedures, and prior to the institution of an action against the provider or financier for such error, the financier or its assignee notifies the recipient of the error and makes whatever adjustments in the appropriate account are necessary to assure that the recipient will not be required to pay an amount in excess of the finance charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.
- (c) A provider or financier shall have no liability for inadvertently disclosing a finance charge, annual percentage rate, periodic payment or irregular payment, average monthly cost, maximum non-interest finance charge, or prepayment fee or charge that exceeds the amount that the provider is required to disclose under this Subchapter.

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

### § 3027. Funding Recipient Will Receive

- (a) When a provider provides a disclosure (either directly to the recipient or to a broker) under Sections 2061 through 2068, and the amount financed is greater than the recipient funds, the provider shall also provide a disclosure entitled "~~Funding You Will Receive~~":Itemization of Amount Financed". The disclosure shall be substantially similar in form to the example disclosure provided in subdivision (b) below, including at a minimum:

~~(1) The amount financed labelled "Funding Provided";~~

~~(2) The amount of any deductions from the amount financed labelled "Deductions", itemized~~

~~separately and listed as negative numbers, and a description of those deductions and the names of persons or entities receiving payments as a result of those deductions;~~

~~(3) The amount of The recipient funds labeled "Funding You Will Receive"; and~~

~~(4)(1) The information, described in subdivision (a)(1) through (a)(3) displayed in a format as~~

~~"Amount Given Directly to demonstrate to the recipient that the deductions from the funding provided result in the amount disclosed as the "Funding You Will Receive". You."~~

~~(b) Example Disclosure:~~

~~(2) The amount credited to the recipient's account with the financier. Where the amount to be credited to the recipient's account may vary based upon changes to the outstanding balance due on the recipient's account, a disclosure shall be considered accurate if it is accurate at the time the disclosure is provided.~~

~~(3) Any amounts paid to other persons by the financier on the recipient's behalf. The disclosure shall identify those persons. The following payees may be described using generic or other general terms and need not be further identified: a recipient's supplier~~

or  
retailer, public officials or government agencies, credit reporting agencies, appraisers,  
and

insurance companies. Where an amount disclosed pursuant to this section may change based upon changes to the outstanding balance due on other financings, a provider's disclosure of a payoff amount shall be considered accurate if it is accurate at the time the

- disclosure is provided.; and  
 (4) The prepaid finance  
 (b) charge.  
 (5) The amount financed.

(1) Example disclosure for transactions where no part of the amount financed is credited to the recipient's account with the financier:

<b>Funding You Will Receive</b>		
-	<b>Amount</b>	<b>Description</b>
<b>Funding Provided</b>	\$10,000	-
<b>Deductions</b>	-\$1,000	Brokerage fee to be paid to [Name of Broker]
-	-\$100	Property Valuation Fee paid to [Service Provider]
<b>Funding You Will Receive</b>	\$8,900	-

<b>ITEMIZATION OF AMOUNT FINANCED</b>	
1. Amount Given Directly to You	\$8,900
2. Property Valuation Fee paid to [_____]	\$100
3. Brokerage Fee paid to [_____]	\$1,000
4. Amount Provided to You or on Your Behalf (1+2+3)	\$10,000
5. Prepaid Finance Charges: Brokerage Fee	\$1,000
6. Amount Financed (4 minus 5)	\$9,000

(2) Example disclosure where part of the amount financed is credited to the recipient's account with the financier:

<b>ITEMIZATION OF AMOUNT FINANCED</b>	
1. Amount Given Directly to You	\$8,900
2. Property Valuation Fee paid to [_____]	\$100
3. Brokerage Fee paid to [_____]	\$1,000
4. Amount Paid on your Account with Us (#XXXXXX)	\$2,000
5. Amount Provided to You or on Your Behalf (1+2+3+4)	\$12,000
6. Prepaid Finance Charges: Brokerage Fee	\$1,000
7. Amount Financed (5 minus 6)	\$11,000

ELFA: Since it is common practice for providers to pay loan proceeds directly to the recipient's vendor or supplier as directed by the recipient, we suggest that a line item be included in the disclosure for "Amounts paid to Supplier".

- (c) The disclosure required by subdivision (a):
- (1) Shall appear as a document separate from the disclosures required by Sections 2061 through 2068;
  - (2) Shall appear immediately following the disclosures required by Section 2061 through 2068;
  - (3) Need not be signed by the recipient; and

- (4) May include a description of any assumptions the provider used to make the disclosure below the information required by subdivision (a).

Note: Authority cited: Section 22804, Financial Code. Reference: Sections 22800, 22802, 22803 and 22804, Financial Code.

ELFA also requests that the DFPI specifically include an effective date falling six months after final regulations are issued. These regulations will impose a significant compliance burden on our members and once the final regulations are published. Providers will spend significant time and effort to modify agreements with recipients, develop or acquire and test software and systems needed to produce compliant disclosures, develop internal policies and procedures necessary to comply with the law and regulations, train employees brokers and suppliers on the new requirements.

If you have further questions, please do not hesitate to contact us.

Respectfully,

/s/ Scott Riehl

Scott Riehl  
Vice President  
State Government Relations  
Equipment Leasing and Finance Association