

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney
General



STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Consumer Protection Section
Consumer Credit Unit

STATEMENT OF ADOPTION

FROM: Martha Upton Fulford
Administrator, Colorado Uniform Credit Code

RE: Statement of Adoption –
Uniform Consumer Credit Rule 18, concerning Income Share Agreements,
4 CCR 902-1

Pursuant to Administrative Procedure Act, Title 24, Article 4 of the Colorado Revised Statutes, I, Martha Upton Fulford, Administrator of the Colorado Uniform Consumer Credit Code, hereby adopt,

Uniform Consumer Rule 18, concerning Income Share Agreements
4 CCR 902-1, Secretary of State tracking number 2023-00392

A copy of the adopted rule is attached hereto.

Signed this October 11, 2023.

Martha Upton Fulford
Administrator
Colorado Uniform Consumer Credit Code

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

- (1) “Earned finance charge” is equal to the finance charge that would have been earned by a creditor applying the greater of the annual percentage rate disclosed pursuant to 12 C.F.R. § 1026.18(e) or, if disclosed, the maximum annual percentage rate disclosed pursuant to 12 C.F.R. § 1026.18(f)(1)(ii) to the amount financed and calculated as of the current date.
- (2) “Income share agreement” or “ISA” means a consumer credit transaction, as defined in C.R.S. § 5-1-301(12), under which the amount of the consumer’s installment and total repayment obligation for the transaction is calculated based upon the amount of the consumer’s future qualified income, and there is a duration of time identified in the agreement after which the consumer’s obligation is complete without regard for the amount paid.
- (3) “Maximum income threshold” means the consumer’s qualified income amount at or above which the qualifying payment will not increase.
- (4) “Maximum payment term” means the time period, measured in months, during which a consumer remains obligated under an income share agreement regardless of whether the consumer’s income is greater than the minimum income threshold.
- (5) “Maximum required payments” means the maximum number of qualifying payments a consumer is required to make under an income share agreement.
- (6) “Minimum income threshold” means the consumer’s qualified income amount at or below which the consumer’s qualifying payment is reduced to zero dollars.
- (7) “Payment cap” means the maximum amount of money a consumer is required to pay to satisfy the consumer’s payment obligation under an income share agreement, which, for example, may be expressed as a dollar value, a multiple of the amount funded to the consumer or on the consumer’s behalf, or as a maximum effective annual percentage rate, excluding charges related to default or other charges and fees that are due under the income share agreement. These examples are not exhaustive, and

the disclosure of a Payment Cap may take other forms, as appropriate for the agreement.

- (8) “Payment percentage” means the share or proportion of qualified income a consumer must pay pursuant to the terms of an income share agreement. The payment percentage may also be expressed as a fixed number or a variable or tiered rate.
- (9) “Qualified income” means that part of the consumer’s income, as defined in contract, to which the payment percentage will be applied to determine the amount of a consumer's qualifying payment.
- (10) “Qualifying payment” means a calculated installment payment that counts toward the maximum required payments pursuant to the terms of an income share agreement.

(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: For each of the following scenarios, the creditor shall disclose the installment payment amount, number of installment payments, total of payments, and the qualified income amount used to calculate the disclosures.

When calculating the scenarios for disclosure, the creditor shall assume that the disclosed number, amounts, and timing of the qualifying payments are received as scheduled. When disclosing the 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 consumer will vary in proportion to the consumer’s future qualified income.

- A. Scenario 1. The consumer's annual qualified income stays constant for the term of the income share agreement at an amount less than the minimum income threshold. This scenario shall be accompanied by a brief description such as, "if your qualified income is below the minimum income threshold." If an income share agreement does not have a minimum income threshold, Scenario 1 shall be calculated using an annual qualified income of \$0.
- B. Scenarios 2-4. The consumer's annual qualified income stays constant for the term of the income share agreement at \$10,000, \$20,000, and \$30,000 less than the qualified income in Rule 18(c)(1)(C) below. If the qualified income used to calculate any of the Scenarios 2-4 is an amount less than the minimum income threshold, then that Scenario may be eliminated from the disclosure.
- C. Scenario 5. The consumer's annual qualified income stays constant for the term of the income share agreement at the qualified 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 dollars (\$100).
- D. Scenarios 6-8. The consumer's annual qualified income stays constant for the term of the income share agreement at \$10,000, \$20,000, and \$30,000 more than the qualified income in Rule 18(c)(1)(C) above. If the qualified 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.
- E. Scenario 9. The consumer's annual qualified income stays constant for the term of the income share agreement at the maximum income threshold. This scenario shall be accompanied by a brief description such as, "if your qualified income is above the maximum income threshold." If an income share agreement does not have a maximum income threshold, Scenario 9 may be eliminated from the disclosure.
- F. If any of the Scenarios would result in a rebate under Rule 18(f), the creditor shall disclose the amount of the rebate or, alternatively, the 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 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.
- G. If Scenarios 6-9 would result in a total of payments in excess of the payment cap established in the ISA loan agreement, the creditor shall disclose the

installment amount or the number of installment payments that the creditor will charge in order to avoid collecting an amount in excess of the payment cap, if one exists. If an installment amount is calculated to accommodate a payment cap, then the creditor shall disclose that fact. This disclosure shall consist of a brief description such as “this installment amount has been reduced to meet the payment cap of \$XX or “the number of payments has been reduced to meet the payment cap of \$XX,” as applicable.

- (2) A creditor offering 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, to be featured prominently relative to other terms in this subsection;
 - 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. the maximum annual percentage rate, labeled as the “maximum annual percentage rate,” if such a rate is disclosed as a limit to a variable rate pursuant to 12 C.F.R. § 1026.18(f)(1)(ii);
 - I. a complete description of the income that shall be considered qualified income and any form(s) of income that are exempted from qualified income;
 - J. a complete description of the manner in which the creditor will calculate the qualified income for the income share agreement;
 - K. how the creditor will calculate the balance owed to prepay the income share agreement in full;
 - L. the types of fees, including late fees, and the method for calculating such fees;
 - M. how the creditor will calculate the date repayment will begin; and
 - N. all acts or omissions that constitute a default on the agreement.

- (3) A creditor offering 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) 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.

(e) 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.

(f) 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.

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.

(g) 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, but is not limited to: (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.

(h) Notice of change in qualifying payment

The creditor shall provide notice of any changes to the amount of the qualifying payment. If the qualifying payment will increase, the creditor shall provide the notice at least 30 days prior to the change. If the qualifying payment will decrease, the creditor shall provide the notice at least 7 days prior to 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.

(i) 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 dollar total of all fees assessed and the method for calculating the fees;
- (6) the number of qualifying payments remaining toward achieving the maximum required payments;
- (7) the number of months remaining toward achieving the maximum payment term;
- (8) the dollar amount required to prepay all obligations under the income share agreement as calculated under Rule 18(f); and
- (9) A description of how the prepayment amount and rebate are calculated; and
- (10) 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 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.

(k) 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).