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

The Department of Business Oversight hereby adopts the following new provisions to be added to Title 10, Chapter 3 of the California Code of Regulations:

§ 2057. Definitions.

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

(1) "Approved advance limit" means the maximum advance that a financer is required to pay a recipient for the purchase of outstanding, unpaid legally enforceable claims under a factoring agreement. If a factoring agreement requires the financer to pay different maximum advances for different types of legally enforceable claims, and advances with respect to one type of legally enforceable claim do not reduce the maximum advances for other types of legally enforceable claims under the agreement, the approved advance limit means the sum of the different maximum advances for different types of legally enforceable claims.

(2) "Approved credit limit" means the maximum advance that a financer is required to pay a recipient under a commercial open-ended credit plan agreement or asset-based lending transaction agreement. Where the commercial open-ended credit plan agreement or asset-based lending transaction agreement requires the financer to pay different maximum advances for different categories of advance (such as advances secured by inventory, accounts receivable, or others), and advances with respect to one category of advance do not reduce the maximum advance for another category of advance, the approved credit limit means the sum of the different maximum advances for different types of legally enforceable claims.

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

(A) "Forwarding payments," as it pertains to the definition of "Asset-based lending transaction" set forth in section 22800, subdivision (c) of the Code, includes arrangements in which a recipient and the financer create an account in which third party obligors deposit payments, arrangements in which a recipient repays advances with the proceeds the recipient collects from the sale or disposition of goods or services financed with such advances, and arrangements in which the recipient directs third party obligors to make payments directly to the financer.

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

(A) The time when a specific amount, rate or price, in connection with a commercial financing, is quoted to a recipient, based upon information from, or about, the recipient; and

(B) 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 an increase to the finance charge, payments, term, or annual percentage rate, regardless of whether those terms were previously disclosed to the recipient.

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

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

(7) "Code" means the California Financial Code.

(8) "Closed-end transaction" means a transaction in which credit is extended only once over a specific term (including contracts that include an option in which the recipient may extend the term), and is repaid:

(A) in regular predetermined payments of a specified amount over a fixed period of time; or

(B) in the case of sales-based financing, in payments calculated as a percentage of sales or income but with a minimum requirement payment or payments such that the recipient is eventually required to repay the amount advanced regardless of the sales or income the recipient collects.

(9) "Draw period" means the length of time during which a recipient may make draws under an open-ended credit plan or general factoring or asset-based lending agreement.

(10) "Finance charge" means the amount of any and all costs of the financing, represented as a dollar amount, as more specifically described in section 3010 of these rules.

(11) "Financer" means the person who provides or will provide the commercial financing to the recipient or any nondepository institution which enters into a written agreement with a depository institution to arrange for the extension of commercial financing by the depository institution to a recipient via an online lending platform administered by the nondepository institution.

(12) "Initial interest rate" means, in a credit transaction with an interest rate that changes over time and cannot be calculated in advance for the entire term of the transaction, the rate that would be in effect at the time a disclosure is made, assuming the recipient accepted the financing offer.

(13) "Interest rate" means the periodic rate at which interest accrues on the outstanding principal balance and (if interest is compounded) on accrued but unpaid interest in a commercial financing.

(14) "Irregular payment" means any payment made to the financer that is not a periodic payment.

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

(16) "Maximum non-interest finance charge" means:

(A) For all commercial financing except factoring, the maximum amount of the finance charge other than interest accrued that a recipient may be required to pay if the recipient chooses to prepay the outstanding balance due under a commercial financing agreement.

(B) For factoring, the maximum amount of the finance charge, other than interest accrued since the time the financer purchased the legally enforceable claim, that the recipient may be required to pay if the recipient repurchases the account receivable before the account receivable is due for payment by the account debtor.

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

(18) "Periodic payment" means any payment made to the financer at regular intervals.

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

(A) A provider includes a financer when the financer communicates a specific amount, rate or price, in connection with a commercial financing, based upon information from, or about, a recipient, either directly to a recipient, or to a broker with the expectation that the information will be shared with a recipient.

(B) The phrase "administered by" excludes arrangements where a nondepository institution provides technology or support services for a depository institution's commercial financing program, provided that the nondepository institution has no interest, or arrangement or agreement to purchase any interest in the commercial financing extended by the depository institution in connection with such program, and the commercial financing program is not branded with a trademark owned by the nondepository institution.

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

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

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

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

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

(25)“Term” means, with respect to:

(A) Factoring disclosures made pursuant to section 22802, subdivision (b)(3), the length of time between when the recipient receives payment from the financer for the legally enforceable claim and the date the legally enforceable claim becomes due and payable.

(B) Factoring disclosures made pursuant to section 22803, subdivision (a)(3), the maximum length of time between when a financer 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.

(C) With respect to closed-end transactions, commercial open-end credit plans, and asset-based lending transactions, the length of time that it is anticipated will be necessary for the recipient to fulfill its obligations under the financing agreement with respect to a particular loan advance; and

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

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

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

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

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

(A) The financer receives periodic payments based upon a pre-set amount (or amounts) stated in the contract;

(B) The contract allows the recipient to request, or the financer to initiate, adjustments to the payment amount, credits to the recipient, or charges to the recipient after execution of the contract, so that the total amount paid by the recipient more closely reflects a split rate listed in the contract.

(29)With respect to factoring transactions:

(A) “Account debtor” means the debtor with the primary obligation to pay the legally enforceable claim assigned by the recipient.

(B) “Purchase price” means the amount that the financer agrees to pay the recipient for assignment of a legally enforceable claim.

(C) “Factoring fee” means any fee charged by the financer to process the transaction plus the difference between the face value of a legally enforceable claim and the purchase price that the financer agrees to pay the recipient for assignment of that legally enforceable claim.

(D) “Original advance amount” means the amount that a financer issues to a recipient upon receipt of a legally enforceable claim for payment.

(E) “Reserve amount” means, in a reserve factoring transaction, the difference between the purchase price for a legally enforceable claim and the original advance amount, that is held in reserve to secure the financer in the event of non-payment of the legally enforceable claim, or to secure the financer in the event of nonpayment of other legally enforceable claims assigned or to be assigned by the recipient to the financer.

(F) “Reserve factoring transaction” means a factoring transaction where, upon receipt of a legally enforceable claim for payment, a financer pays an original advance amount to the recipient that is less than the purchase price and holds the difference between the original advance amount and the purchase price to secure the financer against deficiencies on amounts paid by the account debtor on the legally enforceable claim or other legally enforceable claims assigned or to be assigned by the recipient to the financer.

(b) Unless otherwise stated, all references to “average” refer to “mean”.

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

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

§ 2060. General Formatting and Content Requirements.

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

(1) At the top of the disclosure, centered on the page or other display medium, the provider shall print the following statement in bold font: “OFFER SUMMARY.”

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

(3) 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.

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

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

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

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

(8) If the information in this section is provided to a recipient electronically, the provider shall include a method for the recipient to submit an electronic signature and automatic date stamp to comply with subdivision (a)(2) of this section and provide the recipient with the ability to receive a copy of the disclosure in a format that the recipient may keep. A format the recipient may keep includes hard copy disclosures, and electronic documents containing the required disclosures that the customer can save indefinitely for future reference.

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

   (A) Base those estimates or assumptions on the best information reasonably available to the provider at the time of the disclosure;

   (B) State clearly that any disclosure based upon an estimate or assumption is an "Estimate" by adding the word "Estimate" to the descriptive language of any required disclosure under this chapter; and

   (C) State clearly any assumptions or estimates used as the basis for the disclosure in any explanation or description associated with the disclosure.

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

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

§ 2061 Closed-End Transaction Formatting and Content Requirements.

(a) Disclosures for closed-end transactions provided in accordance with section 22802 of the Code shall comply with the following requirements unless the closed-end transaction meets the definition of sales-based financing:

(1) The provider shall present the disclosures in a table consisting of seven rows and three columns.

(2) The first row of the table shall include only the following information:

   (A) In the first column, the following language: "Funding You Will Receive."

   (B) In the second column, the amount of funds that will be provided to the recipient, excluding any deductions such as origination charges and amounts used to pay off other financings.

   (C) In the third column, a description of how the amount in the second column was calculated, including a disclosure of the amount owed and the amounts and descriptions of any deductions excluded from (2)(B) above.

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

(A) In the first column:

(i) If the contract provides for a fixed interest rate or rates that are predetermined by the contract, or no interest rate, the following language: “Annual Percentage Rate (APR)”.

(ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract, the following language: “Initial Annual Percentage Rate (APR)”.

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

(C) In the third column:

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

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

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

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

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

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

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

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

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

(4) The third row of the table shall include only the following information:
   (A) In the first column:
      (i) If the contract provides for a fixed interest rate or rates that are predetermined by the contract, or no part of the finance charge is based upon interest accrued, the following language: "Finance Charge".
      (ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract, the following language: "Estimated Finance Charge".
   (B) In the second column, the total finance charge, calculated in accordance with section 3010 of these rules.
   (C) In the third column:
      (i) The provider's calculation of the finance charge, with the amount and description of each expense (such as interest and origination fee) included in the finance charge.
      (ii) If the contract provides for an adjustable interest rate or rates that are not predetermined by the contract, an explanation of how the initial interest rate was used to calculate interest charges and a notice that the actual finance charge may vary.
(5) The fourth row of the table shall include only the following information:
   (A) In the first column:
      (i) If the periodic payments will not vary over the term of the transaction or the periodic payments during the term of the transaction will vary and it is possible to calculate the payment amounts in advance, the following language: "Payment".
      (ii) If the periodic payment amounts will vary over the term of the transaction and it is not possible to calculate the payment amounts in advance (e.g. due to an adjustable interest rate using a benchmark rate and a margin), the following language: "Initial Payment".
   (B) If periodic payments during the term of the transaction will not vary:
      (i) In the second column, the amount of each periodic payment followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.) followed by the date and amount of any irregular payments listed in chronological order.

(ii) In the third column, a short explanation of the payment frequency and any irregular payments. The provider may also include a short statement describing when each payment will become due.

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

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

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

Or

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

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

(D) If periodic payments during the term of the transaction vary and it is not possible to calculate all payment amounts in advance:

(i) In the second column, the initial periodic payment amount followed by a forward slash (/) and the frequency of each periodic payment followed by the date plus followed by reasonably anticipated irregular payments listed in chronological order.

(ii) In the third column, a statement describing how the initial period payment amount was calculated and that the actual payment may change over time, and an explanation of any irregular payments. The provider may also include a statement describing when the payment will adjust and how it will be calculated.

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

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

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

(C) In the third column, an explanation describing the term.

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

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

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

(B) In all other cases, “If you pay off the financing early, you will not need to pay any portion of the finance charge other than interest accrued since your last payment.”

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

(A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: “If you pay off the financing early you must also pay the following additional fees not already included in the finance charge:” followed by the amounts and descriptions of each additional fees and charges.

(B) In all other cases, the following statement: “If you pay off the financing early you will not pay additional fees not already included in the finance charge.”

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

(A) In the first column: “Average Monthly Cost”.

(B) In the second column, the average monthly cost that the recipient will pay over the term of the transaction.

(C) In the third column, language explaining that the recipient will not be required to make monthly payments and explaining how the provider has calculated the monthly cost.

(11) 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.

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

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

(a) Disclosures for commercial open-end credit plans, provided in accordance with section 22802 of the Code, shall comply with the following requirements:

(1) The provider shall present the disclosures in a table consisting of nine rows and three columns.

(2) In the first row, the first, second and third columns shall be combined, and the resulting cell shall have only the following language, in italics:

(A) If the contract allows only for a single payment option: “The calculations below are based on an initial draw of your full Approved Credit Limit of [approved credit limit] and assume that you will pay off the draw entirely according to the agreed payment schedule, that you miss no payments, and that you do not re-draw on this line. Actual costs may differ substantially.”

(B) If the contract allows for multiple payment options: "The calculations below are based on an initial draw of your full Approved Credit Limit of [approved credit limit] and assume that you will choose to make minimum payments, that you miss no payments, and that you do not re-draw on this line. Actual costs may differ substantially." If the amount borrowed is payable on demand, the provider shall disclose that amounts borrowed are payable on demand and that the estimate assumes a term of one year. If an alternate maturity date is stated in the legal obligation between the parties, then the provider shall state that the disclosure is based upon that maturity date.

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

(A) In the first column, the following language: "Funding You Will Receive".

(B) In the second column, the maximum credit amount, minus any deductions such as origination charges and amounts used to pay off other financings.

(C) In the third column, a description of how the amount in the second column was calculated, including a disclosure of the amount owed and the amounts and descriptions of any deductions excluded from (3)(B) above.

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

(A) In the first column:

(i) If the contract provides for a fixed interest rate or rates that are predetermined by the contract, the following language: "Annual Percentage Rate (APR)".

(ii) If the contract provides for an adjustable interest rate and it is not possible to calculate the interest rates throughout the term of the transaction in advance, the following language: "Initial Annual Percentage Rate (APR)".

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

(C) In the third column:

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

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

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

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

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

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

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

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

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

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

(A) In the first column the following language: "Estimated Finance Charge".

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

(C) In the third column, an explanation of the provider's calculation of the finance charge, with the amount and description (such as interest charges and origination fees) of each expense that is included in the finance charge. In addition, if the contract provides for an adjustable interest rate that changes over time, an explanation of how the initial interest rate was used to calculate interest charges.

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

(A) In the first column "Estimated Payment".

(B) If periodic payments during the term of the transaction will not vary:

(i) In the second column, the amount of each periodic payment followed by a forward slash (/) and the frequency of each periodic payment followed by the date and amount of any irregular payments listed in chronological order.

(ii) In the third column, a short explanation of the payment frequency and any irregular payments. The provider may also include a short statement describing when each payment will become due.

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

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

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

(D) If periodic payments during the term of the transaction vary and it is not possible to calculate all payment amounts in advance because the transaction has an adjustable interest rate that cannot be calculated in advance:
  (i) In the second column, a periodic payment amount calculated using the initial interest rate followed by the date and amount of any reasonably anticipated irregular payments listed in chronological order.
  (ii) In the third column, a statement explaining that the periodic payment amount disclosed is based upon the initial interest rate, and that the actual rate may change over time and an explanation of any irregular payments. The provider may also include a statement describing when the payment will adjust and how it will be calculated.

(E) If periodic payments of principal during the term of the transaction do not vary but periodic payments of interest during the term of the transaction vary, and it is not possible to calculate all interest payment amounts in advance, because the transaction has an adjustable interest rate that cannot be calculated in advance:
  (i) In the second column, the phrase “Initial Interest Payment:” followed by an interest payment amount calculated using the initial interest rate, followed by a forward slash (/) and the frequency of each periodic interest payment.
  (ii) In the second column, beneath the disclosure required by subdivision (6)(E)(i), the phrase “Principal Payment Amount:” followed by the amount of each periodic principal payment, followed by a forward slash (/) and the frequency of each periodic principal payment.
  (iii) In the third column, a statement explaining that the Initial Interest Payment Amount disclosed is based upon the initial interest rate, and that the actual rate may change over time.
  (iv) In the third column, beneath the statement explaining the Initial Interest Payment Amount and at the same height as the disclosure required under subdivision (6)(E)(iii), a short explanation of the principal payment amount and frequency.

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

(A) In the first column, the following language: “Draw Period.”
(B) In the second column, the draw period for the transaction.
(C) In the third column, an explanation of the draw period for the transaction.

(8) The seventh row of the table shall include only the following information:
(A) In the first column, the following language: “Term.”
(B) In the second column, the term of the transaction.
(C) In the third column, an explanation describing the term.

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

(10) In the eighth row, the second and third columns shall be combined and shall include only:
(A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient’s last payment, the following statement: “If you pay off the financing early you will need pay all or portion of the finance charge, up to $[maximum non-interest finance charge].”
(B) In all other cases, “If you pay off the financing early, you will not need to pay any portion of the finance charge other than interest accrued since your last payment.”

(11) In the ninth row, the second and third columns shall be combined and shall include only:
(A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: “If you pay off the financing early you must also pay additional fees not already included in the finance charge” followed by the amounts and descriptions of the additional fees and charges.
(B) In all other cases, the following statement, “If you pay off the financing early you will not pay additional fees not already included in the finance charge.”

(12) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the fourth row, and the additional row shall include only the following information:
(A) In the first column, the following language: “Average Monthly Cost.”
(B) In the second column, the average monthly cost that the recipient will pay over the term of the transaction.
(C) In the third column, language explaining that the recipient will not be required to make monthly payments and explaining how the provider has calculated the monthly cost.

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

§ 2063. Factoring Disclosure Format

(a) Disclosures for factoring transactions provided in accordance with section 22802 of the Code shall comply with the following requirements:

(1) The provider shall present the required disclosures in a table consisting of six rows and three columns.
(2) The first row of the table shall include only the following information:
    (A) In the first column, the following language: "Funding You Will Receive."
    (B) In the second column, the amount of funds that will be provided to the recipient, excluding any deductions such as origination charges and amounts used to pay off other financings, and excluding any reserve amount.
    (C) In the third column, a description of how the amount in the second column was calculated, including any origination charges, amounts used to pay off other financings, and reserve amounts excluded from the amount disclosed in the second column. If the factoring transaction involves a reserve amount, a description of when the reserve amount will be paid to the recipient and any conditions imposed upon such delivery.
(3) The second row of the table shall include only the following information:
    (A) In the first column, the following language: "Estimated Annual Percentage Rate (APR)".
    (B) In the second column, the estimated annual percentage rate calculated in accordance with sections 3001 and 3002 of these rules.
    (C) In the third column, the following language:
    i. "APR is estimated cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, fees you pay, and payments made to [name of financer]."
    ii. If no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (3)(C)(i) of this section: "APR it is not an interest rate and the amount of the factoring fee we charge is not based upon an interest rate."

(4) The third row of the table shall include the following information:
    (A) In the first column, the following language: "Finance Charge".
    (B) In the second column, the total finance charge calculated in accordance with section 3010 of these rules.
    (C) In the third column, the provider's calculation of the finance charge, with the amount and description of each expense that is included in the finance charge.
(5) The fourth row of the table shall include only the following information:
    (A) In the first column, the following language: "Payment".
    (B) In the second column, the following language: "NA" or "Not applicable".
    (C) In the third column, a 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."

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

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

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

(C) In the third column, a statement describing how the provider calculated the term. For example, "The invoice is due for payment 30 days from today, so we have estimated a term of 1 month. The invoice may be paid sooner than the due date."

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

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

(B) The second and third columns shall be combined, and:

(i) If the recipient is permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting combined cell shall be divided vertically into two cells by a horizontal line, and:

(a) If at any time during the term of the transaction, repurchase of the legally enforceable claim will result in the recipient paying finance charges other than interest since the advance was made, the top cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date you must pay all or a portion of the finance charge, which could be as high as $[maximum non-interest finance charge]."

(b) In all other cases, the top cell shall include the following statement, "If you repurchase the [description of legally enforceable claim] before the due date you will not pay any portion of the finance charge other than interest earned since disbursement."

(c) If, at any time during the term of the transaction, repurchase of the legally enforceable claim will require the recipient to pay additional fees and charges not included in the finance charge, the bottom cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date, you must pay additional fees and charges that are not part of the finance charge, including [amount and description of fees]."

(d) In all other cases, the bottom cell shall state: "If you repurchase the [description of legally enforceable claim] before the due date, you will not be required to pay any additional fees and charges not already included in the finance charge."

(ii) If the recipient is not permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting cell shall include the following statements:

(a) "You are not permitted to pay the amount due on the [description of legally enforceable claim] before your customer's due date."

(b) If applicable: "The finance charge will not decrease if your customer pays the [description of legally enforceable claim] before the due date."

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

§ 2064. Factoring Disclosure Format for Example Transactions

(a) Disclosures for factoring transactions provided in accordance with section 22803 of the Code shall comply with the following requirements:

(1) The provider shall present the required disclosures in a table consisting of seven rows and three columns.
(2) All three columns of the first row of the table shall be combined, and within the cell created, the provider shall include only the following language, in italics:
(A) If the finance charge, annual percentage rate and term do not vary for different classes of legally enforceable claim: "The calculations below are based upon a hypothetical [description of legally enforceable claims to be assigned, e.g. "Invoice"] of [value calculated in accordance with section 3022 of these rules], assigned to [insert name of financer] with a due date [term] from the date of assignment. Actual costs may differ substantially."
(B) If the finance charge, annual percentage rate or term will vary for different classes of legally enforceable claims with different characteristics, the following in the order listed:
(i) "The calculations below are based upon a hypothetical [description of legally enforceable claims to be assigned, e.g. "invoice"] of [insert value calculated in accordance with section 3022 of these rules], assigned to [name of financer] with a due date [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 [name of account debtor]."
(iii) "Actual costs may differ substantially."
(3) The second row of the table shall include only the following information:
(A) In the first column, the following language: "Funding You Will Receive".
(B) In the second column, the amount of funds that will be provided to the recipient, excluding any deductions such as origination charges and any reserve amount, for an example transaction compliant with section 3022 of these rules.
(C) In the third column, a description of how the amount in the second column was calculated, including the amount and description of any fees or reserve amounts deducted. If the factoring transaction involves a reserve amount, a description of when the reserve amount will be paid to the recipient and any conditions imposed upon such delivery.

(4) The third row of the table shall include only the following information:
  (A) In the first column, the following language: "Annual Percentage Rate (APR)."
  (B) In the second column, the provider's calculation of the annual percentage rate of the transaction calculated in accordance with sections 3001 and 3002 of these rules.
  (C) In third column, the following language:

"This is the estimated cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, fees you pay, and payments made to [name of financer]. This estimate assumes that you will assign the [description of legally enforceable claim assigned, e.g. "invoice"] to [name of financer] today, the invoice is due in [term] and your customer will pay the [name of legally enforceable claim assigned, e.g. "invoice"] in full on the due date."

  (D) If no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (4)(C) of this section: "APR is not an interest rate and the amount of the finance charge is not based upon an interest rate."

(5) The fourth row of the table shall include the following information:
  (A) In the first column, the following language: "Finance Charge."
  (B) In the second column, the total finance charge calculated in accordance with section 3010 of these rules.
  (C) In the third column, the provider's calculation of the finance charge, with the amount and a description of each expense (e.g. factoring fee, origination fee, etc.) that is included in the finance charge.

(6) The fifth row of the table shall include only the following information:
  (A) In the first column, the following language: "Payment Amount".
  (B) In second column, the following language: "NA" or "Not applicable."
  (C) In the third column, a 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.")

(7) The sixth row of the table shall include only the following information:
  (A) In the first column, the following language: "Estimated Term."
  (B) In the second column, the term of the transaction.
  (C) In the third column, a 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."

(8) The seventh row of the table shall include only the following information:
  (A) In the first column, the following language: "Prepayment."
  (B) The second and third columns shall be combined, and:

(C) If the recipient is permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting combined cell shall be divided vertically into two cells by a horizontal line, and:

(i) If at any time during the term of the transaction, repurchase of the legally enforceable claim will result in the recipient paying finance charges other than interest since the advance was made, the top cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date, you must pay all or a portion of the finance charge, which could be as high as $[maximum non-interest finance charge]."

(ii) In all other cases, the top cell shall include the following statement, "If you repurchase the [description of legally enforceable claim] before the due date, you will not pay any portion of the finance charge other than interest earned since disbursement."

(iii) If, at any time during the term of the transaction, repurchase of the legally enforceable claim will require the recipient to pay additional fees and charges not included in the finance charge, the bottom cell shall include the following statement: "If you repurchase the [description of legally enforceable claim] before the due date, you must pay additional fees and charges that are not part of the finance charge, including [amount and description of fees]."

(iv) In all other cases, the bottom cell shall state: "If you repurchase the [description of legally enforceable claim] before the due date, you will not be required to pay any additional fees and charges not already included in the finance charge."

(D) If the recipient is not permitted to repurchase the legally enforceable claim for payment before the legally enforceable claim is due and payable, the resulting cell shall include the following statements:

(i) "You are not permitted to pay the amount due on the [description of legally enforceable claim] before your customer's due date."

(ii) If applicable: "The finance charge will not decrease if your customer pays the [description of legally enforceable claim] before the due date."

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

§ 2065. Sales-Based Financing Disclosure Formatting

(a) Disclosures for all sales-based financing provided in accordance with section 22802 of the Code, except for asset-based lending that meets the definition of sales-based financing, shall comply with the following requirements:

(1) The provider shall present the required disclosures in a table consisting of eight rows and three columns.

(2) The first row of the table shall include only the following information:
   (A) In the first column, the following language: "Funding You Will Receive"
   (B) In the second column, the amount of funds that will be provided to the recipient, excluding any deductions such as origination charges and amounts used to pay off other financings.
   (C) In the third column, a description of how the amount in the second column was calculated, including the amount and description of any deductions. For example: "This is your advance amount of [advance amount] minus the [amount and description of fees deducted] that will be deducted."
(3) The second row of the table shall include only the following information:
   (A) In the first column, the following language: "Estimated Annual Percentage Rate (APR).
   (B) In the second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
   (C) In the third column, the following language:

"APR is the estimated cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, and the periodic payments you make. This calculation assumes your estimated 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].

   (D) If no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (3)(C) of this section: "APR it is not an interest rate. The amount of the finance charge you will pay is not based upon an interest rate."

(4) The third row of the table shall include only the following information:
   (A) In the first column, the following language: "Estimated Finance Charge".
   (B) In the second column, the finance charge calculated in accordance with section 3010 of these rules.
   (C) In the third column, 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."
(5) The fourth row of the table shall include only the following information:
   (A) In the first column, the following language: "Estimated Payment".
   (B) The second and third columns shall be combined, and contain the following information:
      (i) The 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. If the provider anticipates that the periodic payment

amount 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

(ii) The date and amount of any irregular payments listed in chronological order.
(iii) The date and amount of any reasonably anticipated true-ups.

(6) The fifth row of the table shall include only the following information:
  (A) In the first column, the following language: "Payment Terms."
  (B) The second and third columns shall be combined, and contain the following information:
    (i) If the contract provides for daily periodic payments, a description of when daily payments will be required. For example, on weekdays or every calendar day.
    (ii) If applicable, a plain language description of how the financer will use the split rate to calculate the recipient's required payments. For example: "Each business day, your credit card processer will remit 15% of your gross receipts to us, and send any remaining amounts to you."
    (iii) If the contract contains a true-up mechanism,
      (a) A statement explaining how the provider calculated the pre-set periodic payment(s) described in Section 2057, subdivision (a)(28)(A). For example: "We based your preset daily payment of $75 upon our estimate of 15% of your total income, based upon average monthly income of $15,000 for the last three months."
      (b) A short, plain language description of the true-up mechanism, and a reference to the part of the contract that describes the terms of the true-up mechanism, if available. For example: "You have the right to receive refunds of all or part of your payments if you demonstrate that your payments have exceeded 15% of your total income during any given month. For more details on your rights, see paragraph 5 of your contract."
    (iv) A plain language description of any minimum payment terms under the contract. For example: "You must pay us a minimum of $2,000 per month under the contract."
(7) The sixth row of the table shall include only the following information:
  (A) In the first column, the following language: "Estimated Term".

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

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

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

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

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

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

(B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay any portion of the finance charge other than interest owed since your last payment."

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

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

(B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay additional fees not already included in the finance charge."

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

(A) In the first column, the following language: "Estimated Monthly Cost."

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

Months 1-2:
$600/month

Months 3-6:
$1200/month

Month 7:
$1000/month

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

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

§ 2066. Formatting and Content Requirements for Lease Financing.

(a) Disclosures for lease financing provided in accordance with section 22802 of the Code shall comply with the following requirements:

(1) The provider shall present the disclosures in a table consisting of seven rows and three columns.
(2) The first row of the table shall include only the following information:
  (A) In the first column, the following language: "Funding Provided."
  (B) In the second column:
    (i) If the financer does not select, manufacture or supply the goods to be leased, the net cost to the financer to acquire the property to be leased;
    (ii) If the financer selects, manufactures or supplies the goods to be leased, the price that the financer would sell the goods for in a cash transaction, minus any down payment or other deposit to be paid by the recipient.
  (C) 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."
(3) The second row of the table shall include only the following information:
  (A) In first column the following language: "Annual Percentage Rate (APR)".
  (B) In second column, the annual percentage rate calculated in accordance with section 3001 of these rules.
  (C) In the third column, the following language:

"APR is the cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, the periodic payments you make, and the anticipated cost for you to acquire the property at the end of the lease term.

Your APR is not an interest rate."

(4) The third row of the table shall include only the following information:
  (A) In first column the following language: “Finance Charge”.
  (B) In second column, the total finance charge, calculated in accordance with section 3010 of these rules.
  (C) In the third column, the provider’s calculation of the finance charge, with the amount and description of each expense included in the finance charge.

(5) The fourth row of the table shall include only the following information:
  (A) In the first column the following language: “Payment”.
  (B) If periodic payments during the term of the transaction will not vary:
    (i) In the second column, the amount of each periodic payment followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.), followed by the date and amount of any irregular payments listed in chronological order, followed by the price of the purchase option.
    (ii) In the third column, a short explanation of the payments, followed by an explanation of any irregular payments. For example: “This is how much you will pay each month, the $300 maintenance fee due 12 months after you receive funding, and the purchase price you may pay at the end of the lease to acquire the property.” The provider may also include a short statement describing when each payment will become due. For example: “Your monthly payments are due on the 1st day of every month.”
  (C) If periodic payments during the term of the transaction vary, the second and third column in the fourth row shall be combined and the provider shall list the periodic payment amounts with a description of when each amount will become due, followed by the date and amount of any irregular payments listed in chronological order, followed by the price of the purchase option. For example:

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

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

Purchase Price: $1000.

Or

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

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

Purchase Price: $1000.

(6) The fifth row of the table shall include only the following information:
   (A) In first column, the following language: “Term”.
   (B) In second column, the term of the transaction.
   (C) In third column, an explanation describing the term. For example: “This is how long you will make lease payments under the contract.”
(7) In the first column, the sixth and seventh rows shall be combined and shall include the following language: “Prepayment.”
(8) In the sixth row, the second and third columns shall be combined and include only:
   (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient’s last payment, the following statement: “If you pay off the financing before the end of the Term, you will be required to pay all or a portion of the finance other than interest since your last payment, up to $[maximum non-interest finance charge].”
   (B) In all other cases, the following statement: “If you pay off the financing before the end of the Term, you will not be required to pay any portion of the finance charge other than interest owed since your last payment.”
(9) In the seventh row, the second and third columns shall be combined and shall include only:
   (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: “If you pay off the financing before the end of the term, you must pay additional fees or charges not included in the Finance Charge, including” followed by a description of any prepayment charges.
   (B) In all other cases, the following statement: “If you pay off the financing before the end of the term, you will not be required to pay additional fees or charges not included in the Finance Charge.”
(10) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the third row, and the additional row shall include only the following information:
   (A) In the first column, the following language: “Average Monthly Cost.”
   (B) In the second column, the average monthly cost that the recipient will pay over the term of the transaction.
   (C) In the third column, language explaining that the recipient will not be required to make monthly payments and explaining how the provider has calculated the monthly cost. For example: “Although you do not make payments on a monthly basis, this is our calculation of your average monthly cost based upon the payment amounts disclosed below.”

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

§ 2067 General Asset-Based Lending Transaction Disclosure Formatting.

(a) Disclosures for asset-based lending transactions, provided in accordance with section 22803 of the Code and section 3021 of these rules, shall comply with the following formatting requirements, unless the asset-based lending transaction meets the definition of inventory financing:

(1) The provider shall present the required disclosures in a table consisting of nine rows and three columns.

(2) All three columns of the first row of the table shall be combined, and within the cell created, the provider shall provide an explanation, in italics, of all assumptions used to calculate the disclosures, and a notice, if applicable, that actual costs may differ substantially from those disclosed. For example: "The calculations below are based upon a hypothetical lump sum draw of [amount calculated in accordance with Section 3021], with no additional draws, repaid from the collection of the accounts receivable or payment intangibles that secure this loan. We anticipate we will receive an average of [insert amount anticipated] per day in repayments from your customers' accounts. Actual costs may differ substantially."

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

(A) In the first column, the following language: "Funding You Will Receive."

(B) In the second column, the amount of funds calculated in accordance with Section 3021, excluding any deductions such as origination charges and amounts used to pay off other financings.

(C) In the third column, a description of how the amount in the second column was calculated, including the amount and description of any deductions. For example: "This is your advance amount of [advance amount] minus the [amount and description of fees deducted]."

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

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

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

(C) In the third column, the following language in the order listed:

(i) "APR is the estimated cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, and the payments we collect. APR is not an interest rate."

(ii) A description of the applicable interest rate or rates for the transaction, if applicable.

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

(A) In the first column, the following language: "Estimated Finance Charge".

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

(C) In the third column, the provider's calculation of the finance charge, with the amount and description of each expense that is included in the finance charge, and a statement that that the actual finance charge may vary, if applicable.

(6) The fifth row of the table shall include only the following information:
   (A) In the first column, the following language: "Payment"
   (B) In the second column, the amount of each periodic payment, followed by a forward slash (/) and the frequency of each periodic payment (month, day, etc.) followed by the date and amount of any irregular payments listed in chronological order. 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 periodic payment amounts and the time periods when those estimates apply, followed by the date and amount of any irregular payments listed in chronological order. For example:

Months 1-2:
$20/day

Months 3-7:
$40/day

Month 6: $100 maintenance fee.

   (C) In the third column, a statement describing how the lender will receive repayments and an explanation of any irregular payments. For example: "This is how much we anticipate collecting each day in repayments from your customers' accounts. You will also pay a $300 maintenance fee 12 months after you receive funding."
(7) The sixth row of the table shall include only the following information:
   (A) In the first column, the following language: "Draw Period."
   (B) In the second column, the draw period for the transaction.
   (C) In the third column, an explanation of the draw period for the transaction.
(8) The seventh row of the table shall include only the following information:
   (A) In the first column, the following language: "Term."
   (B) In the second column, the term of the transaction.
   (C) In the third column, an explanation stating that the estimated term is based upon assumptions about the recipient's income. For example:

"Although 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 upon the assumption that we will receive $700 per day in repayments from your customers' accounts."

(9) In the first column, the eighth and ninth rows shall be combined and shall include the following language: "Prepayment."
(10) In the eighth row, the second and third columns shall be combined and shall include only:
   (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient's last payment, the following statement: "If you pay off

the financing faster than required, you will be required to pay all or a portion of the finance charge, up to $[maximum non-interest finance charge] based upon our estimates."

(B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay any portion of the finance charge other than interest owed since your last payment."

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

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

(B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay additional fees not already included in the finance charge."

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

(A) In the first column, the following language: "Estimated Monthly Cost."

(B) In the second column, the monthly cost that the recipient will pay over the term of the transaction. If the provider anticipates that the estimated monthly cost will vary over the term of the transaction, either due to changes in the recipient's income through the particular payment channel, a change in the split rate, or some other reason provided for in the contract, the provider shall list the estimated monthly costs and the time periods when those estimates apply. For example:

Months 1-2:
$600/month

Months 3-6:
$1200/month

Month 7: $1000/month

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

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

§ 2068 Disclosure Formatting for All Other Transactions

(a) Disclosures for commercial financing that does not meet the definition of a closed-end transaction, sales-based financing, commercial open-end credit plan, factoring transaction, lease financing, or asset-based lending transaction shall comply with the following formatting requirements:

(1) The provider shall present the required disclosures in a table consisting of seven rows and three columns.

(2) The first row of the table shall include only the following information:

(A) In the first column, the following language: "Funding You Will Receive".

(B) In the second column, the amount of funds that will be provided to the recipient, excluding any deductions such as origination charges and amounts used to pay off other financings.

(C) In the third column, a description of how the amount in the second column was calculated, including the amount and description of any deductions. For example: "This is your advance amount of [advance amount] minus the [amount and description of fees deducted] that will be deducted."

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

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

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

(C) In the third column, the following in order:

(i) "APR is the cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, and payments paid by you or on your behalf to [financer]. APR is not an interest rate."

(ii) A description of any assumptions made by the provider to calculate APR.

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

(A) In the first column, the following language: "Finance Charge".

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

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

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

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

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

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

Months 1-2:
$20/day

Months 3-7:
$40/day

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

(6) The fifth row of the table shall include only the following information:
   (A) In the first column, the following language: "Term".
   (B) In the second column, the term of the transaction.
   (C) In the third column, an explanation of the term. For example: "If you make all the payments required by the contract, your will make your last payment in 48 months."
(7) In the first column, the sixth and seventh rows shall be combined and shall include the following language: "Prepayment."
(8) In the sixth row, the second and third columns shall be combined and shall include only:
   (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay finance charges other than interest accrued since the recipient's last payment, the following statement, "If you pay off the financing faster than required, you will be required to pay all or a portion of the finance charge, up to $[maximum non-interest finance charge]."
   (B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay any portion of the finance charge other than interest owed since your last payment."
(9) In the seventh row, the second and third columns shall be combined and shall include:
   (A) If, at any time during the term of the transaction, prepayment of the outstanding balance due will require the recipient to pay additional fees and charges not included in the finance charge, the following statement: "If you pay off the financing faster than required, you must pay additional fees not already included in the finance charge of [amount and description of fees]."
   (B) In all other cases, the following statement: "If you pay off the financing faster than required, you will not be required to pay additional fees not already included in the finance charge."
(10) If the contract provides for periodic payments that are not monthly, the provider shall insert one additional row below the third row, and the additional row shall include only the following information:
   (A) In the first column, the following language: "Monthly Cost."
   (B) In the second column, the monthly cost that the recipient will pay over the term of the transaction. If the provider anticipates that the estimated monthly cost will vary over the term of the transaction, the provider shall list the estimated monthly costs and the time periods when those estimates apply. For example:

Months 1-2:
$600/month

Months 3-6:
$1200/month

Month 7:
$1000/month

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

(11) If the contract provides for multiple payment options, the provider shall insert one additional row above the first row, and in that row, all three columns shall be combined, resulting in a single cell. In that cell, the provider shall include a statement explaining how the provider has based the disclosure on the minimum payment permitted under the contract.

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

§ 2070. Signatures.

(a) Prior to consummating a commercial financing, a financer shall obtain a copy of the disclosures made pursuant to sections 22802 and 22803 of the Code that are signed by the recipient. Where the recipient is not a natural person, a natural person authorized to sign on behalf of the legal entity may sign the disclosure, provided that the natural person is not a broker. Such disclosures may be transmitted between the recipient and the provider via electronic transmission and utilizing electronic signatures, regardless of whether subsequent financing agreements, amendments and supplements are provided to the recipient in person, by mail or electronically.

(b) If a commercial financing transaction is consummated electronically, a provider may obtain a recipient's signature on the required disclosures electronically or by facsimile.

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

§ 2071. Thresholds for Disclosure

(a) For the purpose of determining whether the amount of a commercial financing offer is equal to or less than $500,000, a provider shall:

(1) For open-end credit plans, use the approved credit limit.

(2) For asset-based lending transaction:

(A) Use the approved credit limit, if transaction meets all of the following requirements:

(i) The provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transaction that will occur under the agreement;

(ii) The approved credit limit exceeds $500,000; and

(iii) The parties to the asset-based lending transaction agree in writing prior to execution of their agreement that an amount exceeding $500,000 is reasonably expected to be unpaid and outstanding at some point during the agreement.

(B) If the asset-based lending transaction does not meet all of the requirements listed in subparagraph (a)(2)(A) above, the commercial financing offer shall be considered less than or equal to $500,000.

(3) For a factoring transaction,

(A) Use the approved advance limit, if the transaction meets all of the following requirements:

(i) The provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transaction that will occur under the agreement;

(ii) The approved advance limit exceeds $500,000; and

(iii) The parties to the factoring transaction agree in writing prior to execution of their agreement 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.

(B) If the factoring transaction does not meet all of the requirements listed in subparagraph (a)(3)(A) above, the commercial financing offer shall be considered less than or equal to $500,000.

(4) For lease financing:

(A) If the financer does not select, manufacture or supply the goods to be leased, use the net cost to the financer to acquire the property to be leased;

(B) If the financer selects, manufactures or supplies the goods to be leased, use the price that the financer would sell the goods for in a cash transaction, minus any down payment or other deposit to be paid by the recipient.

(5) In all other transactions, use the total amount of funds to be provided by the provider to the recipient or by the provider on behalf of the recipient in connection with the commercial financing (including amounts used to pay off other financings).

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

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

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

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

§ 2091. Estimates – Sales-Based financing (Accounts Receivable Purchase Transactions) – Historical Method.

(a) This section shall apply only to sales-based financing.(b) With respect to any assumptions about a recipient's future monthly sales, income, or receipts necessary to calculate the disclosures required by this chapter, a provider shall use the "estimated monthly sales, income, or receipts projection" described below:

(1) The estimated monthly sales, income, or receipts projection shall be calculated as the recipient's historical average sales volume or income with respect to the 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 four (4) months 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 particular payment channel or mechanism using an average from the months the recipient has been in operation.
(c) If a provider must make additional estimates or assumptions other than a recipient's estimated monthly sales or receipts projection in order to provide disclosures required by this chapter, the provider shall:
(1) Base those estimates or assumptions on the best information reasonably available to the provider at the time of the disclosure;(2) State clearly that any disclosure based upon an estimate or assumption is an "Estimate" by adding the word "Estimate" to the descriptive language of any required disclosure under this chapter.
(3) State clearly any assumptions or estimates used as the basis for the disclosure in any description associated with the disclosure.

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

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

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

(1) With respect to any assumptions about a recipient's future sales, income or receipts, and as an alternative to the methods described in Section 2091 for calculating disclosures required by this chapter, a provider may elect to calculate the required disclosures in accordance with this section.

(2) A provider shall calculate the disclosures using an "internal estimated sales, income, or receipts projection" through the particular payment channel or mechanism designated in the contract.

(3) The "internal estimated sales, income, or receipts projection" through the particular payment channel or mechanism shall be calculated using the best information reasonably available to the provider.

(4) Once every four months, a provider who makes disclosures based upon internal estimated sales projections shall conduct an audit of its commercial financings.

(A) The audit shall cover all sales-based financings paid off during the previous four-month period where the provider made disclosures based upon internal estimated sales projections. The audit shall not include sales-based financings where:

(i) The provider or financer 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 financer stopped collection of amounts due under a contract after determining that the recipient had violated the terms of the contract.

(B) The provider shall calculate the retrospective annualized rate for each sales-based financing in the audit. With respect to financing where a lump sum payment is used to pay off the financing faster than required by the contract, a provider may calculate the retrospective annualized rate by ignoring the lump sum payment and assuming that the contract would have been repaid in periodic payments that are an average of the past periodic payments under the contract.

(C) The provider shall subtract the disclosed annualized rate from the retrospective annualized rate for each sales-based financing in the audit. The difference resulting from this calculation shall be called the "APR spread".

(D) The provider shall find the median APR spread for all sales-based financings in the audit. The median shall be called the "audited APR spread."

(5) After completing its audit, the provider shall calculate the weighted average of the audited APR spreads for the last three audits and the last five audits using the total number of transactions used to calculate the audited APR spreads for each audit period. This provision does not require a provider to calculate a weighted average for 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.

(A) If the weighted average for the last three audits is greater than 10%, the provider shall not utilize the method described in this section to calculate the required disclosure terms for 24 months, but shall instead employ the methods described in Section 2091 unless the provider determines that the method described in Section 2091 would have yielded a higher weighted average.
(B) If the weighted average for the last five audits is greater than 5%, the provider shall not utilize the method described in this section to calculate the required disclosure terms for 24 months, but shall instead employ the method described in Section 2091 unless the provider determines that the method described in Section 2091 would have yielded a higher weighted average.

(6) 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.

(7) If a provider must make additional estimates or assumptions other than an estimate of a recipient's future sales, income or receipts in order to provide disclosures required by this chapter, the provider shall:
(A) Base those estimates or assumptions on the best information reasonably available to the provider at the time of the disclosure;
(B) State clearly that any disclosure based upon an estimate or assumption is an "Estimate" by adding the word "Estimate" to the descriptive language of any required disclosure under this chapter; and
(C) State clearly any assumptions or estimates used as the basis for the disclosure in any description associated with the disclosure.

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

§ 3000. Annualized Rate Disclosure.

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

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

§ 3001. Calculation of Annual Percentage Rate.

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

(b) The annual percentage rate 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.
(c) The annual percentage rate calculation shall include all finance charges as that term is defined in section 3010 of these rules.
(d) When calculating the annual percentage rate, a provider may assume that it can collect payments on every calendar day, regardless of bank holidays, weekends, or other days that would otherwise delay or accelerate the provider's collection of a payment.
(e) When calculating the required disclosures for commercial open-ended credit plans, the provider shall assume that the recipient borrows the approved credit limit at origination and makes no subsequent draws and that minimum on-time payments are made pursuant to the contract.

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

§ 3002. Additional Assumptions for Factoring Transactions

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

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

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

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

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

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

3010. Finance Charge.

(a) The "finance charge" for a commercial credit transaction is the sum of:
   (1) For all commercial financing transactions, all charges that would be included in the finance charge under 12 C.F.R. part 1026.4 (effective April 1, 2019), if the transaction were a consumer credit transaction and the financer were a creditor under federal law. This paragraph is intended to require finance charges to include any charge that would be a finance charge under 12 C.F.R. part 1026.4, regardless of whether the transaction is question would be considered an "extension of credit" under federal law and regardless of whether the financer would be considered a "creditor" under federal law;
   (2) In any accounts receivable purchase transaction that is not a factoring transaction, the discount taken on the face value of the accounts receivable;
   (3) In a factoring transaction, the difference between the face value on the invoice and the amount paid directly to the recipient upon assignment of the legally enforceable claim to the financer, but excluding reserve amounts, only if the financer reasonably anticipates that it will return all reserve amounts to the recipient once it has been paid for the legally enforceable claim or claims assigned by the recipient or upon termination of the contractual relationship between the financer and the recipient, properly crediting payments made by account debtors and previous collections by the financer from the recipient, all amounts held in reserve, and payments by insurers on defaulted accounts. In determining what the financer can reasonably anticipate, the financer shall consider past performance of similar contracts (both those made to the recipient and other similar recipients) and the policies and procedures of the financer; and
   (4) In any lease financing transaction, the sum of lease payments (including any regular periodic payments and irregular payments) and price of the purchase option that the lessee may pay to acquire the leased goods at the end of the lease, minus the amount of funds provided that is disclosed to the recipient in accordance with subdivision (a)(2)(B) of section 2066 of these rules.

(b) For products where any part of the finance charge is based upon interest that accrues on the outstanding principal balance owed by the recipient, the interest charge adjusts over time, and it is not possible to calculate the interest charges in advance for the entire term of the transaction because the charge adjusts based upon a benchmark rate plus a margin, the provider shall calculate the interest charges for periods of time when the interest charge cannot be calculated in advance based upon the benchmark rate in effect at the time of disclosure and the margin.

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

§ 3021. Asset-based lending; Example transaction.

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

(1) For asset-based lending transactions where the finance charge, annual percentage rate, or term varies based upon the type of advance received, where the provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transactions that will occur under the agreement, and where the financer provides disclosures based upon an example of a transaction that could occur under the agreement under section 22803 of the Code, the provider shall give the recipient a separate disclosure for each type of advance.

(2) Maximum draw amount. If the agreement between a financer and recipient permits an advance of funds to the recipient up to and including an approved credit limit, the example transaction used in making the disclosures shall assume the recipient has drawn half the approved credit limit. For example, if the approved credit limit under the agreement is $50,000, the example transaction shall assume the recipient has drawn $25,000.

(3) No maximum draw amount. If the agreement between a provider and recipient does not specify a maximum approved credit limit, the example transaction used in making the disclosures shall assume the recipient has drawn $10,000.

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

§ 3022. Factoring; Example Transaction.

(a) For factoring transactions where the finance charge, annual percentage rate, or term varies based upon the type of the legally enforceable claim assigned, where the provider offers the recipient an agreement that describes the general terms and conditions of the commercial financing transactions that will occur under the agreement, and where the financer 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 financer 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 financer 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.

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

§ 3023. Duties of Financers and Brokers.

(a) A financer shall:
   (1) Provide a copy of compliant disclosures to a broker, whenever a financer provides a broker with a financing amount, rate or price quote for commercial financing relating to a recipient, based upon information from, or about, the recipient, the financer; and
   (2) Maintain a copy of each disclosure that it generates pursuant to this chapter for a period of at least four years following the date that the disclosure is presented to the recipient or provided to a broker.
   (3) Maintain a copy of the evidence of transmission of the disclosures provided by a broker to the financer in compliance with subdivision (b) for a period of at least four years following the date that the disclosure is presented to the recipient.
   (4) Develop procedures reasonably designed to ensure that recipients receive the disclosures compliant with this chapter at the time that the financing amount, rate or price quote is provided to the recipient by the broker, if the financer communicates financing amount, rate or price quotes to brokers. These procedures shall include:
      (A) Contractual requirements that brokers timely provide to the financer documentation of transmission of the disclosure (including timing of transmission) to the recipient;
      (B) Timely investigation of facts that would give a financer reasonable notice that a broker has not provided disclosures to recipients as required by subdivision (b); and
      (C) Discontinuation of relationships with any broker who the financer has found has not complied with subdivision (b).

(b) A broker shall not provide a recipient with a specific amount, rate, or price quote for commercial financing based upon information from, or about, the recipient, until the broker transmits the disclosures required by subdivision (a)(1) of this section, unaltered, to the recipient. After a broker transmits disclosures to the recipient, the broker shall provide evidence of transmission of the disclosures to the financer, including the time of transmission.

(c) This section shall not be construed to:
   (1) Require a broker to evaluate the accuracy of the disclosures provided by the financer;

(2) Create any liability for a broker if the disclosures that the financer provides do not comply with this Chapter or Division 9.5 of the Code; or
(3) Limit any liability that may arise when a broker makes representations concerning the commercial financing.

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

§ 3024. Other Laws.

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

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

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

§ 3025. Recipient's Relationship to California

(a) The requirement of section 22802, subdivision (a), of the Code, applies only to recipients whose business is principally directed or managed from California.

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