

Department of Business Oversight, Legal Division
September 9, 2019
Attn: Mark Dyer, Regulations Coordinator
1515 K Street, Suite 200
Sacramento, California 95814-4052
Via email: regulations@dbo.ca.gov

Re: Second invitation for comments on proposed rulemaking-commercial financing disclosures, FILE NO: PRO 01-18

Dear Mr. Dyer,

Last year, the California State Legislature passed the most significant financial protection bill in the nation for small business owners. SB 1235 is the first law in the country to respond to the growing need for small business finance truth in lending standards, following calls for action by leaders of the Federal Reserve, the U.S. Treasury Department, and this coalition of leaders from the nonprofit sector and the small business financing industry.

We are a broad industry and nonprofit coalition, including nearly all the organizations that supported the enactment of SB 1235. The Responsible Business Lending Coalition (RBLC) represents more than 500 California small business lenders, fintech companies, advocacy and community organizations, small business service providers and CDFIs, as well as tens of thousands of small businesses. As such, we commend the Department of Business Oversight (DBO) for drafting regulations that protect small businesses. While we are encouraged by the draft regulations, we strongly urge the DBO to adopt the additional policy recommendations outlined in this letter, and explained in greater detail in the long-form letter attached, as it continues the rulemaking process.

The proposed regulations recognize that small business financing has changed. Many small businesses now commonly pay effective APRs of higher than $90 \%$-sometimes as high as $350 \%$-without these rates ever being disclosed to them. While the federal Truth in Lending Act requires consumer creditors to disclose key information about transactions in a clear and comparable way, no such national standard exists to protect the millions of small business owners seeking financing to grow their businesses. We're very pleased to see the following included in the DBO's first round of proposed regulations:

- APR or Estimated APR should be disclosed for all small business financing products: We commend the DBO's decision to propose that APR or Estimated APR be disclosed for all small business financing products. APR is the only established metric that enables informed comparisons of the cost of capital over time and between products of different dollar amounts and term lengths. This is why APR is the long-standing, familiar price metric, vetted over 50 years of the Truth in Lending Act.
- Total Payments Per Month or Projected Payments Per Month should be disclosed in dollars: We appreciate the DBO adopting this recommendation as it enables direct comparison of payments charged by products offered with daily, weekly or monthly payments, and between products with fixed or sales-based payments. When making these comparisons, it is critical that a small business owner understands not just the percentages but the concrete estimated payments per month. Many providers offer daily, weekly and monthly payment plans, and this makes it very difficult to compare products.
- Prepayment language should prevent hidden prepayment penalties: We are glad to see that the DBO included this provision as it requires providers to disclose the potential finance charge due in the event of early repayment, and whether any non-interest finance charges are due in the event of early repayment. If a small business owner pays off a loan early, any prepayment penalties should be clearly and identified prior to the small business owners signing a contract.

Below are our recommendations to further strengthen proposed regulations and ensure they are structured in a way to best support small businesses.

- Clarify that disclosures must be presented as soon as possible and in time for comparison shopping, not at a "final loan offer" after it is too late. In the current draft rule, small businesses may not receive their first disclosure of the rate they would pay until they are about to sign a contract. At this point, it is too late to be useful in comparison shopping or to seek out other options. A small business owner should receive the disclosures when they are first presented with a specific offer of financing, empowering them to use the disclosure information to comparison shop and find the most affordable and appropriate financing for their business.
- Modify the proposed method for calculating Estimated APR for sales-based transactions to ensure that providers' flexibility in estimations required is paired with sufficient accountability. We are glad to see the DBO has prioritized both clarity and innovation by adopting a form of the RBLC's proposal to permit both a prescriptive and a flexible approach to estimates required for APR calculation. However, we are concerned that the flexible approach is not paired with sufficient accountability for accuracy. It would allow providers to misquote APR for years without any oversight or repercussions from the DBO.
- Clarify the disclosure responsibilities of brokers. Today, many small businesses obtain financing through brokers, who may have misaligned incentives to steer borrowers into the most expensive form of financing in order to obtain the highest fees. SB 1235 requires brokers present appropriate disclosures. The DBO should clarify the specific disclosure responsibilities of brokers, empowering small businesses to identify the most affordable and appropriate financing for them.
- Clarify the method of APR calculation for lines of credit. We applaud the DBO for avoiding a loophole whereby fees would not be included in APR for lines of credit. The DBO should clarify how this calculation will work by applying two assumptions: Credit lines are drawn in full at origination, and minimum payments are made. These assumptions will provide clarity for small business owners seeking credit.
- Clarify required and prohibited language in disclosure form. As the first regulation of its kind in the nation, it is critical that the explanatory language required in the disclosure forms be as clear as possible.
- Clarify flexibility in disclosure formatting. Useful disclosures must share enough in common to be easily comparable, but there are some benefits to permitting some flexibility in the formatting of a disclosure. We offer recommendations to strike the right balance of clarity and flexibility.
- Require disclosures of both APR and amount of funds provided in order to include all costs associated with financing renewals. The DBO has been given express authority under Section 22804 of the Financial Code to determine and specify how the annualized rate shall be calculated and the type of fees and charges that shall be included in the annualized rate calculation. To correctly portray the true cost of financing, disclosures of both APR and amount of funds must include the practice called "double dipping" whenever it occurs. If double dipping is not incorporated, the resulting disclosures may meaningfully misinform California small business owners as they compare various financing options.
- Offer online APR calculation aids to ensure greater transparency.
- Establish a public complaint portal to support monitoring. Establishing a public complaint portal will provide additional transparency and clarity so that small business owners know the reputations of the companies they are using.

According to the U.S. Small Business Administration, small businesses are responsible for two-thirds of all private sector jobs that have been created since the Great Recession. Access to capital, aided by technology, has been an essential part of this growth. However, small business owners must have the opportunity to understand the financing they are being offered in a clear, concise manner that enables informed comparison across all their financing options.

Thank you for the opportunity to comment. We look forward to working with the Department of Business Oversight on the development of these disclosures, for the good of California's small businesses.

Sincerely,

1. The Responsible Business Lending Coalition

Members include Accion, Community Investment Management, Funding Circle, Lending Club, Opportunity Finance Network, Opportunity Fund, Small Business Majority, StreetShares, and the Aspen Institute.
2. Access Plus Capital
3. Accion
4. AmPac Tri-State CDC
5. ANewAmerica
6. Arcata Economic Development Corporation (AEDC)
7. Asian Business Association
8. Asian Business Association of the Inland Empire
9. Asian Pacific Islander Small Business Program (APISBP)
10. Bankers Small Business CDC of California
11. Bethel LA Community Development Corporation
12. Black Business Association
13. Business Center for New Americans
14. C.O.O.K. Alliance
15. California Asian Chamber of Commerce
16. California Asset-Building Coalition
17. California Association for Micro Enterprise Development (CAMEO)
18. California Black Chamber of Commerce
19. California Capital Financial Development Corporation
20. California Hispanic Chambers of Commerce (CAHCC)
21. California Reinvestment Coalition (CRC)
22. California Small Business Development Center (SBDC) - Valley Community
23. CDC Small Business Finance
24. CNote
25. Colorado Lending Source
26. Common Capital
27. Community Housing Opportunities Corporation (CHOC)
28. Community Investment Management (CIM)
29. Community Vision
30. Consumer Advocacy and Protection Society at Berkeley Law
31. Core Performance
32. Crane Works
33. Economic Development \& Financing Corp. (EDFC)
34. El Concilio of San Mateo County
35. El Parajo Community Development Corporation
36. Faith and Community Empowerment (FACE)
37. Fresno Area Hispanic Foundation
38. Funding Circle
39. Go Local Sonoma County
40. The Greenlining Institute
41. Halo Business Finance
42. Hispanic Chambers of Commerce of San Francisco (HCCSF)
43. Housing and Economic Rights Advocates (HERA)
44. ICA Fund Good Jobs
45. Inclusive Action for the City
46. Inland Empire Regional Chamber of Commerce
47. International Rescue Committee San Diego
48. Invest in Women Entrepreneurs Initiative
49. Jefferson Economic Development Institute (JEDI)
50. Latino Business Network \& Allies
51. LendingClub
52. Lighter Capital
53. Main Street Launch
54. The Marketplace Lending Association

Members include LendingClub, Prosper, Funding Circle, Avant, Marlette
Funding, Affirm, Common Bond, Upstart, Peer Street, Lending Point, College
Ave, and SoFi
55. Mission Economic Development Agency (MEDA)
56. Montecito Bank \& Trust
57. Mountain Biz Works
58. Multifunding
59. National Federation of Filipino American Associations (NaFFA)
60. Nav
61. North Bay Jobs with Justice
62. Northern California Small Business Development Corporation (Nor-Cal FDC)
63. Opportunity Fund
64. Pacific Asian Consortium in Employment (PACE)
65. Pacific Community Ventures (PCV)
66. Primestor Investments, LLC
67. Public Law Center (PLC)
68. Sac Black Biz
69. Silver Lining
70. Small Business California
71. Small Business Majority
72. StreetShares
73. TELACU Education Foundation
74. The Woodstock Institute
75. Time for Change Foundation
76. Venturize
77. Vermont Slauson Economic Development Corporation (VSEDC)
78. Veteran Launch
79. Wadeco Business Center
80. Women's Economic Ventures (WEV)
81. Working Solutions
82. 3 Core

Department of Business Oversight
Attn: Mark Dyer, Rulemaking Coordinator
1515 K Street, Suite 200 Sacramento, California 95814-405
Via Electronic Mail:
regulations@dbo.ca.gov

CC: Charles Carriere, Senior Counsel
charles.carriere@dbo.ca.gov

## RE: PRO 01-18, Small Business Financing Disclosures

Dear Mr. Dyer,
The Responsible Business Lending Coalition ("RBLC") appreciates the opportunity to comment on the invitation for comments by the Department of Business Oversight ("Department") regarding the California Financing Law ("CFL") Commercial Financing Disclosures. The RBLC commends the Department for soliciting input on the draft regulations and sample disclosures before initiating the formal rulemaking process with the Office of Administrative Law.

The RBLC is a diverse association of nonprofit and for-profit organizations serving small businesses that have joined together out of concern about the need for increased access to capital and about the rise of irresponsible small business lending practices. ${ }^{1}$ The mission of the RBLC is to drive responsible practices in the small business lending sector.

In 2018, State Senator Steve Glazer introduced the commercial financing disclosure bill, $\underline{S B}$ 1235, inspired by the RBLC's Small Business Borrowers' Bill of Rights. The RBLC organized and led a coalition of more than 500 nonprofit and for-profit organizations that supported and passed SB 1235. We are grateful to the Department for promulgating these rules to implement this crucial law.

As in our January 22, 2019 comment letter, ${ }^{2}$ we base the following recommendations on two central goals of a disclosure system: comparability and informed consent. These disclosure requirements will empower small business owners to effectively shop for the most affordable

[^0]and appropriate financing for their business, and to avoid unaffordable financing that can devastate small businesses and the families, employees and communities that depend on them.

This letter offers the following recommendations for achieving these goals:

1. Clarify that disclosures must be presented as soon as possible and in time for comparison shopping, not at a "final loan offer" after it is too late.
2. Modify the proposed method calculating Estimated APR of sales-based financing to ensure that providers' flexibility in estimation is paired with sufficient accountability.
3. Clarify disclosure obligations of brokers.
4. Clarify required and prohibited language in disclosure forms.
5. Clarify flexibility in disclosure formatting.
6. Require disclosures of both APR and amount of funds provided in order to include all costs associated with finance renewals.
7. Offer online APR calculation formulas or calculators for ease of compliance.
8. Establish a public complaint portal to support monitoring.

We commend the Department for anchoring the proposed rule around annual percentage rate ("APR") and Estimated APR as the required annual rate to be disclosed for all small business financing products. We strongly urge the Department to formally adopt APR as the annualized rate required under SB 1235.

APR is the only established metric that enables informed comparisons of the cost of capital over time and between products of different dollar amounts and term lengths. APR is the time-tested rate that people know and expect because it is the legally required standard for credit cards, mortgages, auto loans, and personal loans, including short-term loans. A 2018 study conducted by the Federal Reserve Bank of Cleveland found small business borrowers seeking financing online find APR to be among the most useful terms for understanding the cost of a product. ${ }^{3}$

APR can be calculated for all small business financing products, including sales-based financing products such as merchant cash advances ("MCA"). In fact, some providers already do calculate and disclose it. Some providers calculate APR but do not disclose it to borrowers, yet they do

[^1]advertise it to their investors in securitization documents, ${ }^{4}$ proving it is possible to calculate and disclose to borrowers.

In some cases, providers have even furnished an annualized yield projection to their investors. Certainly small business borrowers deserve similar transparency and access to this information. The Truth in Lending Act regulations endorse the uses of estimates when the information needed for a perfectly accurate disclosure is not available. It states, "If any information necessary for an accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate." ${ }^{5}$

Some financing providers that do not currently disclose APRs have expressed a concern that "the APR formula was not designed to account for daily pay products." This is incorrect. Regulation Z, which describes the APR formula, addresses daily payments specifically, reading, "A standard interval of time is a day, week, semimonth, month" and so on, and proceeds to describe the APR calculation method. ${ }^{6}$ The formula described in Regulation Z is designed to accommodate payments of varied and irregular amounts and frequencies.

Some providers have expressed a concern about their ability to calculate APR, writing that "APR is a complicated mathematical calculation that existing formulas in Excel, Google Sheets, and other online calculators fail to determine correctly." This is also incorrect. This letter provides relevant formulas and suggests that the Department publish these formulas to help providers that are unfamiliar with performing these sorts of calculations. We have also included, as an appendix, a mathematical demonstration that APR as described in Regulation Z can be correctly calculated in Microsoft Excel. ${ }^{7}$

We also note that as drafted, the rule would bring transparency to the issue of hidden prepayment charges. We applaud the Department's proposed approach to prepayment disclosure as consistent with the goals of SB 1235 and urge that it be maintained while incorporating wording clarifications we address below.

[^2]Some have questioned whether the detail provided in the proposed prepayment disclosures would be excessive or confuse small business owners. However, researchers at the Federal Reserve found that small business owners require clearer information to avoid misunderstanding the potential cost in early prepayment for fixed-fee products. The researchers found that small business owners often assume they will obtain cost savings if they pay early, just as they would in a traditional, amortizing loan: ${ }^{8}$


#### Abstract

Participants tended to make (sometimes mistaken) assumptions about the products based on past experiences with traditional bank loans. For example, some participants assumed their borrowing costs would decline if the loan were paid off quickly even when, as was the case in Products A and C, that repayment was presented as a total amount owed rather than an interest rate. Asked about the impact of faster sales growth on total repayment and interest costs on these two products, a number of participants assumed that, as with conventional loan products, they would incur some savings by repaying early. Others were uncertain, especially about the impact on the interest rate they would be paying. (In fact, total repayment amounts on these two products would be unchanged, there would be no savings on interest, and effective interest rates would rise because of the shortened repayment period.)


The Department's current prepayment disclosure approach is designed to address this confusion, and we urge the Department to retain it.

We have also identified several areas in which the Department should consider providing more clarity, flexibility and additional oversight to ensure the strongest possible protections for California's small businesses.

[^3]
## Recommendations for the Proposed Draft Regulation

We believe that adoption of the following recommendations are necessary to achieve the intent of SB 1235: to empower small business owners to make informed decisions about the costs of their financing options.

## Recommendation 1: Clarify that disclosures must be presented as soon as possible and in time for comparison shopping, not at a "final loan offer" after it is too late.

In the current draft rule, small business owners may not receive their first disclosure of the rate they would pay until they are about to sign a financing contract. At this point, disclosure is too late to be useful in comparison shopping. Days or weeks may have passed while terms were being discussed. The small business owner may feel emotionally committed to proceeding after putting time and effort into gathering or providing documentation. A business owner may be facing an immediate need for the capital to purchase a piece of equipment, pay a supplier, or initiate a marketing program, which would prevent them from going "back to the drawing board." For all of these reasons, a small business owner should receive the disclosures when they are first presented with a specific offer of financing, empowering them to use the information to shop around and find the most affordable and appropriate financing for their business.

Research conducted by the Federal Reserve establishes that small business owners express a desire for disclosure to come as soon as possible in the process. In a 2018 report on online small business financing disclosures, Federal Reserve researchers found that "When asked when in the process they wanted product details, participants said as early as possible to help them make informed decisions about where to apply." ${ }^{\prime 9}$

In fact, the text of SB 1235 establishes that the required disclosure take place when a "specific" offer of financing is made, as opposed to when a "final" offer is made. ${ }^{10}$ We suggest the proposed rule be modified to replace "final offer" with "specific offer," and suggest the following considerations to define when a "specific offer" has taken place:

1. A specific financing amount or price is quoted to a recipient. This does not include amounts or prices expressed as a range, or "as low as," or "up to," but are not a specific number.
2. The terms quoted are informed by information from, or about, the specific recipient. This may include information provided by a small business in a financing application, or by

[^4]third-party data sources such as credit bureaus, bank account transaction, or payments processing data.

Once a "specific offer" has been made, the disclosure must take place as soon as possible before the recipient can proceed further with the financing application. For example, the required disclosure may be the page following the presentment of a specific offer.

A mail advertisement with terms referenced that were not informed by information about the recipients would not constitute a specific offer. Even if informed by information about a potential recipient, an offer of "up to" $\$ 10,000$ would not be considered a specific offer because it does not contain a specific financing amount. An offer of $\$ 10,000$, based on information about the specific recipient, should be considered a "specific offer," even if delivered by mail. It is common, for example, for credit card mail solicitations to include the required Truth in Lending disclosure "Schumer box," so that a consumer can consider whether to pursue the offer of financing.

Recommendation 2: Modify the proposed method calculating Estimated APR of sales-based financing to ensure that providers' flexibility in estimation is paired with sufficient accountability.

We strongly support the Department's proposal, which establishes both a Historical Method and alternative, optional Underwriting Method for calculating APR. We appreciate this approach, and urge the Department to retain both options. However, we are concerned that the proposed Underwriting Method lacks sufficient accountability measures for providers choosing this methodology. As written, the Underwriting Method could permit miscalculation of APR to extend for a period of years before the Department could ascertain whether the provider was calculating APR appropriately.

As currently proposed, the Underwriting Method authorizes providers to utilize their own methods to estimate the inputs to an APR calculation for up to three years before any potential consequences for inaccuracy would arise. We believe that this three-year time period is too lengthy to represent meaningful accountability, given that significant time will be required for a disclosure system to be established, and for financing to be originated and repaid. Under the current proposal, it is quite possible that discovery of, and potential consequences for, inaccurate APR calculations might not take place until the five-year annualized rate provisions under SB 1235 expire.

Therefore, we strongly recommend that the time period for APR accuracy measurement in the Underwriting Method be shortened to one year.

We believe it is critical that providers utilizing the voluntary Underwriting Method report data to the Department in a timely manner. Because use of the Underwriting Method is voluntary, the

Department is legally authorized to specify reporting requirements for providers electing to use this Method in place of the Historical Method, which does not impose any reporting requirements on providers subject to the disclosure provisions of SB 1235. Only providers that choose the optional Underwriting Method need report to the Department on the accuracy of those APR calculations.

Pursuant to SB 1235, the Department has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute. ${ }^{11}$ Section 22804 of the Code specifically authorizes the Department to adopt regulations concerning the annualized rate disclosure that specify when providers shall be permitted to disclose an estimated annualized rate, the appropriate method for doing so, and the permissible accuracy requirements and tolerance allowances for the calculation.

Accepting this data need not represent a significant staffing cost to the Department. The existing reporting channels used for CFL reporting could be used for ease of administration. Additional data reporting would be limited to the firms that choose to opt-in to the voluntary flexible Underwriting Method, and the Department can determine the frequency and extent to which it reviews the data submitted by Underwriting Method participants. The voluntary Underwriting Method with this reporting component would create meaningful accountability.

It should be noted that we are not proposing that the Department establish new regulatory oversight requirements or penalties. The data reporting would simply ensure basic transparency of providers who voluntarily choose the Department-offered option of the flexible Underwriting Method. If a provider elects the optional Underwriting method, it follows that the Department should require basic reporting in order to create an appropriate accountability mechanism.

We recommend that reporting to the Department take place annually and include transaction-level information about the disclosed vs. the retrospectively-calculated APR.

A proposed template for reporting is included below and discussed in greater detail on pages $39-41$ of the SB 1235 support coalition's January 2019 comment letter. ${ }^{12}$

[^5]Figure 1: Hypothetical reporting to the Department of a provider's portfolio

| 4 | A | B | C | D | E | F |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 1 | Account number | Financing Amount | Projected Total Monthly Payments | Estimated APR | Average Total Monthly Payments | Retrospective APR |
| 2 | 123456 | 20,000 | 2,000 | 35\% | 2,400 | 42\% |
| 3 | 123457 | 25,000 | 3,000 | 33\% | 2,550 | 28\% |
| 4 | 123458 | 15,000 | 1,000 | 39\% | 1,050 | 41\% |
| 5 | 123459 | 40,000 | 5,000 | 24\% | 4,750 | 23\% |
| 6 | 123460 | 23,000 | 1,750 | 21\% | 2,188 | 26\% |
| 7 | 123461 | 30,000 | 3,000 | 35\% | 4,500 | 51\% |
| 8 | 123462 | 30,000 | 2,800 | 18\% | 1,400 | 9\% |
| 9 | 123463 | 30,000 | 2,500 | 40\% | 3,500 | 55\% |
| 10 | 123464 | 30,000 | 5,000 | 46\% | 10,000 | 83\% |
| 11 | 123465 | 8,000 | 3,000 | 31\% | 900 | 11\% |
| 12 | 123466 | 8,000 | 600 | 36\% | 618 | 37\% |

Note that this reporting, by including portfolio data, would be considered confidential and therefore not subject to disclosure under the California Public Records Act. Not only is this reporting necessary to create appropriate accountability, but it is also necessary for the Department to effectively calibrate the permitted accuracy thresholds. In the current form of the regulation, without any reporting, the Department lacks data to determine whether the proposed $5 \%$ and $10 \%$ accuracy thresholds are appropriate. If a provider's estimates proved inaccurate, triggering the requirement to discontinue use of the flexible Underwriting Method, the Department would not have this information.

For example, the Department would not know whether the APR Spread measurement was inaccurate by $5 \%$ or by $85 \%$. The Department would not know whether the inaccuracy in question was affecting products with Estimated APRs averaging 10, and representing an inaccuracy of $0.5 \%$ APR, or products with Estimated APRs of $400 \%$ and inaccuracy of $20 \%$ APR. Through basic voluntary reporting by providers utilizing the Underwriting Method, the Department would be able to determine the most appropriate thresholds and identify certain factors that impact estimates. By collecting this data, the Department can refine the regulation as needed to best provide regulatory clarity and stability for providers and transparency for small business owners.

## Recommendation 3: Clarify disclosure obligations of brokers.

Today, many small businesses obtain financing through brokers. Just as in the subprime mortgage crisis, these brokers may may have financial incentives to steer borrowers into the most expensive form of financing in order to obtain the highest fees.

In the figure below, a merchant cash advance company advertises to potential brokers that they could earn "up to 15 Pts in commission" among their sources of compensation.

Figure 2: Advertisement to potential small business financing brokers

## AUGUST EXTENTION! BUY RATES AS LOW AS 1.15

## Start Funding More Deals!

The new Everest Business Funding Partner Program provides a unique way for you to receive personalized service on your submissions - this includes deal status, offer flexibility and more while earning commissions on funded deals. Apply now to join the program and earn great commissions.

## SIGN UP TODAY!



That fee of $15 \%$ of the loan amount creates a significant incentive for brokers when compared to the $1-2 \%$ a broker may often earn if the borrower is approved for a more affordable SBA or fintech loan. But it represents a considerable cost to the borrower. A $15 \%$ fee for the broker on financing repaid over six months represents a cost of $53 \%$ APR, in addition to any financing charges the lender may earn.

Fortunately, SB 1235 requires that brokers present the appropriate disclosures when they extend an offer of financing. This is critical for a small business owner working with a broker because the decision to choose a financing product is made is based on the options the broker presents. These options are reviewed, evaluated and compared before the business owner interacts with any one financing company. Only when the broker helps a business select a financing option does the business owner typically proceed to work with a financing company. ${ }^{13}$ At that point, a disclosure is no longer useful in comparison shopping.

The Department should clarify the specific disclosure responsibilities of brokers, empowering small businesses to identify the most affordable and appropriate financing for them. We suggest the following clarifications:

1. If a broker is extending a specific offer of financing on behalf of a financing company, the financing company is responsible for providing sufficient and accurate information to a broker, just as they are obligated to present sufficient and accurate information to a recipient. The financing company must also ensure that consent to the required disclosure was obtained as described in $\S 2060$ (b). ${ }^{14}$
2. In addition to the liability of the financing company, the broker is also liable for obtaining and presenting all required information from the financing company when a specific offer is made by the broker.
3. If the broker adds additional "points" or other costs to the financing, both the broker and financing company shall ensure that the disclosure accurately reflects these costs. ${ }^{15}$ Shared responsibility is appropriate in these cases as the financing company and broker typically coordinate efforts in order to facilitate the broker marking up the financing.

If the offer subsequently changes, the disclosure must be re-presented, as described in the proposed rule.

[^6]
## Recommendation 4: Clarify required and prohibited language in disclosure forms.

As the first regulation of its kind in the nation, it is critical that the explanatory language required in the disclosure forms be as clear as possible for two reasons. First, on behalf of the millions of California small business owners who will receive these disclosures when considering financing, particularly those with limited English and/or literacy proficiency, simplicity will be essential. Second, as other states seek to replicate California's example, well-designed and tested disclosure language will facilitate standardization, benefiting providers and consumers alike.

RBLC member Opportunity Fund conducted an interactive review session of the draft disclosure forms with 10 diverse staff members, including several whose first language was not English. Each participant was asked to review the form and note any language that was confusing, intimidating or potentially misleading. As a result, we propose a variety of improvements to the required disclosure language that simultaneously increase the clarity and accessibility of the disclosures while maintaining the key elements as mandated under SB 1235. These proposed edits are provided in the attached redlined version of the draft regulations and include the following concepts:

- Updating the required form header to read simply "OFFER SUMMARY"
- Retitling "Amount of Funds Provided" to "Funding You Will Receive"
- Simplifying explanatory language regarding APR
- Retitling "Finance Charge" to "Total Finance Charge" and simplify explanatory language
- Retitling "Payment Amount/Frequency" to "Payment" or "Estimated Payment" as appropriate
- Simplifying language regarding Estimated Term
- Retitling "Prepayment" to "Prepayment Costs"
- Revising explanatory language regarding Prepayment to be statements rather than questions and clarifying language (see sample language below)
- Updating the required form signature explanatory language to read "The State of California requires small business financing companies to give this information so you can make an informed decision. By signing below, you confirm you have received this information."
- Incorporating guidance as to the appropriate means of confirming disclosure receipt in a digital environment.

On the specific issue of prepayment, in order to address the concern that small business owners may believe the finance charge owed during prepayment is in addition to the finance charge, the Department could modify the prepayment language as proposed below (and included in the attached markup):
"If you pay off the financing early:"
1)"You would not need to pay any portion of the finance charge [other than interest owed since your last payment]."
(OR)
"You would need to pay [X]\% of any unpaid portion of the finance charge up to \$[maximum non-interest finance charge]."
2) "You would not pay additional fees not already included in the finance charge." OR
"You would also pay additional fees not already included in the finance charge of [amount or description of fees]."

In addition to these recommended improvements, there is also language we believe should be actively prohibited from inclusion in the disclosure form. No pricing metrics may be included that could easily be confused to be an interest rate or APR. Unfortunately, it is common for some providers to use pricing metrics that are easily confused to be an interest rate or APR but are a lower number than the actual interest rate or APR. The Federal Reserve research described above highlights this problem in existing disclosures used today: ${ }^{16}$
> - Participants were confused by terminology used to describe all three products. For Product A, "repayment percentage options" was a confusing term for some participants who thought this was an interest rate, rather than a share of sales. For Product B, participants most commonly conflated "simple interest" with the APR. In addition, the phrasing of the statement "this rate excludes any fees, including a one-time origination fee of 3\%" (emphasis added) perplexed some participants. For Product C, the term "factor rate" was the main source of confusion for a majority of participants who stated they had not heard it before.

Additionally, the study found that "several [business owners] perceived that lenders were attempting to 'hide' or 'conceal' true costs by excluding basic information about their products from their sites or by using terminology with which they were less familiar (for example, 'simple interest' or 'factor rate' versus APR)." These less familiar rates do in fact give the impression of a lower cost. A product with a " $20 \%$ simple interest" or " $20 \%$ factor rate" would have an APR of $57 \%$, assuming a six-month term.

As organizations that work with small businesses, we see the results of these confusing or misleading disclosure elements daily. ${ }^{17}$ We suggest that at no point in disclosure should the term

[^7]"rate" or percentage pricing metrics be used to describe a metric that is not the interest rate or APR. For example, as described in the Federal Reserve research, " $20 \%$ factor rate," " $20 \%$ rate," " $20 \%$ simple interest" all have high potential to confuse or mislead small business owners. The same concept can be expressed, without the same confusion, described as a " 1.20 factor," for example. It is important that the proposed regulations address this within the scope of SB 1235.

## Recommendation 5: Clarify flexibility in disclosure formatting.

Useful disclosures must share enough in common to be easily comparable. At the same time, there are some benefits to permitting some flexibility in the formatting of a disclosure. For example, if a disclosure is closely integrated into an application design, it may be more likely to be read, and less at risk of being treated as "fine print." While some providers in bad faith may seek flexibility in order to reduce customer awareness of high prices, others may seek flexibility in order to increase the clarity or digestibility of a disclosure. We offer a number of suggestions intended to maximize the usefulness of the disclosure through appropriate flexibility.

1. Clarify provider disclosure flexibility. For example, the Department should clarify that dynamic disclosures are permitted, by which a provider could allow recipients to customize elements of their offer, such as the amount or term, within the required disclosure.
2. Encourage providers to present the disclosure in designs consistent with the "look and feel" of the rest of the provider's materials, including colors and fonts.
3. Permit testing of disclosures consistent with the goals of SB 1235, similar to the Dodd-Frank 1032e Trial Disclosure program.

Improvements in disclosure are becoming more and more possible. The Dodd-Frank Act included a provision for "the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued" by the CFPB. ${ }^{18}$ Based on the example of the Dodd-Frank Trial Disclosure provision, we encourage the Department to consider applications for presentation of the required disclosures in other formats that may increase usefulness and understanding. We suggest that alternate disclosures meet the following criteria:

1. Disclosure is consistent with the principles of the "4 Cs of transparency": It is Clear, Complete, Conspicuous, and easy to Compare with other options.
2. Disclosure includes all required elements described in the regulation, including APR or Estimated APR.

[^8]3. The order of required elements described in the regulation is maintained.
4. The required elements occur before, more prominently than, and separately from other disclosure elements.
5. The standard disclosure form should also be available.
6. No pricing metrics are included that could easily be confused to be an interest rate or APR, as described in the preceding recommendation.
7. The modified disclosure is tested and evaluated for impact on recipient understanding of the terms of financing and decisions made as a result of the disclosure.

Recommendation 6: Require disclosures of both APR and amount of funds provided in order to include all costs associated with finance renewals.

The Department has been given express authority under Section 22804 of the Financial Code to determine and specify how the annualized rate shall be calculated, and the type of fees and charges that shall be included in the annualized rate calculation. To correctly portray the true cost of financing, disclosures of both APR and amount of funds must include all costs associated with financing renewals. If the costs associated is not incorporated, the resulting disclosures may meaningfully misinform California small business owners as they compare various financing options.

When a small business owner refinances or renews their financing with their current provider, and the proceeds from the new financing is used to pay off the balance from the previous financing, this may include unpaid or un-accrued interest or fees. At times, the amount charged represents a significant portion of the overall cost of the financing.

This renewal cost is used by some providers to effectively-double charge small business borrowers in a way that is difficult to identify. It can, however, be easily distinguished from standard practices, such as origination fees, by the combination of: a) the requirement that previous financing from the same provider must be paid down by, or to obtain, the new financing, and b) a "minimum non-interest finance charge," as defined by the Department, of greater than zero.

## A Financing Renewal Example

To illustrate, consider the following example: A small business owner has taken a 12-month financing offer of $\$ 100,000$ with a fixed fee of $20 \%$. They will repay $\$ 120,000$ in total. In the sixth month, $\$ 30,000$ has been repaid, and the provider's sales team calls the small business owner to offer a renewal of the $\$ 100,000$ financing. Seventy thousand dollars of the new
financing must go to pay the outstanding balance of the earlier financing, including the $20 \%$ fixed fee on that financing. This practice has the effect of significantly increasing the effective APRs the borrower pays. In this example, including costs associated with the renewal causes the effective APR for the sequence of financing to increase from $35 \%$ to $41 \%$.

## How to Accurately Incorporate Costs Associated with Financing Renewals

Fortunately, the costs associated with financing renewals can be easily calculated and accurately disclosed to a small business, regardless of the product. First, funds required to repay the outstanding balance on financing from the same provider should not be included in the "Amount of Funds Provided." After all, funds that are withheld by a provider, whether for an origination fee or refinancing an existing account, are not "provided." This is the case whether the outstanding financing will be repaid by new funds from the provider, or by other funds the borrower obtains elsewhere. Similarly, funds disbursed to a related entity of the provider should also not be included to prevent related-entity loopholes.

Second, the APR or Estimated APR calculation should reflect all costs associated with the renewal, including costs of the new financing received as well as any fees outstanding on the previous financing. To perform this calculation, we suggest that the APR or Estimated APR be calculated for the complete string of financing from the same provider. This previous string would go back until a point when the borrower held no financing with the provider that was repaid as a condition of subsequent financing.

The APR of a series of renewed financing products can be calculated using the internal rate of return computation, which can be performed using the "IRR" formula in common software such as Microsoft Excel and Google Sheets. ${ }^{19}$

Row 3 in Figure 3 below shows the calculation used. In these examples, all payments between the provider and small business are considered, going back to the origination of the first financing that was repaid as a condition of financing renewal, including fees. The amount of funds provided appears as a positive number, and the funds paid by the small business appear as negative numbers. This is then annualized by multiplying it by the number of payments in a year. 20

[^9]This approach incorporates the calculation method of Retrospective APR, for all payments and fees that have already taken place, and the appropriate APR or Estimated APR calculation for the new financing being considered.

Figure 3: Costs associated with financing renewal may increase the borrowers' effective $A P R$, but can be easily calculated

| 4 | D | E | F | G | H | 1 |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 1 |  | First loan, if paid as scheduled | First loan, if prepaid after 6 mo at full fee | Second loan, without considering double dipping | Both loans together, including double dipping | Now the borrower takes a third loan in month 12 , and is double dipped again |
| 2 | Estimated APR > | 35\% | 48\% | 35\% | 41\% | 44\% |
| 3 | Formula | $=\operatorname{IRR}(E 4: E 16) * 12$ | $=\operatorname{IRR}(\mathrm{F} 4: \mathrm{F} 10)^{*} 12$ | $=\operatorname{IRR}(\mathrm{G10}$ :G22)*12 | $=\operatorname{IRR}(\mathrm{H} 4: \mathrm{H} 22) * 12$ | $=\operatorname{IRR}(14: 128) * 12$ |
| 4 | Month V |  |  |  |  |  |
| 5 | 0 | 100,000 | 100,000 |  | 100,000 | 100,000 |
| 6 | 1 | $(10,000)$ | $(10,000)$ |  | $(10,000)$ | $(10,000)$ |
| 7 | 2 | $(10,000)$ | $(10,000)$ |  | $(10,000)$ | $(10,000)$ |
| 8 | 3 | $(10,000)$ | $(10,000)$ |  | $(10,000)$ | $(10,000)$ |
| 9 | 4 | $(10,000)$ | $(10,000)$ |  | $(10,000)$ | $(10,000)$ |
| 10 | 5 | $(10,000)$ | $(10,000)$ |  | $(10,000)$ | $(10,000)$ |
| 11 | 6 | $(10,000)$ | $(70,000)$ | 100,000 | 30,000 | 30,000 |
| 12 | 7 | $(10,000)$ |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 13 | 8 | $(10,000)$ |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 14 | 9 | $(10,000)$ |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 15 | 10 | $(10,000)$ |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 16 | 11 | $(10,000)$ |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 17 | 12 | $(10,000)$ |  | $(10,000)$ | $(10,000)$ | 30,000 |
| 18 | 13 |  |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 19 | 14 |  |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 20 | 15 |  |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 21 | 16 |  |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 22 | 17 |  |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 23 | 18 |  |  | $(10,000)$ | $(10,000)$ | $(10,000)$ |
| 24 | 19 |  |  |  |  | $(10,000)$ |
| 25 | 20 |  |  |  |  | $(10,000)$ |
| 26 | 21 |  |  |  |  | $(10,000)$ |
| 27 | 22 |  |  |  |  | $(10,000)$ |
| 28 | 23 |  |  |  |  | $(10,000)$ |
| 29 | 24 |  |  |  |  | $(10,000)$ |

## Recommendation 7: Offer online APR calculation formulas or calculators for ease of compliance.

Publishing a calculator, calculation aids, or simply recommended formulas would be effective ways for the Department to encourage consistent application of its disclosure calculation rules. This would bring certainty to providers and more reliable disclosures for small business owners. It could also potentially reduce the support burden on the Department by providing clear guidance and reducing instances of regulatory violations.

There are a number of instances in which regulators utilize calculation support tools for disclosure calculations. For example, Regulation Z itself refers providers to the "Regulation Z Annual Percentage Rate Tables" produced by the CFPB:
"(b)Computation tools. (1) The Regulation Z Annual Percentage Rate Tables produced by the Bureau may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: an irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity. ${ }^{21}$

Similarly, the OCC has published APR calculation software called the Annual Percentage Rate Calculation Program for Windows (APRWIN). ${ }^{22}$ Regulation Z explicitly endorses the use of calculator tools like this: "Creditors may use any other computation tool in determining the annual percentage rate if the rate so determined equals the rate determined in accordance with Appendix $J$ to this part, within the degree of accuracy set forth in paragraph (a) of this section. ${ }^{, 23}$ This explicit regulatory endorsement would apply not only to the OCC's APRWIN, but also to Microsoft Excel, Google Sheets, or the online calculators produced by Nav, provided they produce an appropriately accurate APR. To develop calculation aids, the Department could draw on any of these resources.

If the Department does not wish to produce its own calculators, a helpful approach would be to simply publish a webpage identifying formulas that can be used in common software programs

[^10]like Microsoft Excel and Google Sheets to perform the required calculations. ${ }^{24}$ The following calculations could be helpful to providers:

## Calculating APR or Estimated APR for products with payments of the same amount:

The formula below could be used in Microsoft Excel or Google Sheets for:

- Standard loans, leases, and other closed-end transactions
- Sales-based transactions if Projected Sales Volume is projected at a flat rate
- Open-end credit plans if the minimum payments used in calculating Estimated APR are of the same amount
- Factoring transactions, in which there is effectively only one payment

APR or Estimated APR = RATE ((number of payments), (payment amount as a negative number*), (amount of funds provided ${ }^{* *}$ )) $x$ (number of payments periods that occur in a year, to annualize the rate**)
*Payment amounts should include the net flow of payments for a payment period. For example, fees that occur regularly should be included within the payment amount.
**Fees paid at origination are excluded from the amount of funds provided.
***The number of payment periods used to annualize a rate are:

- Daily - 365
- Weekly - 52
- Biweekly - 26
- Monthly - 12

If post-origination fees occur at irregular periods or amounts after origination, then the formulas below for irregular payment amount should be used instead. Figure 4 below provides an example of an APR calculated using the RATE formula.

Figure 4: APR calculated using the RATE formula. This considers a merchant cash advance of $\$ 100,000$, with projected monthly payments of $\$ 17,156.14$ over six months.

| A | B | C |  |
| :--- | :--- | ---: | :---: |
| 1 | Loan Amount | 100,000 |  |
| 2 | Estimated APR | $10.00 \%$ | =RATE(B3,B4,B1)*12 |
| 3 | Term (months) | 6 |  |
| 4 | Payment | $-\$ 17,156.14$ |  |

[^11]If payments are to be made more than once per week, such as on weekdays only, the calculation method below using the IRR or XIRR formulas provides complete accuracy. For the sake of convenience in the Estimated APR calculation, providers are also given the option of utilizing the RATE formula by assuming that payments are made daily in an amount equal to the total payments projected within the week divided by seven.

This will result in some inaccuracy in the calculation. Assuming a weekday-only payment product with a one year term and an accurately calculated APR of $10 \%$, this assumption would result in an Estimated APR of $9.98 \%$, an inaccuracy of $0.02 \%$ and $0.22 \%$ of the APR. We believe permitting this assumption is a prudent convenience to providers with little negative impact on the financing decision-making process.

If payments of different amounts over the course of the financing are anticipated, even if offering weekday-only payment products, sales-based financing providers should use the Estimated APR calculation approaches below.

For typical factoring products, the same formula can be used. The number of payments is one. The payment amount is the amount of the invoice factored minus the rebate amount. The amount disbursed is the amount initially advanced. To annualize, multiply the result of the RATE formula by 365 days per year divided by the number of days between the factoring advance and the customers payment on the invoice. For example, if the invoice was paid to the factor in 30 days, to annualize the RATE formula it would be multiplied by 12 , which is 365 divided by 30 .

## Calculating APR or Estimated APR for products with payments of different amounts, and equal payment periods:

The formula below could be used in Microsoft Excel or Google Sheets for:

- Closed-end transactions with different payments amounts, such as a first or last payment, or financing structured with larger payments made earlier in the term.
- Sales-based transactions if Projected Sales Volume is projected to rise or fall, or if calculating Retrospective APR when payment amounts have varied.
- Open-ended credit plans if the minimum payments used in calculating Estimated APR are of different amounts.
$A P R$ or Estimated $A P R=I R R$ (select series of cells beginning with the amount of funds provided as a positive number, followed by the net payment amounts for each period as a negative number) $x$ (number of payments periods that occur in a year, to annualize the rate)

The time period between each cell selected in the IRR formula must represent an equal period of time. For example, if the payment occurs on weekdays only, weekend days where no payment
takes place must be included as blank cells. This way, the time between each cell reflects the equal period of time of one day.

The number of payment periods used to annualize the rate is the same as discussed for the RATE formula above.

Fees that are to be included in the APR or Estimated APR and take place after origination should be included within a payment period. For example, if a monthly payment amount is $\$ 1,000$, and a fee is also charged that month for $\$ 200$, the cell should reflect a total amount of $\$ 1,200$.

In the example in Figure 5 below, the IRR formula is used to calculate APR for the same MCA as was considered in Figure 4:

Figure 5: Estimated APR calculated using IRR formula for the same MCA as in Figure 4

| A | B | C | D | E | F | G | H |  |
| :--- | :--- | ---: | ---: | ---: | ---: | ---: | ---: | ---: |
| 1 | Estimated APR | $10.00 \%$ | $<--$ The IRR formula here is simply: $=$ IRR(B4:H4)*12 |  |  |  |  |  |
| 2 |  |  |  |  |  |  |  |  |
| 3 | Month | $1 / 1 / 2018$ | $2 / 1 / 2018$ | $3 / 1 / 2018$ | $4 / 1 / 2018$ | $5 / 1 / 2018$ | $6 / 1 / 2018$ | $7 / 1 / 2018$ |
| 4 | Payment | 100,000 | $-\$ 17,156.14$ | $-\$ 17,156.14$ | $-\$ 17,156.14$ | $-\$ 17,156.14$ | $-\$ 17,156.14$ | $-\$ 17,156.14$ |

The IRR formula works as well for different payment amounts. The below example considers a business with Projected Sales Volume expected to rise over time, with a fee assessed in the third month, and no payment made in the fifth month.

Figure 6: Estimated APR calculated for MCA projecting varying payment amounts. This example considers a business with sales volumes, and thus payment amounts, projected to rise over the term of the financing as the business grows. In this example, payments occur on weekdays only and so no payments take place on the weekend of January 5 and 6.

| A | A | B | C | D | E | F | G | H | I |
| :--- | :--- | ---: | ---: | ---: | ---: | ---: | ---: | ---: | ---: |
| 18 | RAPR | $26.31 \%$ | -- The formula here is: $=$ IRR(B21:121)*365 |  |  |  |  |  |  |
| 19 |  |  |  |  |  |  |  |  |  |
| 20 | Month | $1 / 1 / 2019$ | $1 / 2 / 2019$ | $1 / 3 / 2019$ | $1 / 4 / 2019$ | $1 / 5 / 2019$ | $1 / 6 / 2019$ | $1 / 7 / 2019$ | $1 / 8 / 2019$ |
| 21 | Payment | 100,000 | $-15,000$ | $-18,000$ | $-20,500$ | 0 | 0 | $-23,000$ | $-23,800$ |

Calculating Estimated APR or Retrospective APR for products with payments of different amounts, and/or different payment periods:

The formula below could be used in Microsoft Excel or Google Sheets for products with payments occurring only on weekdays, or otherwise at unequal intervals.

Estimated APR or Retrospective APR $=((X I R R$ (select a series of cells indicating the flow of money, starting with the disbursed amount in the first cell, and a second series of cells indicating the corresponding dates of those payments) +1$\left.)^{\wedge}(1 / 365)-1\right) * 365$

Figure 7: This example uses the XIRR formula to consider the same MCA described in Figure 6.

| 4 | A | B | C | D | E | F | G | H |
| :---: | :--- | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 13 | RAPR | $26.31 \%$ | <-- The formula here is: | $(($ (XIRR(B16:G16,B15:G15)+1)^(1/365)-1)*365 |  |  |  |  |
| 14 |  |  |  |  |  |  |  |  |
| 15 | Month | $1 / 1 / 2019$ | $1 / 2 / 2019$ | $1 / 3 / 2019$ | $1 / 4 / 2019$ | $1 / 7 / 2019$ | $1 / 8 / 2019$ | $1 / 8 / 2019$ |
| 16 | Payment | $\$ 100,000$ | $-\$ 15,000$ | $-\$ 18,000$ | $-\$ 20,500$ | $-\$ 23,000$ | $-\$ 23,000$ | $-\$ 800.00$ |

The formula produces the same Retrospective APR of $26.31 \%$, and may be easier for providers to use in two respects as a result of including the dates on which payments are made. First, it does not require the provider to include cells with a zero value where no payments were made. As you can see in row 15, the weekend dates of $1 / 5 / 2019$ and $1 / 6 / 2019$ are not included. Second, when multiple payments are made in a single day, providers may use multiple cells to reflect those payments. Cells G16 and H16 both represent payments made on 1/8/2019.

Further illustrations of APR calculation scenarios and demonstration of consistency of these calculations with Regulation Z are included in Appendix A.

## Recommendation 8: Establish a public complaint portal to support monitoring.

In order to ensure that disclosure requirements under SB 1235 are implemented consistently and accurately across the industry, we encourage the Department to create an online portal or similar mechanism for submitting and publicly monitoring complaints by small business owners. Building on the best practices from the CFPB's consumer complaint database, this portal would serve several important functions.

First, it would streamline the process by which small business owners formally complain about misleading or incorrect disclosures, signaling to small business owners that the Department actively seeks their input and takes seriously their complaints. Secondly, by allowing business owners, community groups and others to easily and regularly monitor the content and frequency of the complaints, it enables them to better understand and act on patterns of misbehavior. This is particularly important given that, while SB 1235 requires disclosure from a wide range of small business financing companies, it does not require unlicensed parties to obtain a license or be otherwise regulated by the Department.

Therefore, an online complaint database would facilitate small businesses and their advocates to more effectively pursue the private right of action granted through SB 1235, thereby complementing the enforcement activities of the Department. The small business finance sector is closely watching how SB 1235 is implemented and enforced in California, so we encourage the Department to invest the needed resources up front to allow small business owners to support enforcement. At a bare minimum, we believe the Department should provide a quarterly public report as to the number and type of complaints by provider.

## Additional technical recommendations for clarity:

Following are additional recommendations for narrower scope and requiring less discussion. Further recommendations not included here are found in the redline markup attached as an appendix.

1. Clarify the method of APR calculation for lines of credit. We applaud the Department for including fees among the finance charges calculated in APR for open-end lines of credit. Without including fees, the APRs of lines of credit would not be accurately comparable with other types of products and some lines of credit could exploit this loophole and disclose a $0 \%$ APR. In order to clarify the method for calculating APR for open-end credit, we suggest that the Department indicate the following two assumptions be used: Credit lines are drawn in full at origination and not re-drawn, and minimum payments are made according to the contract and on time.

For all types of credit products, the Department should also consider the Military Lending Act's improvements on the fee categorization in Regulation Z. These improvements were designed to plug three loopholes that have been identified in the fee inclusion rules of Reg Z. The Military Lending Act calculation of the Military APR (MAPR) additionally requires inclusion of a) application fees, b) fees like overdraft fees that could occur in a cash transaction, and c) fees for add-on products such as credit insurance. ${ }^{25}$ Not including these fees in the APR would encourage lenders to shift fees to the type of fees that are not disclosed in the APR.
2. In describing the "term" for open-end credit, it may make sense for the term disclosed to describe the period of time during which draws can be made, rather than the period of time to repay a draw based on minimum payments.

[^12]3. In §2091 and §2092 we suggest the language specify "the" particular payment channel rather than "a" particular payment channel," to clarify that all relevant payment channels must be considered.
4. In discussion of the consequences for inaccuracy in §2092(e), we recommend a language modification to clarify that while a provider might "calculate" various terms according to internal projections, they may not use those calculations for purposes of the required disclosure. Secondly, while prohibited for utilizing the voluntary "Underwriting method" they must utilize the "historical method."
5. A number of sections, including §2061(c).1.b, §2062(d).1.ii, use the term "estimated APR" to describe the initial APR of an adjustable/variable-rate transactions. These should instead be described as "initial APR" as contemplated in Regulation Z, which addresses this scenario.
6. In discussion of the APR calculation historical method in §3003, we suggest more specificity about how to "account" for specified daily amounts, penalties, and so on.

Thank you, again, for the opportunity to comment. We look forward to working with the Department of Business Oversight on finalizing these disclosures, for the good of California's small businesses.

Sincerely,
The Responsible Business Lending Coalition
Members include: Accion, The Aspen Institute, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Opportunity Fund, Small Business Majority, StreetShares

## Attached:

Appendix A - Explanation of How the Relevant APR Formula from TILA Regulation Z is Calculated Easily Using Basic Functions in Common Software
Appendix B - RBLC Markup of Suggestions for Draft Regulation

## Appendix A - Explanation of How the Relevant APR Formula from TILA Regulation $\mathbf{Z}$ is Calculated Easily Using Basic Functions in Common Software

The federal Truth in Lending Act (TILA) is implemented in Regulation Z, which details the mathematical formulas for calculating the annual percentage rate (APR) in Appendix J. The relevant Regulation Z APR formula can be calculated easily using standard industry software programs such as Microsoft Excel or Google Sheets.

For purposes of illustration, the TILA APR equation can be reduced to the following equation via serval simplifying assumptions. ${ }^{26}$ This TILA APR equation is explicitly designed to be used for products repaid daily, weekly, semi-monthly, monthly, and so on.

$$
\begin{equation*}
0=-A+\frac{P_{1}}{(1+i)^{t_{1}}}+\frac{P_{2}}{(1+i)^{t_{2}}}+\ldots+\frac{P_{n}}{(1+i)^{t_{n}}} \text { and (2) } A P R=i * m \tag{1}
\end{equation*}
$$

Where: $\mathrm{A}=$ initial advance $\quad \mathrm{i}=$ unit period interest rate (e.g. daily interest rate)
$\mathrm{Pj}=$ amount of the payment
$\mathrm{Tj}=$ number of full unit periods to the final payment
$\mathrm{n}=$ number of payments $\quad \mathrm{m}=$ number of periods per year

## These Reg Z Formulas Can Be Calculated Using The RATE, IRR and XIRR Functions in

 ExcelThe following functions in Microsoft Excel or Google Sheets can be used to calculate APR consistent with the Regulation Z formula:

1. For financing products with equal payment amounts and equal payment periods (e.g., for loans, sales-based financing with flat sales projections or using Historical Method, etc.):
$A P R=$ RATE (Number of payments, payment amount as a negative number, disbursed amount after fees deducted) * Number of payment periods in one year to annualize
2. For financing products with unequal payment amounts, and equal payment periods (e.g., sales-based financing with projected or retrospective sales volumes that vary over the payment period, with payments every day of the week):
$A P R=I R R$ (select a series of cells indicating the flow of money, with the disbursed amount in the first cell, followed by cells representing the total charges in each subsequent payment period) * Number of payment periods in one year to annualize

[^13]3. For financing products with unequal payment amounts, and/or unequal payment periods (e.g., sales-based financing with projected or retrospective sales volumes that vary over the payment period, with payments on weekdays only):
$A P R=((X I R R$ (select a series of cells indicating the flow of money, starting with the disbursed amount in the first cell, and a second series of cells indicating the corresponding dates of those payments) +1$\left.)^{\wedge}(1 / 365)-1\right) * 365$

We will use an example to show how the APR calculated from the RATE function is consistent with the TILA APR formula. To illustrate, consider a one year loan with an advance of $\$ 1,000$, origination fee of $\$ 200$, and 12 monthly payments of $\$ 100$. To show that the APR calculated in Excel is consistent with the TILA APR formula, we will plug the APR obtained from the Excel formula described above into the TILA APR equation to show the mathematical conditions are met. The TILA APR equation will resolve to zero, proving that the Excel-derived APR correctly represents the mathematical conditions in Regulation Z.

Step 1: Using the RATE formula in Excel, we derive an APR of 35.07\%. By plugging this APR and the number of periods in a year into Regulation $Z$ equation (2), we derive a period interest rate " $i$ " $=2.92 \%$.

$$
A P R=i * m
$$

APR $=35.07 \%$ Source: Excel output
$\square$
Source: loan term

Step 2: By plugging A, P1, P2 ... P12 and i into equation (1), we see that equation (1) simplifies to 0 as required. This means that the Excel APR meets all the mathematical conditions dictated by the TILA APR.


Expanding beyond this example, when used correctly the RATE, IRR and XIRR functions in Excel all return an interest rate that's calculated in a manner that is mathematically consistent with that of the TILA APR.

Following are demonstrations from Microsoft Excel using each of these formulas.

The following spreadsheet shows how the RATE function in Excel produces an APR that's consistent with the TILA APR methodology.
Use case: for loans with equal payments that occur at equal intervals

User Input
Calculated / Linked

| Section 1. Input loan terms |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: |
| In Section 1, we enter the loan terms. | Initial advance | -\$1,000.00 | Payment Frequencies | Periods per Year |
|  | Payment per period | \$25.00 | Monthly | 12 |
|  | Payment frequency | Daily | Semi-Monthly | 24 |
|  | No. of total payments | 48 | Bi-Weekly | 26 |
|  | Periods per year | 365 | Weekly | 52 |
|  |  |  | Daily | 365 |
|  |  |  | *For weekday payments, see tab 'Weekday RATE' |  |


| Section 2. Calculate interest using RATE() |  |  |
| :--- | :--- | ---: |
| In Section 2, we use the RATE function in | Interest rate, unit period | $0.77 \%$ |
| Excel to calculate both the interest per | APR | $281.10 \%$ |
| unit period, as well as the annual APR. |  |  |

Section 3. Setting up the Reg $Z$ Equation

In Sections 3 and 4, we verify that the APR calculated from the RATE function is in fact consistent with the TILA APR formula.

In order to do so, we will first map (in Section 3) the user inputted values about the loan to the various variables in the TILA APR formula.

$A P R=i * m$

| Name of variable | Variables | Value | Source |
| :--- | :---: | :---: | :---: |
| Initial advance | A | $-\$ 1,000.00$ | User input (Section 1) |
| Payment per period | P1....Pn | $\$ 25.00$ | User input (Section 1) |
| Interest per period | i | $0.77 \%$ | Calculated (Section 2) |
| Periods per year | m | 365 | Calculated (Section 1) |

## Source

User input (Section 1)
(Section 1)

Calculated (Section 1)

Section 4. Confirm Reg Z is Satisfied

In Section 4, we will plug the APR obtained from the Excel formula into the TILA APR formula to show the mathematical conditions are met. This is shown by taking the sum off all the values and showing it equals zero. Since cell $\$ \mathrm{H}$ \$44 is zero, we have shown that the APR calculated by Excel is consistent with the TILA APR.

| Period | Amount | Reg Z Calculation |  |
| :---: | :---: | :---: | :---: |
| 0 | -\$1,000.00 | -\$1,000.00 | Sum 0.00 |
| 1 | \$25.00 | \$24.81 | Is sum zero (nearest cent) Yes |
| 2 | \$25.00 | \$24.62 | Satisfies Reg Z Yes |
| 3 | \$25.00 | \$24.43 |  |
| 4 | \$25.00 | \$24.24 | NOTE: because this table ends at 50 rows, it will |
| 5 | \$25.00 | \$24.06 | not calculate in full for examples with more |
| 6 | \$25.00 | \$23.88 | than 49 payments. To calculate a protect with |
| 7 | \$25.00 | \$23.69 | more payments, simply extend te number of |
| 8 | \$25.00 | \$23.51 | rows in this section. |
| 9 | \$25.00 | \$23.33 |  |
| 10 | \$25.00 | \$23.15 |  |
| 11 | \$25.00 | \$22.98 |  |
| 12 | \$25.00 | \$22.80 |  |
| 13 | \$25.00 | \$22.63 |  |
| 14 | \$25.00 | \$22.45 |  |
| 15 | \$25.00 | \$22.28 |  |
| 16 | \$25.00 | \$22.11 |  |
| 17 | \$25.00 | \$21.94 |  |
| 18 | \$25.00 | \$21.78 |  |
| 19 | \$25.00 | \$21.61 |  |
| 20 | \$25.00 | \$21.44 |  |
| 21 | \$25.00 | \$21.28 |  |
| 22 | \$25.00 | \$21.12 |  |
| 23 | \$25.00 | \$20.96 |  |
| 24 | \$25.00 | \$20.80 |  |
| 25 | \$25.00 | \$20.64 |  |
| 26 | \$25.00 | \$20.48 |  |
| 27 | \$25.00 | \$20.32 |  |
| 28 | \$25.00 | \$20.17 |  |
| 29 | \$25.00 | \$20.01 |  |
| 30 | \$25.00 | \$19.86 |  |
| 31 | \$25.00 | \$19.71 |  |
| 32 | \$25.00 | \$19.56 |  |



The following spreadsheet shows how the IRR function in Excel produces an APR that's consistent with the TILA APR methodology
For ease of illustration, we have limited the Excel template for loans with no more than 52 periods. In production, Excel can handle loans with more than 52 periods
Use case: for loans with non-equal payments that occur at equal intervals.
User Input
Calculated / Linked

| Section 1. Input loan terms |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: |
| In Section 1, we enter the terms of the loan. | Loan Terms |  | Payment Frequencies | Periods per Year |
|  | Initial advance | -\$1,000.00 (Entered as a negative number) | Monthly | 12 |
|  | Period 1 payment | \$90.00 | Semi-Monthly | 24 |
|  | Period 2 payment | \$90.00 | Bi-Weekly | 26 |
|  | Period 3 payment | \$150.00 | Weekly | 52 |
|  | Period 4 payment | \$0.00 | Daily | 365 |
|  | Period 5 payment | \$0.00 | *For equal weekday pa | , please see tab |
|  | Period 6 payment | \$80.00 | 'Weekday RATE' |  |
|  | Period 7 payment | \$50.00 |  |  |
|  | Period 8 payment | \$60.00 |  |  |
|  | Period 9 payment | \$140.00 |  |  |
|  | Period 10 payment | \$100.00 |  |  |
|  | Period 11 payment | \$150.00 |  |  |
|  | Period 12 payment | \$110.00 |  |  |
|  | Period 13 payment | \$0.00 |  |  |
|  | Period 14 payment | \$0.00 |  |  |
|  | Period 15 payment | \$0.00 |  |  |
|  | Period 16 payment | \$0.00 |  |  |
|  | Period 17 payment | \$0.00 |  |  |
|  | Period 18 payment | \$0.00 |  |  |
|  | Period 19 payment | \$0.00 |  |  |
|  | Period 20 payment | \$0.00 |  |  |
|  | Period 21 payment | \$0.00 |  |  |
|  | Period 22 payment | \$0.00 |  |  |
|  | Period 23 payment | \$0.00 |  |  |
|  | Period 24 payment | \$0.00 |  |  |
|  | Period 25 payment | \$0.00 |  |  |
|  | Period 26 payment | \$0.00 |  |  |
|  | Period 27 payment | \$0.00 |  |  |
|  | Period 28 payment | \$0.00 |  |  |
|  | Period 29 payment | \$0.00 |  |  |
|  | Period 30 payment | \$0.00 |  |  |
|  | Period 31 payment | \$0.00 |  |  |
|  | Period 32 payment | \$0.00 |  |  |
|  | Period 33 payment | \$0.00 |  |  |
|  | Period 34 payment | \$0.00 |  |  |
|  | Period 35 payment | \$0.00 |  |  |
|  | Period 36 payment | \$0.00 |  |  |
|  | Period 37 payment | \$0.00 |  |  |
|  | Period 38 payment | \$0.00 |  |  |
|  | Period 39 payment | \$0.00 |  |  |
|  | Period 40 payment | \$0.00 |  |  |
|  | Period 41 payment | \$0.00 |  |  |
|  | Period 42 payment | \$0.00 |  |  |
|  | Period 43 payment | \$0.00 |  |  |
|  | Period 44 payment | \$0.00 |  |  |
|  | Period 45 payment | \$0.00 |  |  |
|  | Period 46 payment | \$0.00 |  |  |
|  | Period 47 payment | \$0.00 |  |  |
|  | Period 48 payment | \$0.00 |  |  |
|  | Period 49 payment | \$0.00 |  |  |
|  | Period 50 payment | \$0.00 |  |  |
|  | Period 51 payment | \$0.00 |  |  |
|  | Period 52 payment | \$0.00 |  |  |
|  | Payment frequency | Daily |  |  |
|  | No. of total payments | 10 |  |  |
|  | Periods per year | 365 |  |  |


| Section 2. Calculate interest using IRR() |  |  |
| :--- | :--- | ---: |
| In Section 2, we use the IRR function in | Interest rate, unit period | $0.28 \%$ |
| Excel to calculate both the interest per | APR | $101.98 \%$ |
| unit period, as well as the annual APR. |  |  |


| Section 3. Setting up the Reg Z Equation |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: |
| In Sections 3 and 4, we want to verify that the APR calculated from the IRR function is in fact consistent with the TILA APR formula. <br> In order to do so, we will first map (in Section 3) the user inputted values about the loan to the various variables in the TILA APR formula. | $0=-A+\frac{P_{1}}{(1+i)_{1}}$ | $\frac{}{i^{\gamma_{2}}}+$ |  |  |
|  | $A P R=4 * m$ |  |  |  |
|  | Name of variable | Variables | Value | Source |
|  | Initial advance | A | -\$1,000.00 | User input (Section 1) |
|  | Period 1 payment | P1 | \$90.00 | User input (Section 1) |
|  | Period 2 payment | P2 | \$90.00 | User input (Section 1) |
|  | Period 3 payment | P3 | \$150.00 | User input (Section 1) |
|  | Period 4 payment | P4 | \$0.00 | User input (Section 1) |
|  | Period 5 payment | P5 | \$0.00 | User input (Section 1) |
|  | Period 6 payment | P6 | \$80.00 | User input (Section 1) |
|  | Period 7 payment | P7 | \$50.00 | User input (Section 1) |
|  | Period 8 payment | P8 | \$60.00 | User input (Section 1) |
|  | Period 9 payment | P9 | \$140.00 | User input (Section 1) |
|  | Period 10 payment | P10 | \$100.00 | User input (Section 1) |
|  | Period 11 payment | P11 | \$150.00 | User input (Section 1) |
|  | Period 12 payment | P12 | \$110.00 | User input (Section 1) |
|  | Period 13 payment | P13 | \$0.00 | User input (Section 1) |
|  | Period 14 payment | P14 | \$0.00 | User input (Section 1) |


|  | Period 15 payment | P15 | \$0.00 | User input (Section 1) |  |
| :---: | :---: | :---: | :---: | :---: | :---: |
|  | Period 16 payment | P16 | \$0.00 | User input (Section 1) |  |
|  | Period 17 payment | P17 | \$0.00 | User input (Section 1) |  |
|  | Period 18 payment | P18 | \$0.00 | User input (Section 1) |  |
|  | Period 19 payment | P19 | \$0.00 | User input (Section 1) |  |
|  | Period 20 payment | P20 | \$0.00 | User input (Section 1) |  |
|  | Period 21 payment | P21 | \$0.00 | User input (Section 1) |  |
|  | Period 22 payment | P22 | \$0.00 | User input (Section 1) |  |
|  | Period 23 payment | P23 | \$0.00 | User input (Section 1) |  |
|  | Period 24 payment | P24 | \$0.00 | User input (Section 1) |  |
|  | Period 25 payment | P25 | \$0.00 | User input (Section 1) |  |
|  | Period 26 payment | P26 | \$0.00 | User input (Section 1) |  |
|  | Period 27 payment | P27 | \$0.00 | User input (Section 1) |  |
|  | Period 28 payment | P28 | \$0.00 | User input (Section 1) |  |
|  | Period 29 payment | P29 | \$0.00 | User input (Section 1) |  |
|  | Period 30 payment | P30 | \$0.00 | User input (Section 1) |  |
|  | Period 31 payment | P31 | \$0.00 | User input (Section 1) |  |
|  | Period 32 payment | P32 | \$0.00 | User input (Section 1) |  |
|  | Period 33 payment | P33 | \$0.00 | User input (Section 1) |  |
|  | Period 34 payment | P34 | \$0.00 | User input (Section 1) |  |
|  | Period 35 payment | P35 | \$0.00 | User input (Section 1) |  |
|  | Period 36 payment | P36 | \$0.00 | User input (Section 1) |  |
|  | Period 37 payment | P37 | \$0.00 | User input (Section 1) |  |
|  | Period 38 payment | P38 | \$0.00 | User input (Section 1) |  |
|  | Period 39 payment | P39 | \$0.00 | User input (Section 1) |  |
|  | Period 40 payment | P40 | \$0.00 | User input (Section 1) |  |
|  | Period 41 payment | P41 | \$0.00 | User input (Section 1) |  |
|  | Period 42 payment | P42 | \$0.00 | User input (Section 1) |  |
|  | Period 43 payment | P43 | \$0.00 | User input (Section 1) |  |
|  | Period 44 payment | P44 | \$0.00 | User input (Section 1) |  |
|  | Period 45 payment | P45 | \$0.00 | User input (Section 1) |  |
|  | Period 46 payment | P46 | \$0.00 | User input (Section 1) |  |
|  | Period 47 payment | P47 | \$0.00 | User input (Section 1) |  |
|  | Period 48 payment | P48 | \$0.00 | User input (Section 1) |  |
|  | Period 49 payment | P49 | \$0.00 | User input (Section 1) |  |
|  | Period 50 payment | P50 | \$0.00 | User input (Section 1) |  |
|  | Period 51 payment | P51 | \$0.00 | User input (Section 1) |  |
|  | Period 52 payment | P52 | \$0.00 | User input (Section 1) |  |
|  | 1 Iterest per period | i | 0.28\% | Calculated (Section 2) |  |
|  | Periods per year | m | 365 | Calculated (Section 1) |  |
| Section 4. Confirm Reg Z is Satisfied |  |  |  |  |  |
| In Section 4, we will plug the APR | Period | Amount | Reg Z Calculation |  |  |
| obtained from the Excel formula into the | 0 | - \$1,000.00 | -\$1,000.00 | Sum | 0.00 |
| TILA APR formula to show the | 1 | \$90.00 | \$89.75 | Is sum zero (nearest cent) | Yes |
| mathematical conditions are met. This is | 2 | \$90.00 | \$89.50 | Satisfies Reg Z | Yes |
| shown by taking the sum off all the values | 3 | \$150.00 | \$148.75 |  |  |
| and showing it equals zero. Since cell | 4 | \$0.00 | \$0.00 |  |  |
| \$H\$148 is zero, we have shown that the | 5 | \$0.00 | \$0.00 |  |  |
| APR calculated by Excel is consistent with | 6 | \$80.00 | \$78.67 |  |  |
| the TLLA APR. | 7 | \$50.00 | \$49.03 |  |  |
|  | 8 | \$60.00 | \$58.68 |  |  |
|  | 9 | \$140.00 | \$136.53 |  |  |
|  | 10 | \$100.00 | \$97.25 |  |  |
|  | 11 | \$150.00 | \$145.47 |  |  |
|  | 12 | \$110.00 | \$106.38 |  |  |
|  | 13 | \$0.00 | \$0.00 |  |  |
|  | 14 | \$0.00 | \$0.00 |  |  |
|  | 15 | \$0.00 | \$0.00 |  |  |
|  | 16 | \$0.00 | \$0.00 |  |  |
|  | 17 | \$0.00 | \$0.00 |  |  |
|  | 18 | \$0.00 | \$0.00 |  |  |
|  | 19 | \$0.00 | \$0.00 |  |  |
|  | 20 | \$0.00 | \$0.00 |  |  |
|  | 21 | \$0.00 | \$0.00 |  |  |
|  | 22 | \$0.00 | \$0.00 |  |  |
|  | 23 | \$0.00 | \$0.00 |  |  |
|  | 24 | \$0.00 | \$0.00 |  |  |
|  | 25 | \$0.00 | \$0.00 |  |  |
|  | 26 | \$0.00 | \$0.00 |  |  |
|  | 27 | \$0.00 | \$0.00 |  |  |
|  | 28 | \$0.00 | \$0.00 |  |  |
|  | 29 | \$0.00 | \$0.00 |  |  |
|  | 30 | \$0.00 | \$0.00 |  |  |
|  | 31 | \$0.00 | \$0.00 |  |  |
|  | 32 | \$0.00 | \$0.00 |  |  |
|  | 33 | \$0.00 | \$0.00 |  |  |
|  | 34 | \$0.00 | \$0.00 |  |  |
|  | 35 | \$0.00 | \$0.00 |  |  |
|  | 36 | \$0.00 | \$0.00 |  |  |
|  | 37 | \$0.00 | \$0.00 |  |  |
|  | 38 | \$0.00 | \$0.00 |  |  |
|  | 39 | \$0.00 | \$0.00 |  |  |
|  | 40 | \$0.00 | \$0.00 |  |  |
|  | 41 | \$0.00 | \$0.00 |  |  |
|  | 42 | \$0.00 | \$0.00 |  |  |
|  | 43 | \$0.00 | \$0.00 |  |  |
|  | 44 | \$0.00 | \$0.00 |  |  |
|  | 45 | \$0.00 | \$0.00 |  |  |
|  | 46 | \$0.00 | \$0.00 |  |  |
|  | 47 | \$0.00 | \$0.00 |  |  |
|  | 48 | \$0.00 | \$0.00 |  |  |
|  | 49 | \$0.00 | \$0.00 |  |  |
|  | 50 | \$0.00 | \$0.00 |  |  |
|  | 51 | \$0.00 | \$0.00 |  |  |
|  | 52 | \$0.00 | \$0.00 |  |  |

The following spreadsheet shows how the XIRR function in Excel produces an APR that's consistent with the TILA APR methodology.
For ease of illustration, we have limited the Excel template for loans with no more than 52 periods. In production, Excel can handle loans with more than 52 periods
Use case: for loans with (equal or non-equal) payments that occur at non-equal intervals.
User Input
Calculated / Linked

| Section 1. Input loan terms |  |  |  |
| :---: | :---: | :---: | :---: |
| In Section 1, we enter the terms of the loan. |  |  |  |
|  | Payment Number | Date | Amount |
|  | Initial advance | 2-Jan-19 | -\$1,000.00 |
|  | Payment 1 | 3-Jan-19 | \$90.00 |
|  | Payment 2 | 4-Jan-19 | \$100.00 |
|  | Payment 3 | 7-Jan-19 | \$50.00 |
|  | Payment 4 | 8-Jan-19 | \$120.00 |
|  | Payment 5 | 9-Jan-19 | \$70.00 |
|  | Payment 6 | 10-Jan-19 | \$100.00 |
|  | Payment 7 | 11-Jan-19 | \$100.00 |
|  | Payment 8 | 14-Jan-19 | \$100.00 |
|  | Payment 9 | 15-Jan-19 | \$100.00 |
|  | Payment 10 | 16-Jan-19 | \$100.00 |
|  | Payment 11 | 17-Jan-19 | \$80.00 |
|  | Payment 12 | 18-Jan-19 | \$70.00 |
|  | Payment 13 | 0 | 0 |
|  | Payment 14 | 0 | 0 |
|  | Payment 15 | 0 | 0 |
|  | Payment 16 | 0 | 0 |
|  | Payment 17 | 0 | 0 |
|  | Payment 18 | 0 | 0 |
|  | Payment 19 | 0 | 0 |
|  | Payment 20 | 0 | 0 |
|  | Payment 21 | 0 | 0 |
|  | Payment 22 | 0 | 0 |
|  | Payment 23 | 0 | 0 |
|  | Payment 24 | 0 | 0 |
|  | Payment 25 | 0 | 0 |
|  | Payment 26 | 0 | 0 |
|  | Payment 27 | 0 | 0 |
|  | Payment 28 | 0 | 0 |
|  | Payment 29 | 0 | 0 |
|  | Payment 30 | 0 | 0 |
|  | Payment 31 | 0 | 0 |
|  | Payment 32 | 0 | 0 |
|  | Payment 33 | 0 | 0 |
|  | Payment 34 | 0 | 0 |
|  | Payment 35 | 0 | 0 |
|  | Payment 36 | 0 | 0 |
|  | Payment 37 | 0 | 0 |
|  | Payment 38 | 0 | 0 |
|  | Payment 39 | 0 | 0 |
|  | Payment 40 | 0 | 0 |
|  | Payment 41 | 0 | 0 |
|  | Payment 42 | 0 | 0 |
|  | Payment 43 | 0 | 0 |
|  | Payment 44 | 0 | 0 |
|  | Payment 45 | 0 | 0 |
|  | Payment 46 | 0 | 0 |
|  | Payment 47 | 0 | 0 |
|  | Payment 48 | 0 | 0 |
|  | Payment 49 | 0 | 0 |
|  | Payment 50 | 0 | 0 |
|  | Payment 51 | 0 | 0 |
|  | Payment 52 | 0 | 0 |
|  | No. of total payments | 12 |  |
|  | Periods per year | 365 |  |


| Section 2. Calculate interest using XIRR() |  |
| :--- | :--- |


| Section 3. Setting up the Reg Z Equation |  |  |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| In Sections 3 and 4, we want to verify that the APR calculated from the XIRR function is in fact consistent with the TILA APR formula. <br> In order to do so, we will first map (in Section 3) the user inputted values about the loan to the various variables in the TILA APR formula. |  |  |  |  |  |  |
|  |  | Payment Variables | Value | Date Variable | Value | Source |
|  | Initial advanc | A | -\$1,000.00 | N/A | N/A | User input (Section 1) |
|  | Payment 1 | P1 | \$90.00 | t1 | 1 | User input (Section 1) |
|  | Payment 2 | P2 | \$100.00 | t2 | 2 | User input (Section 1) |
|  | Payment 3 | P3 | \$50.00 | t3 | 5 | User input (Section 1) |
|  | Payment 4 | P4 | \$120.00 | t4 | 6 | User input (Section 1) |
|  | Payment 5 | P5 | \$70.00 | t5 | 7 | User input (Section 1) |
|  | Payment 6 | P6 | \$100.00 | t6 | 8 | User input (Section 1) |
|  | Payment 7 | P7 | \$100.00 | t7 | 9 | User input (Section 1) |
|  | Payment 8 | P8 | \$100.00 | t8 | 12 | User input (Section 1) |
|  | Payment 9 | P9 | \$100.00 | t9 | 13 | User input (Section 1) |
|  | Payment 10 | P10 | \$100.00 | t10 | 14 | User input (Section 1) |
|  | Payment 11 | P11 | \$80.00 | t11 | 15 | User input (Section 1) |
|  | Payment 12 | P12 | \$70.00 | t12 | 16 | User input (Section 1) |
|  | Payment 13 | P13 | \$0.00 | t13 | 0 | User input (Section 1) |
|  | Payment 14 | P14 | \$0.00 | t14 | 0 | User input (Section 1) |
|  | Payment 15 | P15 | \$0.00 | t15 | 0 | User input (Section 1) |



## Appendix B - RBLC Markup of Recommendations for Draft Regulation

STATE OF CALIFORNIA<br>DEPARTMENT OF BUSINESS OVERSIGHT<br>CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3

## § 2057. Definitions.

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

1. "Approved advance limit" means the maximum advance a recipient can receive on outstanding, unpaid legally enforceable claims under a factoring agreement.
2. "Approved credit limit" means the maximum advance a recipient can receive under a commercial open-ended credit plan or asset-based lending transaction.
3. "Asset-based lending transaction" means the definition set forth in section 22800, subdivision (c) of the Code, with the following clarifications:
i. "Forwarding payments" includes arrangements in which a recipient and the finance company create an account in which third party obligors make payments, and arrangements in which the recipient directs third party obligors to make payments to the finance company.
ii. The amount advanced to the recipient may be equal to a percentage of the value of some or all of certain assets of the recipient, including accounts receivable, payment intangibles, cash receipts, inventory, or equipment.
4. "At the time of extending a specific offer of commercial financing" under section 22802 of the Code means:
i. The time when the terms of a specific finat financing toan offer are made amount or price is quoted to a recipient based on information obtained from, or about, the recipient, including when a broker provides this information to a recipient; and
ii. Any subsequent time when the terms of an existing commercial financing contract are amended or supplemented, prior to the recipient agreeing to the changes, if the resulting changes to the contract would result in a change to the finance charge or annual percentage rate previously disclosed to the recipient.

Commented [A1]: Implements Recommendation 3, "Clarify disclosure obligations of brokers."

Commented [A2]: These changes implement Recommendation 1, "Clarify that disclosures must be presented as soon as possible and in time for comparison shopping, not at a 'final loan offer' after it is too late."
5. "Benchmark rate" means a publicly available rate index, such as the London Interbank Offered Rate (LIBOR), commonly used to calculate the interest rate in adjustable-rate transactions in the credit industry.
6. "Bona fide true-up amount" means both:
i. A true-up amount to be paid to the recipient where all of the following are true:
A. The recipient has a contractual right to the true-up amount;
B. The contract requires that the finance company pay true-up amounts to the recipient without requiring a request from the recipient; and
C. As a matter of standard business practice for contracts of the kind offered to the recipient, the finance company regularly pays true-up amounts to recipients.
ii. A true-up amount to be owed by the recipient where both of the following are true:
A. The finance company has a contractual right to the true-up amount;
B. As a matter of standard business practice for contracts of the kind offered by the recipient, the finance company regularly charges true-up amounts to recipients.
7. "Code" means the California Financial Code.
8. "Closed-end transaction" means a transaction in which credit is extended only once over a specific period and is repaid in regular predetermined payments of a specified amount over a fixed period of time.
9. "Depository institution" means any of the entities defined under section 22800, subdivision (h) of the Code and does not include any non-depository subsidiaries or affiliates of such entities.
10. "Finance charge" means the amount of any and all costs of credit, represented as a dollar amount, as more specifically described in section 3010 of these rules.
11. "Finance company" means the individual or institution providing the commercial financing to the recipient.
12. "Initial interest rate" means, in a credit transaction with an interest rate that changes over time, 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 for a closed-end transaction, commercial open-end credit plan, or asset-based lending transaction.
14. "Margin" means, in a credit transaction with an adjustable interest rate, the standard adjustment to the benchmark rate designated in the contract used to calculate the periodic interest rate.
15. "Maximum non-interest finance charge" means:
i. For all commercial financing except factoring, the maximum amount of the finance charge other than interest accrued since the last payment that a recipient may be required to pay if the recipient chooses to prepay the outstanding balance due under a commercial financing agreement.
ii. For factoring, the maximum amount of the finance charge other than interest accrued since the time of the financing company 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.
16. "Particular payment channel or mechanism" means, with respect to sale-based financing, the payment channel(s) or mechanism(s) designated in the contract between a recipient and the finance company that will be used to determine the amount of a recipient's payment or a true-up amount.
17. "RecipientPerson" means any person of the entities defined under section 22800 , subdivisonsection ( $n!$ ) of the Code, except that this chapter shall only apply to persons who the entities defined if they are domiciled, headquartered, or otherwise identify their principal place of business in California and are the person entity seeking the commercial financing (i.e., not a third-party broker).
18. "Provider" means the definition set forth in section 22800 , subsection ( m ) of the Code. Within that definition, the phrase "administered by" excludes an arrangement whereby a non-depository institution provides technology or support services for a depository institution's branded commercial financing program so long as the non-depository 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.
19. "Retrospective annualized rate" is the actual annualized rate, determined after the specific financing contract has been fully repaid to the finance company, when the dates and amounts of payments and fees are known.
20. "Sales-based financing" means a transaction that is repaid by a recipient to the finance company 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 transactions with a "true-up mechanism."
21. "Specified payment amount" means the periodic pre-set amount stated in the contract described in subdivision (a)(24)(i) of this section.
22. "Split rate" means, with respect to sales-based financing, the percentage number used by the finance company to calculate the payment amounts paid to the finance company or the true-up amount.
23. "Term" means, with respect to all commercial financing except factoring, the length of time that it is anticipated will be necessary for the recipient to fulfill its obligations under a financing agreement.
24. "True-up mechanism" means, with respect to sales-based financing, a contractual arrangement with all of the following elements:
i. The finance company receives periodic payments based upon a pre-set amount stated in the contract;
ii. The contract specifies that, over the term of the contract, the finance company will receive amounts based upon a percentage of the recipient's sales or income.
iii. The finance company periodically reviews the sales or income received by the recipient to determine whether the amounts received by the finance company during the previous period are greater than or less than the percentage described in subdivision (a)(19) of this section.
iv. The finance company pays or charges the recipient an amount necessary to make average amounts collected by the finance company during the previous period equal to the percentage described in subdivision (a)(24)(ii) of this section.

Commented [A3]: This avoids a potential application of the disclosure requirements only to providers based in CA. The term "person" appeared here only in this definition, and "recipient" was not defined.
25. "True-up period" means a period reviewed by the finance company to determine whether the amount collected is greater than or less then the percentage described in subdivision (a)(24)(ii) of this section.
26. With respect to factoring transactions:
i. "Account debtor" means the debtor with the primary obligation to pay the legally enforceable claim assigned by the recipient.
ii. "Factoring fee" means the face value of a legally enforceable claim minus the original advance amount and the reserve amount, if applicable.
iii. "Maximum receivable term," under a general factoring agreement of the kind described by section 22803 of the Code, means the maximum length of time between when a finance company will accept a legally enforceable claim and when that legally enforceable claim will become due and payable by the legally enforceable claim's account debtor.
iv. "Original advance amount" means the amount that a finance company issues to a recipient upon receipt of a legally enforceable claim for payment before the finance company receives full payment of the legally enforceable claim.
v. "Reserve amount" means, in a reserve factoring transaction, the amount that is equal to the face value of the legally enforceable claim minus the original advance amount and fee retained by the finance company, that is paid to the recipient on or after the date that the finance company receives full payment for the legally enforceable claim.
vi. "Reserve factoring transaction" means a factoring transaction, where upon receipt of a legally enforceable claim for payment, a finance company advances an original advance amount to the recipient that is less than the face value of the legally enforceable claim minus the factoring fee, and where, upon timely payment in full of the legally enforceable claim, the finance company pays the recipient an amount equal to the face value of the legally enforceable claim minus the original advance amount and the factoring fee.
(b) 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.

## § 2060. General Formatting and Content Requirements.

Disclosures provided in accordance with sections 22800 through 22804 of the Code shall comply with the following requirements:
(a) At the top of the disclosure, centered on the page or other display medium, the provider shall print the following statement in bold font: "OFFER SUMMARYThis disclosure is provided in accordance with California law to help you understand the cost of your small business financing."
(b) At the bottom of the disclosure, below any other information required by this Article, the provider shall print the following statement: "The state of California requires small business financing companies to give this information so you can make an informed decision. By

Commented [A4]: This and a number of following comments address Recommendation 4, "Clarify required and prohibited language in disclosure forms." Focus groups found the legal nature of the requirement more contextua at the bottom of the disclosure, and so it is moved to (b) below, with some suggestions to simplify language.
acknowledging below, you confirm you have received this information.By signing below, you are confirming that you received this form." Below the statement, the provider shall include a space for the applicant to sign the form labeled "Applicant Signature" and a space for the applicant to write the date of their signature labeled "Date." When provided electronically, the provider shall include a method for the applicant to submit an electronic signature and an automatic date stamp.
(c) The term or estimated term of a transaction 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. For the purposes of these disclosures, a provider may 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".
(d) The annual percentage rate shall be expressed to the nearest ten basis points.
(e) The provider shall use the following font sizes for disclosures:

1. For the third column of a disclosure table, ten-point font.
2. Where the second and third columns are combined, ten-point font for the resulting column.
3. Where the second and third columns of a disclosure table are not combined, bold, sixteen-point font for the second column.
4. Notwithstanding subdivisions (e)(1) and (e)(2) above, in any row where the first column includes the language "Prepayment Costs", twelve-point font for any columns in the same row.
5. In all other cases, twelve-point font.
(f) The disclosures shall be presented to the recipient as a separate document from any other contract or disclosure document provided to the recipient.
(g) Once a specific offer of commercial financing has been made, the disclosures shall be presented to the recipient prior to authorizing the recipient to proceed further with the further processing of-the financing application.
(h) A provider may permit a recipient to customize the terms of the offer within the required disclosure and within the terms offered to the recipient through the provider. The provider may present the required disclosure in colors, typefaces, and other design elements that are clear, complete, conspicuous, easy to compare with other disclosures, and consistent with this section.
(f)(i) The provider may present the required disclosure in colors, typefaces, and other design elements that are clear, complete, conspicuous, easy to compare with other disclosures, and consistent with this section.

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

Disclosures for closed-end transactions provided in accordance with section 22802 of the Code shall comply with the following requirements, unless the closed-end transaction meets the definition of salesbased financing:
(a) The provider shall present the disclosures in a table consisting of seven rows and three columns.
(b) The first row of the table shall include only the following information:

Commented [A5]: Some online forms may have different forms of signature assent, such as a checkbox signature, which are legally acceptable but may render the removed language confusing. An alternative is proposed.

Commented [A6]: The disclosure addresses the costs of prepayment, but not all other aspects. The focus group suggested this would be clearer.

Commented [A7]: This clarifies the timing of the disclosure presentation, as addressed in Recommendation 1.

Commented [A8]: These implement aspects of Recommendation 5, "Clarify flexibility in disclosure formatting."
If the Department wishes to consider a trial disclosure program, the following could also be used
"( j$)$ Department will consider applications for presentation of the required disclosures in other formats that may increase usefulness and understanding by recipients, consistent with the following criteria:
1.The disclosure is Clear, Complete, Conspicuous, and easy to Compare with other options.
2.The disclosure includes all required elements described in the regulation, including APR or Estimated APR.
3.The order of required elements described in the regulation is maintained.
4.The required elements occur before, more prominently than, and separately from other disclosure elements.
5.The standard disclosure form should also be available. 6.No pricing metrics are included that could easily be confused to be an interest rate or APR, as described in the preceding recommendation.
7.The modified disclosure is tested and evaluated for impact on recipient understanding of the terms of financing and decisions made as a result of the disclosure."

Commented [A9]: All changes in this section are intended to implement Recommendation 4 "Clarify required and prohibited language in disclosure forms," based on focus group input, and replicated as appropriate in other sections.

1. In the first column, the following language: "Funding You Will ReceiveAmount of Funds provided."
2. In the second column, the amount of funds that will be provided to the recipient, excluding any deductions.
3. In the third column, a description of how the amount in the second column was calculated. For example: "This is your loan amount of [loan amount] minus the [amount and description of fees deducted] that will be deducted."
(c) The second row of the table shall include only the following information:
4. In first column:
a. 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)".
b. If the contract provides for an adjustable interest rate calculated using a benchmark rate and a margin, the following language: "Estimated Initial Annual Percentage Rate (APR)".
5. In second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
6. In the third column:
a. 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 This is the cost of your financing - including interest and
other fees - 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.

APR may be used to compare products with different interest rates and finance charges. 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."
b. 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 This is the cost of your financing-including interest and other fees - 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.

APR may be used to compare products with different interest rates and finance
charges. Your APR is not an interest rate. Your initial interest rate is [interest
Commented [A10]: These sorts of variable rates are addressed in Reg Z, where they are called the "initial APR."
rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges."
c. The following language, if the contract provides for an adjustable interest rate based upon a benchmark rate and a margin:
"APR is the cost of your financing expressed as a vearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make This is the cost of your financing-including interest and other fees-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.

APR may be used to compare products with different interest rates and finance charges. Your APR is not an interest rate. Your initial interest rate is [initial interest rate]. Although your interest rate will adjust over time based upon the [name of benchmark rate], for the purposes of this APR estimate, we have assumed that APR will be fixed for the length of the transaction. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges."
d. The following language, if no part of the finance charge is based upon interest accrued:
"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
makeThis is the cost of your financing expressed as a yearly rate. APR
incorporates the amount and timing of the funding youreceive, fees you pay,
and the periodic payments you make.

APR may be used to compare products with different interest rates (or no interest rate) and finance charges. Your APR is not an interest rate, and your loan does not have an interest rate."
(d) The third row of the table shall include only the following information:

1. In first column:
a. 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 interest accrued, the following language: "Total Finance Charge".
b. If the contract provides for an adjustable interest rate calculated using a benchmark rate and a margin, the following language: "Total Estimated Finance Charge".
2. In second column, the total finance charge, calculated in accordance with section 3010 of these rules.
3. In the third column:
a. The provider's calculation of the finance charge, with the amount and description of each expense (e.g. interest, origination fee, etc.) included in the finance charge.
b. If the contract provides for an adjustable interest rate calculated using a benchmark rate and a margin, an explanation of how the initial interest rate was used to calculate interest charges. For example:

This finance charge estimate assumes the interest rate will be [initial interest rate], which is the initial interest rate that would be in effect today under your contract. Your interest rate will adjust over time based upon the [name of benchmark], so your actual finance charge will vary.
(e) The fourth row of the table shall include only the following information:

1. In the first column
a. 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/Amount/Frequency".
b. 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-Amount/Frequency".
2. 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.).
ii. In the third column, a short explanation of the payment frequency. For example: "This is how much you will pay [frequency of payments, ex. each month]." The provider may also include a short statement describing when each payment will become due. For example: "Your monthly payments are due on the $1^{\text {st }}$ of every month.")
3. 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 column in the fourth row shall be combined and the provider shall list the periodic payment amounts with a description of when each amount will become due. For example:

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

## Or

Payments 1-23: \$600/month

Commented [A11]: The amount and frequency are displayed following, rendering this redundant, and a bit confusing in its formatting.

Payment 24: \$2000.
4. 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 based upon a benchmark rate and a margin:
a. In the second column, a payment amount calculated using the initial interest rate.
b. In the third column, a statement explaining that the payment amount disclosed is based upon the initial interest rate, and that the actual rate may change over time. For example: "This initial payment amount is based upon the interest rate that would be in effect today for your adjustable rate financing. This rate will adjust over time so your actual payment amount may vary." The provider may also include a statement describing when the payment will adjust and how it will be calculated. For example: "Your payment will adjust monthly based upon LIBOR."
(f) The fifth row of the table shall include only the following information:

1. In first column, the following language: "Term".
2. In second column, the term of the transaction.
3. In third column, an explanation describing the term. For example: "This is how long you will make payments under the contract."
(g) In the first column, the sixth and seventh rows shall be combined and shall include only the following language: "Prepayment Costs."
(h) In the sixth row, the second and third columns shall be combined and include only:
4. The following statement: "Ilf you pay off the financing earlyf you pay off the financing before the end of the Term, will you be required to pay finance charges other than interest since your last payment?"
5. Following the statement required by subdivision $(\mathrm{h})(1)$ above, the provider shall answer "You would need to pay $[X] \%$ of any unpaid portion of the finance charge up to \$[maximum non-interest finance charge].Yes", in bold, underlined, capitalized letters, 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. In all other cases, the provider shall answer "You would not need to pay any portion of the finance charge [other than interest owed since your last payment] $N \theta^{\prime \prime}$,-in bold, underlined, capitalized letters.
6. If the response to subdivision (h)(2) is "Yes", the following language shall appear below the language required by $(h)(1)$ and $(h)(2)$ above: The total finance charge other than interest could be as high as [maximum non-interest finance charge]."
(i) In the seventh row, the second and third columns shall be combined and shall include only:
7. The following statement: "If you pay off the financing earlyDoes paying off the financing before the end of the term result in any additional fees or charges not already included in the Finance Charge?"
8. Following the statement required by subdivision (i)(1) above, the provider shall answer "You would also pay additional fees not already included in the finance charge of
[amount or description of fees]. Yes", in bold, underlined, capitalized letters, 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, followed by a description of the prepayment charge. For example: "Prepayment during the first six months requires payment of a prepayment charge equal to $\$ 600$.". In all other cases, the provider shall answer "You would not pay additional fees not already included in the finance charge. $\mathrm{Ne}^{\prime \prime}$ in bold, underlined, capitalized letters.
(j) If the contract provides for periodic payments that are not monthly, then the provider shall insert one additional row below the third row, and the additional row shall include only the following information:
9. In the first column, the following language: "Average Monthly Cost".
10. In the second column, the average monthly cost that the recipient will pay over the term of the transaction.
11. In the third column, language explaining that the recipient will not be required to make monthly payments, but that the provider has calculated an average monthly cost for the disclosure. For example: "Although you do not make payments on a monthly basis, this is our calculation of your average monthly cost."
(k) 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 a statement explaining how the provider has based the disclosure on the minimum payment permitted under the contract. For example: "Although you have multiple payment options each month, the disclosures below assume that you will choose to make minimum monthly payments."

## § 2062. Commercial Open-Ended Credit Plan Disclosure Formatting.

Disclosures for commercial open-ended credit plans provided in accordance with section 22802 of the Code shall comply with the following requirements:
(a) The provider shall present the disclosures in a table consisting of eight rows and three columns.
(b) 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:

1. If the contract allows only for a single payment option: "The calculations below are based on an initial draw of an amount equal to-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."
2. If the contract allows for multiple payment options: "The calculations below are based on an initial draw of an amount equal to-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." Where the contract specifies no time at which outstanding amounts on the account must be repaid by the recipient, and the minimum periodic payments are less than or equal to the interest and other finance charges that will accrue on the amount advanced, the
provider shall also include the following statement: "Although there is no set term for your transaction, this estimate assumes you will pay back all remaining amounts owed in five years."
(c) The second row of the table shall include only the following information:
3. In first column, the following language: "Funding You Will ReceiveAmount of Funds Provided".
4. In second column, the maximum credit limit, minus any deductions required under the contract.
5. In the third column, a description of how the amount in the second column was calculated. For example: "This is the maximum amount you can draw on your credit line minus a $\$ 50$ draw fee that we deduct from the amount advanced."
(d) The third row of the table shall include the following information:
6. In 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 calculated using a
benchmark rate and a margin, the following language: "Estimated Initial Annual Percentage Rate (APR)".
7. In second column the provider's calculation of the annual percentage rate calculated in accordance with section 3001 of these rules.
8. 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 makeThis is the cost of your financing-including
interest and other fees - 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.
```

APR may be used to compare products with different interest rates and
finance charges. 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."
ii. If the contract provides for a 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 makeThis is the cost of your financing - including
interest and other fees-expressed as a yearly rate. APR incorporates the

Commented [A12]: These sorts of variable rates are addressed in Reg Z, where they are called the "initial APR."
amount and timing of the funding you receive, fees you pay, and the periodic payments you make.

APR may be used to compare products with different interest rates and finance charges. 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 based upon a benchmark rate index and a margin, the following language:

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"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 makeThis is the cost of your financing - including
interest and other fees-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.
```

APR may be used to compare products with different interest rates and
finance charges. Your APR is not an interest rate and is not used to calculate
your finance charges. Your initial interest rate is [initial interest rate].
Although your interest rate will adjust over time based upon the [name of
benchmark rate], for the purposes of this APR estimate, we have assumed
that your interest rate will be fixed for the length of the transaction. Your
APR may be higher than your interest rate because APR incorporates
interest costs and other finance charges."
(e) The fourth row of the table shall include only the following information:

1. 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: "Total Finance Charge".
ii. If the contract provides for an adjustable interest rate calculated using a benchmark rate and a margin, the following language: "Total Estimated Finance Charge".
2. In second column, the total finance charge calculated in accordance with section 3010 of these rules.
3. In the third column
a. The provider's calculation of the finance charge, with the amount and description (e.g. interest, origination fee, etc.) of each expense that is included in the finance charge.
b. If the contract provides for an adjustable interest rate calculated using a benchmark rate and a margin, the following language:
"This finance charge estimate assumes the interest rate will be [initial interest rate], which is the initial interest rate that would be in effect today under your contract. You interest rate will adjust over time based upon [name of benchmark rate], so your actual finance charge may vary."
(f) The fifth row of the table shall include only the following information:
4. In the first column
a. 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-Amount/Frequency".
b. 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-Amount/Frequency".
5. If periodic payments during the term of the transaction will not vary:
iii. In second column, the amount of each periodic payment followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.)
iv. In the third column, a short explanation of the payment frequency. For example: "This is how much you will pay [frequency of payment, ex. "each month"]." The provider may also include a short statement describe when each payment will become due. For example: "Your monthly payments are due on the $1^{\text {st }}$ of every month."
6. 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 column in the fifth row shall be combined and the provider shall list the periodic payment amounts with a description of when each amount will become due. For example:

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

Or

Payments 1-23: \$600/month
Payment 24: \$2000
4. 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 based upon a benchmark rate and a margin:
a. In the second column, a payment amount calculated using the initial interest rate.
b. In the third column, a statement explaining that the payment amount disclosed is based upon the initial interest rate, and that the actual rate may change over
time. For example: "This initial payment amount is based upon the interest rate that would be in effect today for your adjustable rate financing. This rate will adjust over time, so your actual payment amount may vary." The provider may also include a statement describing when the payment will adjust. For example: "Your payment will adjust monthly based upon LIBOR."
(g) The sixth row of the table shall include only the following information:

1. In the first column, the following language: "Term."
2. In the second column, the term of the transaction.
3. In the third column, an explanation describing the term including how long a recipient may draw down on their open-end credit plan. For example: "This is how long it would take to pay off your financingadvance if you make the minimum payments required under your contract. You may draw down on your open-end credit plan for () months."
(h) In the first column, the seventh and eighth rows shall be combined and shall include only the following language: "Prepayment Costs."
(i) In the seventh row, the second and third columns shall be combined and shall include only:
4. The following statement: "If you pay off the financing early:" before the end of the Jerm, will you be required to pay finance charges other than interest since your last payment?"
Z. Following the statement required by subdivision (i)(1) above, the provider shall answer "You would need to pay [X]\% of any unpaid portion of the finance charge up to \$[maximum non-interest finance charge]" "Yes" in bold, underlined, capitalized letters, 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. In all other cases, the provider shall answer "You would not need to pay any portion of the finance charge [other than interest owed since your last payment]." "No", in bold, underlined, capitalized letters.
3.2. If the response to subdivision (i)(2) is "Yes", the following language shall appear below the language required by (i)(1) and (i)(2) above: The total finance charge other than interest could be as high as [maximum non-interest finance charge]."
(j) In the eighth row, the second and third columns shall be combined and shall include only:
5. The following statement: "If you pay off the financing early:" "Does paying off the financing before the end of the term result in any additional fees or charges not already included in the Finance Charge?"
6. Following the statement required by subdivision (i)(1) above, the provider shall answer "You would also pay additional fees not already included in the finance charge of [amount or description of fees]" "Yes", in bold, underlined, capitalized letters, 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, followed by a description of the prepayment penalty. For example: "Prepayment during the first six months requires payment of a prepayment penalty equal to $\$ 600$." In all other cases, the provider shall answer "You would not pay additional fees not already included in the finance charge." "No", in bold, underlined, eapitalized letters.
(k) If the contract provides for periodic payments that are not monthly, then the provider shall insert one additional row below the fifth row, and the additional row shall include only the following information:
7. In the first column, the following language: "Average Monthly Cost."
8. In the second column, the average monthly cost that the recipient will pay over the term of the transaction.
9. In the third column, language explaining that the recipient will not be required to make monthly payments, but that the provider has calculated an average monthly cost for the disclosure. For example: "Although you do not make payments on a monthly basis, this is our calculation of your average monthly cost."

## § 2063. Factoring Disclosure Format

Disclosures for factoring transactions provided in accordance with section 22802 of the Code shall comply with the following requirements:
(a) The provider shall present the required disclosures in a table consisting of six rows and three columns.
(b) The first row of the table shall include only the following information:

1. In the first column, the following language: "Funding You Will ReceiveAmount of Funds provided."
2. In the second column, the amount of funds that will be provided to the recipient, excluding any deductions and any reserve amount, expressed in whole dollars.
3. In the third column, a description of how the amount in the second column was calculated. For example: "This is your advance amount of [advance amount] minus the [amount and description of fees deducted] that will be deducted." If the factoring transaction involves a reserve amount, the description may also include a statement that reflects the circumstances under which the recipient will receive the reserve payment. For example: "If the invoice is paid in full and on time, we will remit an additional $\$ 2,300$ reserve payment to you (\$10,000 - \$7,500 amount advanced - \$200 factoring fee).")
(c) The second row of the table shall include only the following information:
4. In first column, the following language: "Estimated Annual Percentage Rate (APR)".
5. In second column, the estimated annual percentage rate calculated in accordance with sections 3001 and 3002 of these rules.
6. In the third column, the following language:
"APR is the estimated cost of your financing expressed as a vearly rate. This is the estimated cost of your financing-including fees and other charges-expressed as a yearly fate. APR includesincorporates the amount and timing of the funding you receive, fees we charge, and payments made to [name of finance company]. This estimate assumes that you will assign the [description of asset assigned, e.g. "invoice"] to [name of financing company] today, and your customer will pay the [name of asset assigned, e.g. "invoice"] in full on the due date."
7. If no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (c)(3) of this section: "APRWhile APR can be used for comparison purposes, it is not an interest rate and the amount of the factoring fee we charge is not based upon an interest rate."
(d) The third row of the table shall include the following information
8. In the first column, the following language: "Total Finance Charge".
9. In the second column, the total finance charge calculated in accordance with section 3010 of these rules, expressed in whole dollars.
10. In the third column, the provider's calculation of the finance charge, with a description of each expense (e.g. factoring fee, origination fee, etc.) that is included in the finance charge.
(e) The fourth row of the table shall include only the following information:
11. In the first column, the following language: "Estimated Payment-Amount/Frequency".
12. In the second column, the following language: "NA" or "Not applicable".
13. In the third column, a statement 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.")
(f) The fifth row of the table shall include only the following information:
14. In the first column, the following language: "Estimated Term".
15. In the second column, the term of the transaction, calculated in accordance with section 2090, subdivision (a) of these rules.
a. In the third column, a statement describing how the provider calculated the term (ex. "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 than the due date.")
(g) The sixth row of the table shall include only the following information:
16. In the first column, the following language: "Prepayment Costs."
17. 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. The top cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date:", will you be required to pay finance charges other than interest?"
B. Below the statement required by subdivision $(\mathrm{g})(2)(\mathrm{i})(\mathrm{A})$ above, in the same cell, the provider shall answer "You would need to pay [X]\% of any unpaid portion of the finance charge, which could be as high as \$[maximum nonnterest finance charge]" "Yes", in bold, underlined, capitalized letters, if at any time during the term of the transaction, repurchase of the legally enforceable claim will result in the recipient paying finances charges other than interest since the advance was made. In all other cases, the provider
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    shall answer: "You would not need to pay any portion of the finance charge
    [other than interest owed since your last payment]." "No", in bold,
    underlined, capitalized letters.
C. If the response to subdivision(g)(2)(i)(B) is "Yes", the following language
shall appear below the language required by (g)(2)(i)(A) and (B) above: "The
total finance charge other than interest could be as high as [maximum non-
interest finance charge]."
D. The bottom cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date:", will you be required to pay any additional fees or charges not already included in the Finance Charge?"
E. Below the statement required by subdivision (g)(1)(i)(D) above, the provider shall answer "You would also pay additional fees not already included in the finance charge of [amount or description of fees],""Yes", in bold, underlined, capitalized letters, 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., followed by a description of the prepayment penalty. For example: "Repurchase before the invoice due date requires payment of an additional \(\$ 10\) repurchase charge." In all other cases, the provider shall answer "You would not pay additional fees not already included in the finance charge." "No" in bold, underlined, capital letters.
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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 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."
§ 2064. General Factoring Disclosure Format

Disclosures for factoring transactions provided in accordance with section 22803 of the Code shall comply with the following requirements:
(a) The provider shall present the required disclosures in a table consisting of seven rows and three columns.
(b) 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 does not vary based upon the account debtor for each 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 finance
company] with a due date [maximum receivable term] from the date of assignment. Actual costs may differ substantially."
b. If the finance charge will vary for different classes of legally enforceable claim with different characteristics (e.g. different account debtors):
i. "The calculations below are based upon a hypothetical [description of legally enforcement claims to be assigned, e.g. "invoice"] of [insert value calculated in accordance with section 3022 of these rules], assigned to [name of financing company] with a due date [maximum receivable term] from the date of assignment."
ii. A description 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 Elsa's Pizza Shack."
iii. "Actual costs may differ substantially."
(c) The second row of the table shall include only the following information:

1. In the first column, the following language: "Funding You Will ReceiveAmount of Funds Provided".
2. In the second column, the amount of funds that will be provided to the recipient, excluding any deductions and any reserve amount, for an example transaction compliant with section 3022 of these rules.
3. In the third column, a description of how the amount in the second column was calculated, such as "This is your advance amount of [insert advance amount] minus the [amount and description of fees and reserve amount deducted] that will be deducted." If the factoring transaction involves a reserve amount, the description may also include a statement that reflects the circumstances under which the recipient will receive the reserve payment. For example: "If the invoice is paid in full and on time, we will remit an additional $\$ 2,300$ reserve payment to you ( $\$ 10,000-\$ 7,500$ amount advanced - $\$ 200$ factoring fee)."
(d) The third row of the table shall include only the following information:
4. In the first column, the following language: "Estimated Annual Percentage Rate (APR).
5. In the second column, the provider's calculation of the annual percentage rate of the transaction calculated in accordance with sections 2090, 3001, and 3002 of these rules.
6. In third column, the following language:
"APR is the cost of your financing expressed as a yearly rate. This is the estimated cost of your financing - including fees and other charges - expressed as a yearly rate. APR in icludeserporates the amount and timing of the funding you receive, fees we charge, and payments made to [name of finance company]. This estimate assumes that you will assign the [description of legally enforceable claim assigned, e.g. "invoice"] to [name of finance company] today, the invoice is due in [maximum receivable term] and your customer will pay the [name of legally enforceable claim assigned, e.g. "invoice"] in full on the due date."
(e) If no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (d)(3) of this section: "APRWhile APR can be used for
comparison purposes, it is not an interest rate and the amount of the finance charge is not based upon an interest rate."
(f) The fourth row of the table shall include the following information:
7. In the first column, the following language: "Total Finance Charge."
8. In the second column, the total finance charge calculated in accordance with section 3010 of these rules.
9. 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.
(g) The fifth row of the table shall include only the following information:
10. In the first column, the following language: "Estimated Payment-Amount/Frequency."
11. In second column, the following language: "NA" or "Not applicable."
12. In the third column, a statement 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.")
(h) The sixth row of the table shall include only the following information:
13. In the first column, the following language: "Estimated Term."
14. In the second column, the term of the transaction calculated in accordance with section 2090, subdivision (b) of these rules.
15. In the third column, a statement 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 than the due date."
(i) The seventh row of the table shall include only the following information:
16. In the first column, the following language: "Prepayment Costs."
17. 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, and:
A. The top cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date:", will you be required to pay finance charges other than interest?"
B. Below the statement required by subdivision (i)(2)(i)(A) above, in the same cell, the provider shall answer "You would need to pay [X]\% of any unpaid portion of the finance charge, which could be as high as \$[maximum noninterest finance charge]," "Yes", in bold, underlined, capitalized letters, 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. In all other cases, the provider shall answer "You would not need to pay any portion of the finance charge [other than interest owed since your last payment]." "No", in bold, underlined, capitalized letters.
C. If the response to subdivision (i)(2)(i)(C) is "Yes", the following language shall appear below the language required by (i)(2)(i)(A) and (B) above: The total finance charge other than interest could be as high as [maximum noninterest finance charge]."
D. The bottom cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date:", will you be required to pay any additional fees or charges not already included in the Finance Charge?"
E. Below the statement required by subdivision (i)(2)(i)(D) above, in bold, underlined, capital letters, the provider shall answer "You would also pay additional fees not already included in the finance charge of [amount or description of fees]," "Yes", in bold, underlined, capitalized letters, 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, followed by a description of the
prepayment charge. For example: "Repurchase before the invoice due date requires payment of an additional \$10 repurchase charge." In all other cases, the provider shall answer "You would not pay additional fees not already included in the finance charge." "No" in bold, underlined, capital tetters.
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 provider shall include the following statements:
A. "You are not permitted to pay the amount due on the invoice 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."

## § 2065. Sales-Based Financing Disclosure Formatting

Disclosures for sales-based financing provided in accordance with section 22802 of the Code, shall comply with the following requirements:
(a) The provider shall present the required disclosures in a table consisting of eight rows and three columns.
(b) The first row of the table shall include only the following information:

1. In the first column, the following language: "Funding You Will ReceiveAmount of Funds Provided."
2. In the second column, the amount of funds that will be provided to the recipient, excluding any deductions.
3. In the third column, a description of how the amount in the second column was calculated. For example: "This is your advance amount of [advance amount] minus the [amount and description of fees deducted] that will be deducted."
(c) The second row of the table shall include only the following information:
4. In the first column, the following language: "Estimate Annual Percentage Rate (APR).
5. In the second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
6. In the third column, the following language:

> "APR 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 the payments you makeThis is the estimated cost of your financing - including fees and other charges expressed as a yearly rate. APR incorporates the amount and timing of the funding you feceive, fees you pay, and the periodic payments you make. This calculation assumes your estimated monthly income through [description of particular payment channel or mechanism] will be [monthly income estimate determined in accordance with sections 2091 or 2092 of these rules].
4. If no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (c)(3) of this section: "APRWhile APR can be used for comparison purposes, it is not an interest rate. The amount of the finance charge you will pay is a fixed amount and is not based upon an interest rate."
(d) The third row of the table shall include only the following information:

1. In the first column, the following language: "TotalEstimated Finance Charge".
2. In the second column, the finance charge calculated in accordance with section 3010 of these rules.
3. 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. 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."
(e) The fourth row of the table shall include only the following information:
4. In the first column, the following language: "Estimated Monthly Cost."
5. In the second column, the estimated monthly cost that the recipient will pay over the term of the transaction based 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

Commented [A13]: The total finance charge for salesbased financing is generally fixed, not estimated. More so, in fact, than traditional closed-end credit.

Month 7:
\$1000/month
3. In the third column, a description of how the provider calculated the estimated monthly cost.
(f) The fifth row of the table shall include only the following information:

1. In the first column, the following language: "Payment Amount/Frequency."
2. In the second column, the amount of each estimated periodic payment calculated in accordance with section 3003 of these rules, followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.). 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 periodic payment amounts calculated in accordance with section 3003 of these rules, and the time periods when those estimates apply. For example:

Months 1-2:
\$20/day

Months 3-7:
\$40/day
3. In the third column, a description of how the provider calculated daily payments and a description of anticipated monthly bona fide true-up amounts calculated in accordance with section 3003 of these rules.
(g) The sixth row of the table shall include only the following information:

1. In the first column, the following language: "Estimated Term."
2. In the second column, the estimated term of the transaction, calculated in accordance with section 3003 of these rules.
3. In the third column, an explanation stating that the estimated term is based upon assumptions about the recipient's income. For example:
"IAlthough your contract does not have a set term, this is our estimate of how long it will take to collect amounts due to-us-under the contract based assumingupon the assumption that you will receive $\$ 6,000$ in monthly income through your BrownPay account."
(h) In the first column, the seventh and eighth rows shall be combined and shall include the following language: "Prepayment Costs."
(i) In the seventh row, the second and third columns shall be combined and shall include only:
4. The following question: "If you pay off the financing faster than required:", will you pay finance charges other than interest since your last payment?"
5. Following the question required by subdivision (i)(1) above, the provider shall answer "You would need to pay $[\mathrm{X}] \%$ of any unpaid portion of the finance charge, which could be as higgh as \$[maximum non-interest finance charge]," "Yes", in bold, underlined, capitalized
letters, 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. In all other cases, the provider shall answer "You would not need to pay any portion of the finance charge [other than interest owed since your last payment]." "No", in bold, underlined, capitalized letters.
6. If the response to subdivision (i)(2) is "Yes", the following language shall appear below the language required by (i)(1) and (2): "The total finance charge other than interest could be as high as [maximum non-interest finance charge]."
(j) In the eighth row, the second and third columns shall be combined and shall include:
7. The following question: "Does paying If you pay off the financing faster than required:" result in any additional fees or charges not already included in the Finance Charge?"
8. After the question required by subdivision (j)(1) above, the provider shall answer "You would also pay additional fees not already included in the finance charge of [amount or description of fees]," "Yes", in bold, underlined, capitalized letters, 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, followed by a description of the prepayment charge. For example: "prepayment during the first six month requires payment of a prepayment charge equal to $\$ 600$." In all other cases, the provider shall answer "You would not pay additional fees not already included in the finance charge." "No" in bold, underlined, capitalized letters.
§ 2066. Formatting and Content Requirements for Lease Financing.
Disclosures for lease financing provided in accordance with section 22802 of the Code shall comply with the following requirements:
(a) The provider shall present the disclosures in a table consisting of eight rows and three columns.
(b) The first row of the table shall include only the following information:
9. In the first column, the following language: "Funding You Will ReceiveAmount of Funds provided."
10. In the second column:
a. If the finance company does not select, manufacture or supply the goods to be leased, the price the finance company will pay to acquire the property to be leased;
b. If the finance company selects, manufactures or supplies the goods to be leased, the price that the finance company would sell the goods in a cash transaction.
11. In the third column, a description of how the amount in the second column was calculated. For example: "This is the amount we will pay to the supplier to acquire the van that you will lease."
(c) The second row of the table shall include only the following information:
12. In first column the following language: "Annual Percentage Rate (APR)".
13. In second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
14. In the third column:
a. The following language, if the contract does not provide for a fixed price purchase option or a purchase option that can be calculated at the time of disclosure:
"APR 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 the payments you makeThis is the cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding we provide, fees you pay, and the periodic payments you make. This APR does not incorporate the costs associated with acquiring the leased property at the end of the lease term.

APR may be used to compare products with different finance charges. Your APR is not an interest rate, and your lease payments and charges are not based upon an interest rate.
b. The following language, if the contract provides for a fixed price purchase option or a purchase option that can be calculated at the time of disclosure:
"APR is the estimated cost of your financing expressed as a yearly rate. This is the cost of your financing expressed as a yearly rate. APR includesincorporates the amount and timing of the funding we provide, 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.

APR may be used to compare products with different finance charges. Your-APR is not an interest rate, and your lease payments and charges are not based upon an interest rate.
(d) The third row of the table shall include only the following information:

1. In first column the following language: "Total Finance Charge".
2. In second column, the total finance charge, calculated in accordance with section 3010 of these rules.
3. 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.
(e) The fourth row of the table shall include only the following information:
4. In the first column the following language: "Payment-Amount/Frequency".
5. If periodic payments during the term of the transaction will not vary:
a. In second column, the amount of each periodic payment followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.), and, if the contract provides for a fixed price purchase option or a purchase option that can be calculated at the time of disclosure, "Purchase Price:" followed by the price of the purchase option.
b. In the third column, a short explanation of the payments. For example: "This is how much you will pay each month, and the purchase price you may pay at the end of the lease to acquire the property." The provider may also include a short statement describing when each payment will become due. For example: "Your monthly payments are due on the $1^{\text {st }}$ day of every month.")
6. 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 with a description of when each amount will become due. For example:

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

Or

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

If the contract provides for a fixed price purchase option or a purchase option that can be calculated at the time of disclosure, the provider shall also include "Purchase Price:" followed by the price of the purchase option.
(f) The fifth row of the table shall include only the following information:

1. In first column, the following language: "Term".
2. In second column, the term of the transaction.
3. In third column, an explanation describing the term. For example: "This is how long you will make lease payments under the contract."
(g) In the first column, the sixth and seventh rows shall be combined and shall include the following language: "Prepayment Costs."
(h) In the sixth row, the second and third columns shall be combined and include only:
4. The following statement: "If you pay off the financing before the end of the Term:", will you be required to pay finance charges other than interest since your last payment?"
5. Following the statement required by subdivision $(\mathrm{h})(1)$ above, the provider shall answer "You would need to pay [X]\% of any unpaid portion of the finance charge, which could be as high as \$[maximum non-interest finance charge]," "Yes" in bold, underlined, eapitalized letters 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. In all other cases, the provider shall answer "You would not need to pay any portion of the finance charge [other than interest owed since your last payment]." "No" in bold, underlined, capitalized letters.
6. If the response to subdivision (h)(2) is "Yes," the following language shall appear below the language required by $(\mathrm{h})(1)$ and (2) above: "The total finance charge other than interest could be as high as [maximum non-interest finance charge]."
(i) In the seventh row, the second and third columns shall be combined and shall include only:
7. The following statement: "If you pay Does paying off the financing before the end of the term:" result in any additional fees or charges not already included in the Finance Charge?"
8. Following the statement required by subdivision (i)(1) above, the provider shall answer "You would also pay additional fees not already included in the finance charge of [amount or description of fees]," if, "Yes" in bold, underlined, capitalized letters 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 ${ }_{j i}$ followed by a description of the prepayment penalty. For example: "Prepayment during the first six months requires payment of a prepayment penalty equal to \$600." In all other cases, the provider shall answer"You would not pay additional fees not already included in the finance charge." "No" in bold, underlined, eapitalized letters.
(j) 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:
9. In the first column, the following language: "Average Monthly Cost."
10. In the second column, the average monthly cost that the recipient will pay over the term of the transaction.
11. In the third column, language explaining that the recipient will not be required to make monthly payments, but that the provider has calculated an average monthly cost for the disclosure. For example: "Although you do not make payments on a monthly basis, this is our calculation of your average monthly cost."

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

Disclosures for asset-based lending transactions, provided in accordance with section 22803 of the Code, shall comply with the following requirements:
(a) The provider shall present the required disclosures in a table consisting of nine rows and three columns.
(b) 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: "The calculations below are based upon a hypothetical lump sum draw of [amount calculated in accordance with Section 3021], with no additional draws, repaid as your customers repay the accounts that secure this loan. We anticipate we will receive an average of [amount calculated in accordance with Section 2091] per day in repayments from your customers' accounts. Actual costs may differ substantially."
(c) The second row of the table shall include only the following information:

1. In the first column, the following language: "Funding You Will ReceiveAmount of Funds provided."
2. In the second column, the amount of funds calculated in accordance with Section 3021, excluding any deductions.
3. In the third column, a description of how the amount in the second column was calculated. For example: "This is your advance amount of [advance amount] minus the [amount and description of fees deducted] that will be deducted."
(d) The third row of the table shall include only the following information:
4. In the first column, the following language: "Estimate Annual Percentage Rate (APR).
5. In the second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
6. In the third column, the following language:

> APR 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 the payments you make. This is the estimated cost of your financing - including fees and other chargesexpressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, and the payments we collect.

While APR can be used for comparison purposes, it is not an interest rate. Your initial interest rate will be [initial interest rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges. Although your interest rate will adjust over time based upon the [name of benchmark rate], for the purposes of this APR estimate, we have assumed your APR will be fixed for the length of the transaction.
(e) The fourth row of the table shall include only the following information:

1. In the first column, the following language: "Total Estimated Finance Charge".
2. In the second column, the finance charge calculated in accordance with section 3010 of these rules.
3. 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.
(f) The fifth row of the table shall include only the following information:
4. In the first column, the following language: "Estimated Monthly Cost."
5. 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
3. In the third column, a statement describing how the lender will receive repayments. For example: "This is how much we anticipate collecting each month in repayments from your customers' accounts."
(g) The sixth row of the table shall include only the following information:

1. In the first column, the following language: "Payment Amount/Frequency."
2. In the second column, the amount of each estimated periodic payment calculated in accordance with section 3003 of these rules, followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.). 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, or for some other reason provided for in the contract, the provider shall list the estimated periodic payment amounts calculated in accordance with section 3003 of these rules, and the time periods when those estimates apply. For example:

## Months 1-2:

\$20/day

Months 3-7:
\$40/day
3. In the third column, a statement describing how the lender will receive repayments. For example: "This is how much we anticipate collecting each day in repayments from your customers' accounts." The provider shall also describe anticipated monthly bona fide true-up amounts calculated in accordance with section 3003 of these rules.
(h) The seventh row of the table shall include only the following information:

1. In the first column, the following language: "Estimated Term."
2. In the second column, the estimated term of the transaction, calculated in accordance with section 3003 of these rules.
3. In the third column, an explanation stating that the estimated term is based upon assumptions about the recipient's income. For example:
"TAlthough your contract does not have a set term, this is our estimate of how long it will take to collect amounts due to us-under the contract based assumingupon the assumption that we will receive $\$ 700$ per day in repayments from your customers' accounts."
(i) In the first column, the eighth and ninth rows shall be combined and shall include the following language: "Prepayment Costs."
(j) In the eighth row, the second and third columns shall be combined and shall include only:
4. The following question: "If you pay off the financing faster than required, will you pay
finance charges other than interest since your last payment?"
5. Following the question required by subdivision (i)(1) above, the provider shall answer "You would need to pay $[X]$ \% of any unpaid portion of the finance charge up to $\$$ [maximum non-interest finance charge]," "Yes" in bold, underlined, capitalized letters 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. In all other cases, the provider shall answer "You would not need to pay any portion of the finance charge [other than interest owed since your last paymentl." "No" in bold, underlined, capitalized letters.
6. If the response to subdivision (i)(2) is "Yes," the following language shall appear below the language required by (i)(1) and (2): "The total finance charge other than interest could be as high as [maximum non-interest finance charge]."
(k) In the ninth row, the second and third columns shall be combined and shall include:
7. The following question: "Does paying If you pay off the financing faster than required:" result in any additional fees or charges not already included in the Finance Charge?"
8. After the question required by subdivision $(\mathrm{j})(1)$ above, the provider shall answer "You would also pay additional fees not already included in the finance charge of [amount or description of fees]," "Yes" in bold, underlined, capitalized letters 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, followed by a description of the prepayment penalty. For example: "Prepayment during the first six months requires payment of a prepayment penalty equal to $\$ 600$." In all other cases, the provider shall answer "You would not pay additional fees not already included in the
finance charge." "No" in bold, underlined, capitalized letters.

## § 2070. Signatures.

(a) A recipient's signature confirming receipt of the disclosures shall be obtained on disclosures made pursuant to both sections 22802 and 22803 of the Code before consummating a commercial financing transaction.
(b) If a commercial financing transaction is being consummated via the internet, a provider may obtain a recipient's signature electronically after making the required disclosures.
§ 2071. Thresholds for Disclosure
(a) For the purpose of determining if the amount of a commercial financing offer is equal to or less than $\$ 500,000$, a provider shall:

1. Use the approved credit limit for an offer under a commercial open-end credit plan;
2. Use the approved credit limit for an offer under an asset-based lending transaction, if:
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 maximum advance limit exceeds $\$ 500,000$; and
iii. The parties to the asset-based lending transaction agree in writing prior to execution of their agreement that an amount exceeding $\$ 500,000$ is reasonably expected to be unpaid and outstanding at some point during the agreement.
3. Use the maximum advance limit for an offer under a factoring transaction, if:
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 maximum advance limit exceeds $\$ 500,000$;
iii. The parties to the factoring transaction agree in writing prior to execution of their agreement that at some point during the agreement, an amount exceeding $\$ 500,000$ is reasonably expected to be advanced to the recipient for legally enforceable claims that have not yet been paid.

## § 2089. Closed-end/Open-end Credit Plans with Payment Options.

(a) For closed-end credit and open-end credit plans that offer multiple payment options to the recipient, the provider shall calculate disclosures for APR, periodic payment amount, monthly cost, finance charge, and term based upon the minimum periodic payments allowed under the contract.
(b) For closed-end credit and open-end credit plans that offer multiple payment options to the recipient, where the contract specifies no time at which outstanding amounts on the account must be repaid by the recipient, and the minimum periodic payments described in subdivision (a) of this Section are less than or equal to the interest and other finance charges that will accrue on the amount advanced, the provider shall assume that any outstanding balance on the account must be repaid five years from the date of the advance.

## § 2090. Estimated Term and APR - Factoring Transactions

This section shall apply only to "factoring" as the term is defined by section 22800, subdivision (i) of the Code.
(a) For the purposes of disclosures under section 22802 of the Code, a provider shall calculate the estimate term by calculating the time between when the provider will advance the original advance amount, and when the legally enforceable claim will become due and payable.
(b) For the purposes of disclosures under section 22803 of the Code, the estimated term disclosed to the recipient shall be the maximum receivable term.
(c) The provider may use the estimated term described in subdivisions (a) and (b) above when calculating the estimated annual percentage rate required by section 3000 of these rules.

## § 2091. Estimates -Accounts Receivable Purchase Transactions/Asset-Based Lending Transactions Historical Method.

This section shall apply only to sales-based financing:
(a) A provider shall calculate a recipient's estimated periodic payments and other charges, monthly costs, bona fide true-up amounts, term, and annual percentage rate disclosed to the recipient using an "estimated monthly sales or receipts projection"
(b) Estimated monthly sales or receipts projection

1. The estimated monthly sales or receipts projection shall be calculated as the recipient's historical average sales volume or income with respect to the a particular payment channel or mechanism.
2. A provider shall fix the number of months considered to determine the recipient's average monthly historical sales or income, provided that the period of historical data used by the provider shall not be less than one (1) month, or more than twelve (12) months.
3. A provider shall use the same number of months to determine all recipients' average historical sales or income, except where a recipient has not been in operation for the number of months set by the provider.
4. When a recipient has not been in operation for the number of months set by the provider as described in subdivision (b)(3) of this section, the provider may calculate the recipient's historical average sales volume or income with respect to the a particular payment channel or mechanism using an average from the months the recipient has been in operation.

## § 2092. Estimates - Sales-based financing (Accounts Receivable Purchase Transactions - Underwriting Method.

This section shall apply only to sales-based financing:
(a) As an alternative to the methods described in Section 2091 for calculating estimated periodic payments and other charges, monthly costs, bona fide true-up amounts, term, and annual percentage rate disclosed to the recipient, a provider may elect to calculate estimated periodic payments, monthly costs, bona fide true-up amounts, term, and annual percentage rate in accordance with this section.
(b) A provider shall calculate a recipient's estimated periodic payment(s) and other charges, monthly costs, bona fide true-up amounts, term, and annual percentage rate disclosed to the recipient using an "internal estimated sales" projection through the particular payment channel or mechanism designated in the contract.
(c) The "internal estimated sales projection" through the a particular payment channel or mechanism shall be calculated using the best information reasonably available to the provider.
(d) Once every twelve four months, a provider who makes disclosures based upon internal estimated sales projections shall conduct an audit of its commercial financings.

1. The audit shall cover all commercial financings paid off during the previous twelvemonth four-month period where the provider made disclosures based upon internal estimated sales projections. The audit shall not include commercial financings where:
i. The provider or finance company initiated legal action against the recipient in court or arbitration for breach of the contract or to collect amounts due under the contract; or
ii. The provider or finance company stopped collection of amounts due under a contract after determining that the recipient had violated the terms of the contract.
2. The provider shall calculate the retrospective annual percentage rate for each commercial financing in the audit.

Commented [A14]: To clarify that all payment channels from which the payments will be calculated and drawn should be included.

Commented [A15]: The comments in this section are intended to implement Recommendation 2, "Modify the proposed method calculating Estimated APR of sales-based financing to ensure that providers' flexibility in estimation is paired with sufficient accountability." The use of four months is suggested here to maintain the Department's method of consequence described in (e), but shorten the period of time to the first consequence to one year. We would also support a simplification to a single measurement conducted annually, with consequence annually. Providers are of course able to measure more frequently to anticipate their results.
3. The provider shall subtract the disclosed annualized rate from the retrospective annualized rate for each commercial financing in the audit. The difference resulting from this calculation shall be called the "APR spread".
4. The provider shall average the APR spread for each commercial financing in the audit. The resulting average shall be called the "annuat audited APR spread."
(e) After completing its audit, the provider shall calculate the weighted average of the annual APR spreads for the last three audits and the last five audits using the total number of transactions used to calculate the annual audited APR spreads for each year audit period. This part does not require a provider to calculate a weighted average iffor the last three audits if the provider has not conducted three audits, or the weighted average for the last five audits if the provider has not conducted five audits.

1. If the weighted average for the last three audits is greater than $10 \%$, the provider may not utilize the "underwriting method" described in §2092 methods described in this section for disclosure of the required termsealculate estimated payments, term of annual percentage rate in accordance with this section for 24 months, but and shall employ the methods described in Section 2091. must instead utilize the "Historical Method described in $\$ 2091$.
2. If the weighted average for the last five audits is greater than $5 \%$, the provider may not utilize the "underwriting method" described in $\$ 2092$ methods described in this section for disclosure of the required termsealculate estimated payments, term or annual percentage rate in accordance with this section for 24 months, but shall employ the methods described in Section 2091. and must instead utilize the "Historical Method described in $\$ 2091 .-$
(f) Following the end of the 24 month period described in part (e) 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.
(g) A provider that elects to calculate estimated periodic payments, monthly costs, bona fide trueup amounts, term, and annual percentage rate in accordance with this section shall annually report to the Department all of the following information for each financing account repaid within the previous 12 months:
3. -The amount financed.
4. The projected total payments per month disclosed to by-the recipient.
5. The average monthly payment amount made by the recipient.
6. The estimated APR initially disclosed to the recipient.
7. The retrospective APR that is calculated upon repayment by the recipient.
8. The aggregate audited APR spread for each audit within the reporting period.
$(f)(h) \quad$ Information provided to the Department by a provider pursuant to this section shall be considered confidential and not subject to disclosure by the Department pursuant to the Public Records Act (Government Code Section 6250 et seq.).

## § 3000. Annualized Rate Disclosure.

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

Commented [A16]: "audited" because period of time is no longer "annual."

Commented [A17]: The changes in this paragraph are intended to help clarify that use of the underwriting method is an option available to providers on a voluntary basis, which they opt in to if they choose to accept the corresponding requirements.
They are also intended to clarify that, while the provider could no longer quote APRs based on the underwriting method, they could calculate the APR based on the underwriting method for internal use, such as considering how to improve it or whether to utilize it again in the future.

[^14]
## percentage rate.

## § 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 the actuarial method set forth in Appendix J, 12 C.F.R. Part 1026, as it may be amended, and which is incorporated herein by this reference.
(b) The actuarial method described in subdivision (a) specifies that, when no payment is made, or when the payment is insufficient to pay the accumulated finance charge, the actuarial method requires that the unpaid finance charge be added to the amount financed and thereby capitalized. Interest is computed on interest since in succeeding periods the interest rate is applied to the unpaid balance including the unpaid finance charge.
(c) The annual percentage rate shall be considered accurate if it is not more than $1 / 8$ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a) of this section.
(d) The annual percentage rate shall be the nominal annual rate determined by multiplying the unitperiod rate by the number of unit-periods in a year.
(e) The term of the transaction begins on the date of its consummation, except that if the finance charge or any portion of it is earned beginning on a later date, the term begins on the later date. The term ends on the date the last payment is due, except that if an advance is scheduled after that date, the term ends on the later date. For computation purposes, the length of the term shall be equal to the time interval between any point in time on the beginning date to the same point in time on the ending date.
(f) The annual percentage rate calculation shall include all finance charges, as that term is defined in section 3010 of these rules.
(g) When calculating the annual percentage rate, a provider may assume that it can collect payments on anticipated payment days every calendar day, regardless of bank holidays, weekends, or other days that would otherwise delay or accelerate the provider's collection of a payment.
(h) For products where any part of the finance charge is based upon interest that accrues on the outstanding principal balance owed by the recipient, and the interest charge adjusts over time based upon a benchmark rate plus a margin, the provider may calculated the interest charge for the life of the loan based upon the benchmark rate in effect at the time of disclosure, plus any margin, taking into account any contractual requirements that would result in the interest rate deviating from benchmark rate plus the margin (e.g. initial fixed-rate periods)
(h)(i) When calculating the annual percentage rate for commercial open-ended credit plans, the provider shall assume that credit lines are drawn in full at origination and not re-drawn, and that minimum on-time payments are made pursuant to the contract-.
(i)(j) If, as a condition of refinancing or renewing a provider's existing advance or loan to a recipient the provider requires the recipient to pay off or pay down the balance of the existing loan or advance with a maximum non-interest finance charge greater than zero, the annual percentage rate shall reflect the annualized cost of previous loans or advances which were required to be paid off or paid down within the current sequence of financing. The current sequence of financing includes the new transaction being considered as well as all capital provided by the provider to the recipient, and all payments and fees paid historically by the

Commented [A19]: Calculations must also incorporate other paragraphs of this section not addressed in (a).

Commented [A20]: This may raise problems with calculations for weekday-only payment products.

Commented [A21]: To clarify how finance charges are to be incorporated for open-end credit.
recipient to the provider, until a point at which the recipient held no financing with the provider that was repaid as a condition of subsequent financing from the provider.

## § 3002. Calculation of Annual Percentage Rate - Factoring Transactions

(a) When calculating an annual percentage rate 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, subdivision (a)(6) 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 an annual percentage rate 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 , subdivision (a)(6) 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 maximum receivable term to the date the disclosure is made.

## § 3003. Estimates Annual Percentage Rate - Sales-based financing

(a) When calculating the estimated periodic payment and bona fide true-up amounts for salesbased financing, a provider shall use the estimated monthly sales projection described in subdivision (b) of section 2091 of these rules or the provider's internal estimated sales projection described in subdivision (c) 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 periodic payment or series of periodic payments falls below a contracted threshold.
(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 sales projection described in subdivision (b) of section 2091, or internal estimated sales projection described in subdivision (c) of section 2092 of these rules, accounting for the following and assuming that all payments are made according to any required minimums and avoiding any penalties or fees:
5. Specified payment amounts;
6. Changes to the split rate over time;
7. Contractual provisions requiring a minimum payment amount;
8. Penalty payments required when a periodic payment or series of periodic payments falls below a contracted threshold;
9. Bona fide true-up amounts, but not true-up amounts that are not bona fide; and
10. Any other finance charges that may be reasonably anticipated based upon the estimated monthly sales projection or the provider's internal estimated sales projection.
(c) When calculatinged estimated annual percentage rate, but not the estimated periodic payment for products where the recipient makes payments more than once per week, a provider's calculation may assume that the recipient will make payments on every calendar day, and may calculate the daily payment for the purposes of the annual percentage rate calculation by dividing the amount of payments made during each 7-day period by 7 .

Commented [A22]: Implements Recommendation 6: "Require disclosures of both APR and amount of funds provided in order to include all costs associated with finance renewals."

Commented [A23]: This is intended to clarify in what way the following items should be accounted for.

## 3010. Finance Charge.

The "finance charge" for a commercial credit transaction is the sum of:
(a) All charges that would be included in the finance charge under 12 C.F.R. part 1026.4, as it may be amended, if the transaction were a consumer credit transaction subject to 12 C.F.R. part 1026.4;
(b) In any accounts receivable purchase transaction, the discount taken on the face value of the accounts receivable; and
(c) In any lease financing transaction, the sum of the lease payments and, if there is a fixed-price purchase option or a purchase option with a price that can be calculated at the time of disclosure, the purchase price listed in the contract 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 subdivision (b)(2) of section 2066 of these rules.

## § 3020. Asset-based lending; General disclosure requirements.

In the alternative to providing disclosures to a recipient under section 2063 of these rules, an assetbased lending provider that offers a recipient an agreement describing the general terms and conditions of the commercial financing transaction that will occur under the agreement may, as permitted by section 22803 of the Code, provide the recipient the required disclosures by way of an example transaction in accordance with the requirements of this Article.

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

The alternative disclosures to a recipient under section 3020 of these rules shall be made using an example transaction and in accordance with the formatting requirements of section 2064 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:
(a) Maximum draw amount. If the agreement between a finance company and recipient permits an advance of funds to the recipient up to and including a maximum credit amount, the example transaction used in making the disclosures shall assume the recipient has drawn half the maximum credit amount. For example, if the maximum credit amount under the agreement is $\$ 50,000$, the example transaction shall assume the recipient has drawn $\$ 25,000$.
(b) No maximum draw amount. If the agreement between a provider and recipient does not specify a maximum credit amount, the example transaction used in making the disclosures shall assume the recipient has drawn $\$ 10,000$.

## § 3022. Factoring; Example Transaction.

(a) For factoring transactions where the finance charge 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 finance 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 finance company 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 half the maximum aggregate purchase price. For example, if the finance company will advance up to $\$ 100,000$ on unpaid legally enforceable claims, the example transaction shall assume the recipient has drawn \$50,000.
(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 $\$ 10,000$.


[^0]:    ${ }^{1}$ Members of the RBLC include Accion, the Aspen Institute, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Opportunity Fund, Small Business Majority and StreetShares.
    ${ }^{2}$ https://dbo.ca.gov/wp-content/uploads/sites/296/2019/04/PRO-01-18-RBLC.pdf

[^1]:    ${ }^{3}$ Board of Governors of the Federal Reserve System, "Press Release: Federal Reserve Releases Findings from Study of Small Business Owners' Perspectives on Online Lenders and Products," 2018.
    https://www.federalreserve.gov/publica $\square$ ons/files/2018-small-business-lending.pdf

[^2]:    ${ }^{4}$ Page 13; https://dbo.ca.gov/wp-content/uploads/sites/296/2019/04/PRO-01-18-RBLC.pdf
    ${ }^{5} 12$ C.F.R. § Part 1026.5(c)
    ${ }^{6} 12$ C.F.R. § Part 1026 Appendix J(b).
    ${ }^{7}$ Some providers have also expressed a view that "APR can be misleading for products that provide more frequent payments or unique repayment features. For example, two products with identical pricing and terms will have different APRs if one is a monthly pay product and one is a daily pay product." This argument mistakenly assumes away the time value of money. In fact, the frequency at which capital must be repaid is an important consideration of cost. According to the National Consumer Law Center, APR was developed in order to accurately reflect the cost implications that result from when repayments occur. If a small business must repay capital more quickly within the term of financing, they have less use of the capital they borrowed. This is accurately reflected in a higher APR. For more detail, please see pages 17-19 of the RBLC's January comment, and the letter from the National Consumer Law Center included as Appendix B.

[^3]:    ${ }^{8}$ Lipman, Barbara and Ann Marie Wiersch, Board of Governors of the Federal Reserve System, "Browsing to Borrow: 'Mom \& Pop’ Small Business Owners' Perspectives on Online Lenders and Products," June 2018. https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf

[^4]:    ${ }^{9}$ Lipman, Barbara and Ann Marie Wiersch, Board of Governors of the Federal Reserve System, "Browsing to Borrow: ‘Mom \& Pop’ Small Business Owners' Perspectives on Online Lenders and Products," June 2018. https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf
    ${ }^{10}$ Section 22802(a) of the Financial Code

[^5]:    ${ }^{11}$ Cf., Section 11342.2 of the Government Code.
    ${ }^{12}$ Accessible at: https://dbo.ca.gov/wp-content/uploads/sites/296/2019/04/PRO-01-18-RBLC.pdf

[^6]:    ${ }^{13}$ In some cases a small business owner may work with a broker throughout the complete transaction and never interact directly with the financing company.
    ${ }^{14} \mathrm{~A}$ financing provider would collect record of this consent along with the other information the financing provider must collect from the broker.
    ${ }^{15}$ For example, in the advertisement included above, the financing company notes that brokers may be offered "buy rates as low as 1.15 ." While the broker may be be quoted a "buy rate" as low as a 1.15 factor metric, they may then be permitted to mark up the financing to a higher price, present this higher price to the small business as the offer available, and pocket the difference. This is similar to the mortgage practice of "yield spread premiums" that contributed to the subprime mortgage crisis. For all of the reasons these hidden dealer markups contributed to adverse outcomes for mortgage borrowers, shared liability by lenders and brokers for is merited here.

[^7]:    ${ }^{16}$ Lipman, Barbara and Ann Marie Wiersch, Board of Governors of the Federal Reserve System, "Browsing to Borrow: ‘Mom \& Pop’ Small Business Owners' Perspectives on Online Lenders and Products,’ June 2018. https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf
    ${ }^{17}$ This problem is discussed with examples in the RBLC's January letter, pages 23-24. https://dbo.ca.gov/wp-content/uploads/sites/296/2019/04/PRO-01-18-RBLC.pdf

[^8]:    ${ }^{18}$ Dodd Frank Act section 1032e: https://www.congress.gov/bill/111th-congress/house-bill/4173/text, and described by the CFPB: https://www.consumerfinance.gov/about-us/innovation/trial-disclosure-program/

[^9]:    ${ }^{19}$ The XIRR formula can also be used. This allows the computation to include the specific dates when payments or charges occurred. Because the IRR formula requires equal periods of time between each cell, XIRR may be simpler for calculations including uneven period of time between payments, such as weekday-only payment products. The XIRR formula calculates the actual 365 day calendar. If an APR calculated using XIRR needed to be compared to an APR calculated assuming a 360 day calendar, additional calculations can be provided. This may be helpful if comparing Estimated APR to Retrospective APR, for example.
    ${ }^{20}$ In this case, the result is multiplied by 12 to annualize it because there are 12 monthly payments in a year. If the payment period was daily, this would be multiplied by 360 or 365 .

[^10]:    ${ }^{21} 12$ C.F.R. § 1026.22(b)(1). https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/22/.
    ${ }^{22}$ Office of the Comptroller of the Currency, Annual Percentage Rate Calculation Program for Windows (APRWIN)," n.d. "https://www.occ.treas.gov/tools-forms/tools/compliance-bsa/aprwin-software.html. ${ }^{23} 12$ C.F.R. § 1026.22(b)(2).
    https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/22/.

[^11]:    ${ }^{24}$ The Department could specify which editions of the software perform these calculations to the Department's satisfaction, such as "Microsoft Excel 365 and earlier editions."

[^12]:    ${ }^{25} 32$ CFR 232.4(c)(1). One useful summary of the fees that should additionally be included under the Military Lending Act can be found on pages 24-25 of the Federal Reserve Military Lending Act Examination Procedures.
    https://www.federalreserve.gov/supervisionreg/caletters/Attachment_CA_Letter_16-6_MLA_Exam_Procedures.pdf A second resource may be the OCC's Military Lending Act Comptroller's Handbook:
    https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/military-lending-act/pub-ch-mla.pdf

[^13]:    ${ }^{26}$ Assumed here that loans have a single disbursement, and all payments occur at full unit-periods. Please see Appendix I for the full Regulation Z APR formula found in Appendix J to Part 1026(b).5.iv.

[^14]:    Commented [A18]: Reporting is critical for the underwriting method to have sufficient accountability to match the flexibility offered, as described in Recommendation 2.

