

Rule 18 Income Share Agreements

For income share agreements made in this state, as provided in C.R.S. § 5-1-201, the following rules apply.

(a) Definitions applicable to this rule

“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.

“Income share agreement” means a consumer credit transaction under which the amount of the consumer’s repayment obligation for the transaction is calculated based upon the amount of the consumer’s future earnings.

“Maximum income threshold” means the consumer’s income amount at or above which the qualifying payment will not increase.

“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 the consumer’s income amount at or below which the consumer’s 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 payment percentage will be applied to determine the amount of a consumer’s qualifying payment.

(b) Required disclosure under TILA, Regulation Z, and the UCCC

A creditor entering into an income share agreement shall disclose to the consumer to whom credit is extended the information, disclosures, and notices required by the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* (UCCC), including C.R.S. § 5-3-101. A creditor entering into an income share agreement shall comply with the federal Truth in Lending Act (TILA) and its implementing regulation, Regulation Z.

(c) Supplemental Colorado disclosure

A creditor entering into an income share agreement shall, in addition to disclosures required by Rule 18(b), include a supplemental Colorado disclosure.

- (1) Scenarios: The creditor shall disclose the monthly installment payment amount, number of monthly payments, and total of payments applicable to the income share agreement for the following scenarios:
 - A. Scenario 1. The consumer's annual income stays constant for the term of the loan at an amount less than the minimum income threshold. This scenario shall be accompanied by a brief description such as, "if your income is below the minimum income threshold." If an ISA does not have a minimum income threshold, Scenario 1 shall be calculated using an annual income of \$0.
 - B. Scenario 2. The consumer's annual income stays constant for the term of the loan at the income used to calculate the APR disclosed pursuant to 12 C.F.R. § 1026.18(e), as required under Rule 18(b), rounded to the nearest hundred (100).
 - C. Scenarios 3-5. The consumer's income stays constant for the term of the loan at \$10,000, \$20,000, and \$30,000 less than the income used to calculate the scenario disclosed according to Rule 18(c)(1)(B) above.
 - D. Scenario 6-8. The consumer's income stays constant for the term of the loan at \$10,000, \$20,000, and \$30,000 more than the income used to calculate the scenario disclosed according to Rule 18(c)(1)(B) above.
 - E. Scenario 9. The consumer's income stays constant for the term of the loan at the maximum income threshold. This scenario shall be accompanied by a brief description such as, "if your income is above the maximum income threshold." If an ISA does not have a maximum income threshold, Scenario 9 may be eliminated from the disclosure.
 - F. When calculating the foregoing Scenarios for disclosure, the creditor shall assume that the disclosed number, amounts, and timing of the qualifying payments are received as scheduled.
 - G. If the income used to calculate any of the Scenarios 3-5 is an amount less than the minimum income threshold, then that Scenario may be eliminated from the disclosure.

- H. If the income used to calculate any of the Scenarios 6-8 is an amount more than the maximum income threshold, then that Scenario may be eliminated from the disclosure.
 - I. If any of the foregoing Scenarios 6-9 would result in a rebate under Rule 18(g), the creditor shall disclose the amount of the rebate or, alternatively, the monthly installment amount that the creditor will charge in order to avoid providing a rebate. If an installment amount is calculated to avoid providing a rebate, then the creditor shall disclose that fact. This disclosure shall consist of a brief description such as “this monthly installment amount has been reduced to maintain an APR of XX%” or “the number of payments has been reduced to maintain an APR of XX%,” as applicable.
 - J. 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. The creditor shall include a brief statement explaining that the amount paid by the borrower will vary in proportion to the borrower’s future income.
- (2) A creditor entering into an income share agreement shall 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:
- A. the amount financed;
 - B. the payment percentage;
 - C. the maximum required payments;
 - D. the maximum payment term;
 - E. the minimum income threshold;
 - F. the maximum income threshold;
 - G. the payment cap;
 - H. maximum APR, if a maximum annual percentage rate is disclosed as a limit to a variable rate pursuant to 12 C.F.R. § 1026.18(f)(1)(ii) in the disclosures required in Rule 18(b);
 - I. a complete description of the income that shall be considered qualified income and any form(s) of income that is exempted from qualified income;

- J. the manner in which the creditor will calculate the qualified income for the income share agreement;
- K. the manner in which the creditor will calculate the balance owed to prepay the income share agreement in full;
- L. the types of fees, including late fees;
- M. the manner in which the creditor will calculate the date on which repayment will begin;
- N. all acts or omissions that constitute a default on the agreement.

(3) A creditor entering into an income share agreement shall disclose that the income share agreement is not a wage assignment, in a statement substantially similar to:

By entering into this agreement, you are not selling or assigning any portion of your future earnings. You 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.

(d) Disclosure of alternatives to private education loans

If an income share agreement is a private education loan under 12 C.F.R. 1026.47, the creditor shall also include in the disclosures required by Rule 18(c), the monthly installment payment amounts, number of monthly payments, total of payments, and APR that the consumer would pay if the consumer financed the Amount Financed using any of the programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) that are required to be disclosed according to 12 C.F.R. 1026.47(a)(6) and repaid under a ten-year standard repayment plan.

The disclosure shall be accompanied by a brief description such as, “the amount of the monthly installment amount, number of payments, and total of payments will not change if your income increases or decreases if you repay according to the 10-year standard repayment plan.”

(e) Finance charges and other UCCC requirements

Creditors making consumer credit transactions that meet the definition of income share agreements shall comply with the finance charge maximums in C.R.S. § 5-2-201 and other requirements of the UCCC.

(f) Prohibition against assignment of earnings

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

(g) Prepayment and rebate

An income share agreement is paid in full when the sum of the amount(s) paid is equal to the sum of the amount financed and the earned finance charge. The earned finance charge is equal to the finance charge that would have been earned by a creditor applying the annual percentage rate disclosed pursuant to 12 C.F.R. § 1026.18(e) or, if a maximum annual percentage rate is disclosed as a limit to a variable rate pursuant to 12 C.F.R. § 1026.18(f)(1)(ii), that maximum annual percentage rate, applied to the amount financed, and calculated as of the current date.

Upon prepayment in full of the income share agreement obligation, the creditor shall rebate to the consumer within 35 days the difference between the amount paid and the sum of the amount financed and the earned finance charge.

(h) Prohibition against false, misleading, or deceptive statements or representations

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) Notice of change in qualifying payment

The creditor shall provide notice of any changes to the amount of the qualifying payment 30 days in advance of the change. The notice shall include:

- (1) The amount of the qualifying payment before and after the change;
- (2) The date on which the change will become effective; and
- (3) a description of the information relied on to determine the consumer's calculated qualifying payment.

(j) Annual statement of account

The creditor shall provide an annual statement of account that shall include the following to the extent that the terms are part of the income share agreement:

- (1) The amounts and dates of every payment made in the preceding 12 months, along with the indication of whether that payment was a "qualifying payment" or "not a qualifying payment" (using those terms).
- (2) the dollar total and number of qualifying payments received;
- (3) the dollar total and number of payment(s) received that did not constitute a qualified payment;
- (4) the dollar total of all payments received;
- (5) the number of qualifying payments remaining toward achieving the maximum required payments;
- (6) the number of months remaining toward achieving the maximum payment term;
- (7) the dollar amount required to prepay all obligations under the income share agreement as calculated under Rule 18(g);
- (8) A description of how the prepayment amount and rebate are calculated; and
- (9) a description of the information relied on to determine the consumer's calculated qualifying payment.

(k) 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 any income share agreement contracts that the creditor intends to use in Colorado;

(3) examples of any disclosure form that the creditor uses or intends to use in Colorado to meet the requirements of this Rule 18(c); and

(4) examples of any disclosure forms that the creditor uses or intends to use in Colorado to meet the requirements of the TILA and Regulation Z.

(l) Record keeping

In addition to the recordkeeping requirements of C.R.S. § 5-2-304, C.R.S. § 5-3-109, and Rule 10, the creditor shall retain data and documentation sufficient to demonstrate the manner and methodology used to calculate disclosures required under this Rule 18(b) and 18(c).