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**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

November 9, 2021

**TO:** Interested Parties; Licensees

**FROM:** Neal Monaghan, Chief Examiner, and Kelsey Lesco, Student Loan Ombudsperson

**RE:** Stakeholder Meeting on November 30th for Rulemaking under the Colorado Uniform Consumer Credit Code and Student Loan Equity Act

To Whom it may concern:

The Administrator of the Colorado Uniform Consumer Credit Code (“UCCC”) is authorized to “adopt, amend, and repeal substantive rules and regulations to carry out the specific provisions of this code... and adopt, amend, and repeal procedural rules to carry out the provisions of this code” with approval of the council of advisors on consumer credit subcommittee. § 5-6-104(1)(e), C.R.S. The Administrator is also empowered to “adopt rules not inconsistent with the federal “Truth in Lending Act” and federal “Consumer Leasing Act” to assure a meaningful disclosure of credit terms so that a prospective consumer will be able to compare more readily the various credit terms available to him or her and to avoid the uninformed use of credit.” § 5-6-104(2), C.R.S. The Colorado Student Loan Equity Act (“SLEA”) authorizes the Administrator to license and regulate student loan servicers. Section 110 provides that the Administrator shall adopt rules as necessary to implement the SLEA. § 5-20-110(5), C.R.S.

Questions have arisen concerning the regulatory treatment of the relatively new financial product called an Income Share Agreement (“ISA”).

The Administrator is interested in issuing the attached draft rule and related sample disclosure concerning the regulation of ISAs in Colorado (see attached). The attached draft rule includes a sample form that is intended as an illustration of the rule, not a model form. Disclosures under this draft rule are supplemental to disclosures made in compliance with the Truth in Lending Act (TILA).

The Administrator would like any written or oral feedback on the draft rule, sample form or any additional ISA-related topics relevant to this proposed rulemaking by close of business on December 1. Submission of sample ISA loan agreements is specifically requested.

In addition, the Administrator's staff will hold a stakeholder meeting on November 30th at 2pm on Zoom (link below).

Please keep in mind that the Administrator intends to hold a rulemaking hearing following consideration of information provided by stakeholders and publication of a proposed rule. A final draft of any proposed rules will be published with the Colorado Secretary of State at least 20 days before the rulemaking hearing.

Join Zoom Meeting

<https://us02web.zoom.us/j/81997933280?pwd=SStFaIVJZ2FtYWhaanJWdWt3RHRiQT09>

Meeting ID: 819 9793 3280

Passcode: 786037

One tap mobile

+13462487799,,81997933280#,,,,\*786037# US (Houston)

+16699006833,,81997933280#,,,,\*786037# US (San Jose)

Dial by your location

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 819 9793 3280

Passcode: 786037

Find your local number: <https://us02web.zoom.us/u/kRBHyHRul>

## **Rule 18 Income Share Agreements**

“Income share agreement” means a consumer credit transaction under which a consumer’s finance charge for the transaction is calculated based upon the amount of income that the consumer earns in the future. For income share agreements entered into in this state, the following rules apply.

### **(a) Definitions Applicable to this Rule**

“Contractual payment percentage” means the share or percentage of qualified income a consumer is required to pay pursuant to the terms of an income share agreement.

“Maximum payment term” means the maximum time, in months, it takes for an income share agreement to be repaid and completely satisfied.

“Maximum required payments” means the total number of qualifying payments a consumer must make to fully satisfy an income share agreement.

“Minimum income threshold” means a consumer’s income amount at or below which the consumer’s contractual payment percentage is reduced to zero dollars.

“Payment cap” means the maximum amount of money a consumer may be required to pay to satisfy the consumer’s payment obligation under an income share agreement.

“Qualifying payment” means a calculated monthly payment that counts toward the maximum required payments or maximum payment term.

“Qualified income” means that part of the consumer’s compensation, however defined, to which the contractual payment percentage will be applied to determine the amount of a consumer's qualifying payment.

### **(b) TILA and UCCC Disclosure**

A creditor entering into an income share agreement in this state shall disclose to the consumer to whom credit is extended the information, disclosures, and notices required by: (1) the federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (TILA) and any regulation thereunder; and (2) the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* (UCCC) and any regulation thereunder.

Creditors shall disclose the APR for an income share agreement pursuant to 12 C.F.R. § 1026.18(e). To the extent that information necessary for an accurate APR disclosure is unknown to the creditor, the creditor shall disclose the APR as an

estimate and shall comply with the requirements for estimates set forth in 12 C.F.R. § 1026.17(c)(2)(i).

(c) Supplemental Disclosure Regarding Finance Charge, Installment Payments, Total of Payments, and APR

A creditor entering into an income share agreement shall, in addition to any other applicable disclosure requirements of TILA or the UCCC, include a disclosure of the monthly installment payment amount, finance charge, total of payments, and estimated annual percentage rate applicable to the income share agreement for the following scenarios.

- (1) Scenario 1. The consumer's annual income stays constant at the amount used to calculate the disclosures required by Rule 18(b) for the duration of the term of the income share agreement. This disclosure shall be accompanied by a brief description such as, "if your income stays constant at the expected amount."
- (2) Scenario 2. The consumer's annual income is 50% less than the amount used to calculate the disclosures required by Rule 18(b) for the duration of the term of the income share agreement. This disclosure shall be accompanied by a brief description such as, "if your income is 50% less than the expected amount."
- (3) Scenario 3. The consumer's annual income is 50% more than the amount used to calculate the disclosures required by Rule 18(b) for the duration of the term of the income share agreement. This disclosure shall be accompanied by a brief description such as, "if your income is 50% more than the expected amount."

For each scenario, the creditor shall identify, in whole dollars, the amount of annual income that the consumer is projected to earn. When calculating the foregoing scenarios for disclosure, the creditor shall: (1) assume 12 qualifying payments per year are received at the contractual payment percentage; and (2) include any grace period in the calculation. The estimated income projection used to calculate the scenarios shall be calculated using the best information reasonably available to the creditor.

In addition to the recordkeeping requirements of Rule 10, the creditor shall retain data and documentation sufficient to demonstrate the manner and methodology used to make the estimates under the three scenarios.

When disclosing the foregoing scenarios, the creditor shall include a statement explaining that the scenarios are illustrations of what may occur and not guarantees of what will occur.

A creditor that complies with this Rule 18(c) complies with the requirement in C.R.S. § 5-3-101(2) that the creditor disclose the finance charge, the payment amount, the total of payments, and the APR for a consumer credit transaction.

(d) Additional Supplemental Disclosures

A creditor entering into an income share agreement shall, in addition to the scenarios set forth in Rule 18(c) and any other applicable disclosure requirements of TILA or the UCCC, disclose the following to the extent that they are terms of the income share agreement, together with a clear and conspicuous description of the meaning of each term:

- (1) the amount financed;
- (2) the contractual payment percentage;
- (3) the maximum required payments for the income share agreement;
- (4) the maximum payment term of the income share agreement;
- (5) the minimum income threshold;
- (6) the payment cap applicable to the income share agreement;
- (7) a complete description of the income that shall be considered qualified income and any form(s) of income that is exempted from qualified income;
- (8) the manner in which the creditor will calculate the qualified income for the income share agreement;
- (9) the manner in which the creditor will calculate the balance owed to prepay the income share agreement in full; and
- (10) the manner in which the creditor will calculate the date on which repayment will begin

(e) Annual Percentage Rate

The annual percentage rate that the creditor discloses pursuant to Rule 18(b) shall comply with the finance charge maximum established in C.R.S. § 5-2-201.

The creditor shall ensure that any amounts that it collects above the annual percentage rate disclosed pursuant to Rule 18(b) are rebated to the consumer within 35 days of repayment in full of the income share agreement, pursuant to C.R.S. § 5-2-211(3). This section shall apply even when the annual percentage rate disclosed pursuant to Rule 18(b) is an estimated rate.

The creditor shall disclose the annual percentage rate accompanied by the statement “your APR will never be higher than [rate].” If this disclosure is an estimate, the creditor shall state clearly that the disclosure is an estimate.

(f) Prohibition Against Wage Assignment

No income share agreement may include a sale or assignment of any portion of the consumer’s future income to the creditor. A creditor may not take any portion of a consumer’s future income as security for repayment of amounts owed by the consumer under an income share agreement.

Every income share agreement shall contain in the written agreement signed by the consumer a provision substantially similar to the following:

By entering into this agreement, you are not selling or assigning any portion of your future earnings. You also are not granting the creditor a security interest in any portion of your future earnings. To the extent that you default on this agreement, the creditor must obtain a valid court judgment against you before the creditor is entitled to collect from your earnings.

(g) Prepayment and Rebate

Subject to the provisions in this section, a consumer shall have the right to prepay the unpaid balance of an income share agreement without penalty.

Upon prepayment in full of an income share agreement, the creditor may collect or retain the amount financed and a finance charge that does not exceed the annual percentage rate disclosed according to Rule 18(b). This section shall apply even when the disclosed annual percentage rate is an estimate.

Where necessary to comply with this section, a creditor shall rebate to the consumer within 35 days the difference between the actual amount paid and the earned finance charge, using the mechanisms established in C.R.S. § 5-2-211(3).

(h) Prohibition against false, misleading, or deceptive statement or representation

With respect to income share agreements made in Colorado, the prohibition against false, misleading, or deceptive statements or representations set forth in C.R.S. § 5-3-110 includes: (1) a prohibition against any representation that an income share agreement is not a loan, is not credit, or otherwise is not a consumer credit transaction as defined in C.R.S. § 5-1-301(12); and (2) a prohibition against any representation that the consumer must or should report the income share agreement as a sale of income to any tax authority.

(i) Receipt of payment

The written receipt for each payment on an income share agreement that the creditor delivers or mails to the consumer pursuant to C.R.S. § 5-3-104(1) shall be sent within 7 days of the creditor's receipt of payment and shall include the following to the extent the terms are part of income share agreement:

- (1) the amount of the payment received by the creditor;
- (2) the amount of the received payment that constituted a qualifying payment;
- (3) the date on which the payment was received by the creditor;
- (4) the number of qualifying payments received by the creditor as of the date of the receipt;
- (5) the dollar total of qualifying payments received by the creditor as of the date of the receipt;
- (6) the number of payments remaining toward achieving the maximum required payments;
- (7) the number of months remaining toward achieving the maximum payment term;
- (8) the dollar amount remaining toward the satisfaction of the payment cap; and
- (9) a description of the information relied on to determine the consumer's calculated qualifying payment.

(j) License application information and notification information

In addition to the other license application information that the Administrator requires pursuant to C.R.S. § 5-2-302, creditors who apply for a license to make supervised loans in Colorado and who intend to make supervised loans that meet the definition of income share agreements shall include the following information in their application and shall provide updated information, to the extent it changes, each time they submit a renewal application pursuant to C.R.S. § 5-2-302(8).

- (1) an explanation of the manner in which the income share agreement terms used, or to be used, by the creditor in Colorado are drafted to ensure compliance with the finance charge limits set forth in C.R.S. § 5-2-201, regardless of the consumer's qualified income, prepayment, or other potential factual developments during the course of repayment of the income share agreement;
- (2) examples of the form of income share agreements that the creditor uses or intends to use in Colorado.

[Sample]

## Colorado Supplemental Income Share Agreement Disclosure

**Borrower**

[Borrower Name]

[Borrower Address]

**Creditor**

[Creditor Name]

[Creditor Address]

### Loan Terms

Amount Financed	Income share	Maximum Required Payments	Payment window	Minimum income threshold	Payment Cap
The amount of credit provided to you or on your behalf	The percentage of your gross monthly income that you will pay	The maximum number of monthly payments you may have to make	The maximum number of months for this loan term	You do not need to make payments if your income is less than this amount	The maximum amount you could pay

### Estimated Loan Rates and Costs

	Monthly Installment Payment	Finance Charge	Total of Payments	Annual Percentage Rate
If your income stays constant at the expected amount, [amount]				
If your income is 50% less than expected, [amount]				
If your income is 50% more than expected, [amount]				
	The amount of your monthly payment	The dollar amount that this credit will cost you	The amount you will have paid when you have made all scheduled payments	The cost of your credit as a yearly rate

### About Your ISA

**The amount you will be required to pay may be more or less than the amount financed and will vary in proportion to your future income.** The above scenarios are examples of what may occur if you earn more or less than the expected amount. The examples are not a guarantee of what will happen to your loan or to your income. These examples are calculated using information about your educational institution and the outcomes of students like you.



## About Your Estimated Annual Percentage Rate

**Your Estimated Annual Percentage Rate (APR) is [Rate].** This amount is an estimate and the actual APR may be lower depending on your income throughout the term of the loan. **Your APR will never be higher than [rate].**

## Fulfilling your payment obligation

[Describe the manner in which the creditor will calculate the date on which repayment will begin.]

## Calculating Your Income

[a complete description of the income which shall be considered qualified income and any form(s) of income which are exempted from qualified income]

[a complete description of the manner in which the creditor will calculate the qualified income for the income share agreement]

## Prepaying Your ISA

[Describe the manner in which the creditor will calculate the balance owed to prepay the income share agreement in full]

## Fees

[Description of fees, including for late payments]

## Not a Wage Assignment

**By entering into this agreement, you are not selling or assigning any portion of your future earnings.** You also are not granting the creditor a security interest in any portion of your future earnings. To the extent that you default on this agreement, the creditor must obtain a valid court judgment against you before the creditor is entitled to collect from your earnings.