

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
23 NYCRR 600**

**DISCLOSURE REQUIREMENTS FOR CERTAIN PROVIDERS OF COMMERCIAL FINANCING  
TRANSACTIONS**

I, Adrienne Harris, Acting Superintendent of Financial Services, pursuant to the authority granted by sections 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, and 811 of the Financial Services Law, do hereby promulgate Part 600 of Title 23 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

**(ALL MATTER IS NEW)**

**Section 600.00 Introduction.**

(a) Financial Services Law sections 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, and 811 (defined in section 600.01(a)(9) as *Commercial Finance Disclosure Law (CFDL)*) require providers of commercial financing that are subject to the CFDL to provide disclosures to potential recipients of commercial financing, at the time a specific offer of financing is extended to a recipient.

(b) Pursuant to the CFDL, the superintendent has the power to promulgate regulations that:

(1) include in the definition of “finance charge” set forth in Financial Services Law section 801(e) “any charges as determined by the superintendent”;

(2) prescribe the formatting of sales-based financing disclosure requirements, pursuant to Financial Services Law section 803;

(3) prescribe a review process under which providers utilizing the opt-in method of calculating estimated annual percentage rate (APR) report data to the superintendent of estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions, pursuant to Financial Services Law section 803(c)(ii), and also:

(i) prescribe the information to be contained in such report as necessary or appropriate for the purpose of making a determination of whether the deviation between the estimated annual percentage rate and actual retrospective annual percentage rates of completed transactions was reasonable; and

(ii) establish a method of such reporting;

(4) prescribe the formatting of closed-end financing disclosure requirements pursuant to Financial Services Law section 804;

(5) prescribe the formatting of open-end commercial financing disclosure requirements pursuant to Financial Services Law section 805;

(6) prescribe the formatting of factoring transaction disclosure requirements pursuant to Financial Services Law section 805;

(7) require disclosure by a provider extending a specific offer of commercial financing that is not open-end financing, closed-end financing, sales-based financing, or factoring transaction but otherwise meets the definition of commercial financing, and prescribe the formatting of such disclosures, pursuant to Financial Services Law section 807; and

(8) pursuant to Financial Services Law section 811 promulgate any other rules and regulations as may be consistent with the purposes of the CFDL, or appropriate for the effective administration of the CFDL, including such rules and regulations:

(i) in connection with the calculation or determination of any metric required to be disclosed to a recipient;

(ii) as necessary to develop and prescribe disclosure formatting to be used by providers that allows for recipients to easily compare financing options in a clear and conspicuous manner;

(iii) as may define the terms used in the CFDL and as may be necessary and appropriate to interpret and implement the provisions of the CFDL; and

(iv) as may be necessary for the enforcement of the CFDL.

**Section 600.01 Definitions.**

(a) For purposes of this Part, the following definitions apply:

(1) *Amount financed* means, with respect to:

(i) a closed-end transaction or sales-based financing, the amount of funds to be provided by the financier to the recipient or on the recipient's behalf;

(ii) a commercial open-end credit plan, the approved credit limit;

(iii) a factoring transaction disclosure made pursuant to Financial Services Law section 806, the original advance amount;

(iv) an asset-based lending transaction, the approved credit limit; and

(v) a lease financing transaction, if the financier:

(a) does not select, manufacture or supply the goods to be leased, the net cost to the financier to acquire the property to be leased; or

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

(2) *Approved advance limit* means the maximum advance that a financier may provide to a recipient or on the recipient's behalf in exchange for assignment of outstanding, unpaid legally enforceable claims under a factoring agreement. The approved advance limit does not include reserve amounts or any other amount not advanced to the recipient at the time of assignment. If a factoring agreement requires the financier 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, then the approved advance limit means the sum of the different maximum advances for different types of legally enforceable claims.

(3) *Approved credit limit* means the maximum advance that a financier may provide to a recipient or on the recipient's behalf 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 financier 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.

(4) *Asset-based lending transaction* means a transaction in which advances are made from time to time contingent on a recipient forwarding payments (defined in paragraph (13) of this subdivision) received from one or more third parties for goods the recipient has supplied or services the recipient has rendered to that third party or parties.

(5) *At the time of extending a specific offer* for financing under the CFDL means:

(i) any time a specific periodic payment or irregular payment amount, rate or price, in connection with a commercial financing, is quoted in writing to a recipient, based upon information from, or about, the recipient; and

(ii) any subsequent time when the terms of an existing consummated commercial financing contract are changed, prior to the recipient agreeing to the changes, if the resulting changes to the contract would result in an increase to the finance charge;

(iii) notwithstanding subparagraphs (i) and (ii) of this paragraph, at the time a specific periodic payment or irregular payment amount, rate or price is quoted to a recipient in writing based upon information from, or about, the recipient, and before the draw or purchase occurs, in connection with each draw on an open-end credit plan if:

(a) draws occur at the time that a recipient purchases products or services from a retailer or supplier; and

(b) the rate or price varies based upon the retailer or supplier the recipient selects, or the products or services the recipient purchases; or

(iv) notwithstanding subparagraphs (i) through (iii) of this paragraph, where a provider allows a recipient to select from multiple offer options or customize a financing offer, a provider must only provide the disclosure(s) for the specific offer that the recipient elects to pursue.

(6) *Benchmark rate* means a rate index (such as the 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.

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

(8) *Closed-end extension of credit*, as that term is used in Financial Services Law section 801(d), 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:

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

(ii) 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) *Commercial Finance Disclosure Law (CFDL)* means Financial Services Law sections 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, and 811.

(10) *Commercial Financing*, as defined in Financial Services Law section 801 (b) does not include any transaction in which a financier provides a disclosure required by the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, that is compliant with such Act.

(11) *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 transaction.

(12) *Financier* means the person who provides or will provide the commercial financing to the recipient.

(13) *Forwarding payments* includes:

(i) arrangements in which a recipient and the financier create an account wherein third party obligors deposit payments;

(ii) 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, or

(iii) arrangements in which the recipient directs third party obligors to make payments directly to the financier.

(14) *Funds paid to brokers* means the total amount of the amount financed that will be paid to any broker.

(15) *Initial interest rate* means, in a credit transaction with an interest rate that changes over time and that 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.

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

(17) *Irregular payment* means any payment made to the financier that is not a periodic payment.

(18) *Lease financing* means providing a lease for goods if the lease includes a purchase option that creates a security interest in the goods leased. Lease financing includes a “finance lease” as defined in section 2-A-103 (1) (g) of the Uniform Commercial Code but does not include a “consumer lease” as defined in section 2-A-103(1)(e) of the Uniform Commercial Code.

(19) *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.

(20) *Maximum non-interest finance charge* means, for:

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

(ii) factoring, the maximum amount of the finance charge, other than interest accrued and unpaid since the time the financier 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.

(21) *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.

(22) *Periodic payment* means any payment made to the financier at regular intervals.

(23) *Person who applies for commercial financing* means the expected primary borrower or borrowers on a commercial financing transaction, open-ended credit plan, or asset-based lending transaction; sellers in accounts receivable purchase transactions, including factoring; and lessees in lease financing transactions.

(24) *Provider* has the meaning ascribed in Financial Services Law section 801(h) and refers to a financier who communicates a specific amount, rate or price, in connection with a commercial financing, either directly to a recipient, or to a broker with the expectation that the information will be shared with a recipient.

(25) *Recipient* means, pursuant to Financial Services Law section 801(i), a person who applies for commercial financing and is made a specific offer of commercial financing by a provider. A recipient may also be an authorized representative of such person. A person acting as a broker cannot be a recipient.

(26) *Recipient funds* means the part of the amount financed that will be made available directly to the recipient. Recipient funds exclude, without limitation, any part of the amount financed used to pay off other financings, funds paid to brokers and funds paid to other third parties.

(27) *Retrospective annualized rate* means the actual annualized rate, determined after the specific financing contract has been fully repaid to the financier, when the dates and amounts of all payments and fees are known.

(28) *Sales-based financing* has the meaning ascribed in Financial Services Law section 801(j).

(29) *Specified payment amount* means the periodic pre-set amount stated in the contract described in paragraph (35)(i) of this of this subdivision.

(30) *Split rate* means, with respect to sales-based financing, the percentage used by the financier to calculate the payment amounts to be paid to the financier or true-ups.

(31) *Term* means, with respect to:

(i) disclosures made pursuant to Financial Services Law section 806, the length of time between when the recipient receives payment from the financier for the legally enforceable claim and the date the legally enforceable claim becomes due and payable;

(ii) closed-end financing and open-end financing, as those terms are defined in the CFDL, the contracted length of time necessary for the recipient to fulfill its obligations under the financing agreement with respect to a particular financing advance;

(iii) asset-based lending disclosures made in accordance with section 600.15 of this Part, the length of time necessary for the recipient to fulfill its obligations under the financing contract based upon the following assumptions:

(a) the recipient maintains a balance equal to the approved credit limit by reborrowing up to the approved credit amount for a time equal to the draw period or one year, whichever is less, and

(b) at the end of the time equal to the draw period or one year, whichever is less, the financier is repaid according to the terms specified in the contract; and

(iv) for all other types of commercial financing, the length of time that it is anticipated will be necessary for the recipient to fulfill its obligations under a financing agreement.

(32) *Transactions*, as that word is used in Financial Services Law section 801(c)(1), means “advances” of financing.

(33) *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.

(34) *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, accounting for past performance of similar contracts (both those made to the recipient and other similar recipients) and the policies and procedures of the financier.

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

(i) the financier receives periodic payments based upon a pre-set amount (or amounts) stated in the contract; and

(ii) the contract allows the recipient to request, or the financier 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.

(b) With respect to factoring transactions:

(1) *Account debtor* means the debtor with the primary obligation to pay the legally enforceable claim assigned by the recipient.

(2) *Purchase price* means the amount that the financier agrees to pay the recipient for assignment of a legally enforceable claim.

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

(4) *Original advance amount* means the amount that a financier issues to a recipient or on the recipient's behalf upon receipt of a legally enforceable claim for payment.

(5) *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 financier in the event of non-payment of the legally enforceable claim, or to secure the financier in the event of non-payment of other legally enforceable claims assigned or to be assigned by the recipient to the financier.

(6) *Reserve factoring transaction* means a factoring transaction where, upon receipt of a legally enforceable claim for payment, a financier 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 financier 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 financier.

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

(d) *[A]n individual commercial financing transaction in an amount over two million five hundred thousand dollars*, as such term appears in Financial Services Law section 802(g), means the aggregate amount that a recipient may receive under a commercial financing agreement and not the amount of any particular advance under such agreement.

## **Section 600.02 Definition of finance charge.**

(a) *Finance charge* means the cost of financing as a dollar amount and equals the sum of:

(i) for all commercial financing transactions, all charges that would be included in the finance charge under the federal Truth in Lending Act, Regulation Z, 12 C.F.R. section 1026.4 (effective April 1, 2019), and only such charges, if the transaction were a consumer credit transaction and the financier were a creditor according to the definition set forth in 15 U.S.C. section 1602(g).

(ii) in any accounts receivable purchase transaction that is not a factoring transaction, the discount taken on the face value of the accounts receivable;

(iii) 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 financier, but excluding reserve amounts, only if the financier 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 financier and the recipient, properly crediting payments made by account debtors and previous collections by the financier from the recipient, all amounts held in reserve, and payments by insurers on defaulted accounts. In determining what the financier can reasonably anticipate, the financier shall consider past performance of similar contracts (both those made to the recipient and other similar recipients) and the policies and procedures of the financier; and

(iv) 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, less the amount of funds provided that is disclosed to the recipient in accordance with section 600.15(b)(2) of this Part.

(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.

## **Section 600.03 Annual percentage 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.

(b) 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 section, 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).

(c) The annual percentage rate calculation shall include all finance charges.

(d) 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.

#### **Section 600.04 Allowed tolerances.**

(a) An annual percentage rate disclosed pursuant to section 600.03 of this Part shall be considered accurate if:

(1) it is not more than one-eighth of one percentage point below the annual percentage rate determined in accordance with section 600.03(b); or

(2) the percentage difference between the annual percentage rate determined in accordance with section 600.03(b) and the annual percentage rate disclosed pursuant to section 600.03(a) is 2.5% or less. The percentage difference shall be calculated as follows: The annualized rate disclosed pursuant to section 600.03(a) shall be subtracted from the annualized rate determined in accordance with section 600.03(b), and the resulting difference shall be divided by rate disclosed pursuant to section 600.03(a) and multiplied by 100.

(b) A provider and financier shall have no liability under this section for any inadvertent error in a disclosure to a recipient that does not comply with this section, if within sixty days after discovering the error through the provider's or financier's own procedures, and prior to the institution of an action against the provider or financier for such error, the financier or its assignee notifies the recipient of the error and makes whatever adjustments in the appropriate account are necessary to assure that the recipient will not be required to pay an amount in excess of the finance charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(c) A provider or financier shall have no liability for inadvertently disclosing a finance charge, annual percentage rate, periodic payment or irregular payment, average monthly cost, maximum non-interest finance charge, or prepayment fee or charge that exceeds the amount that the provider is required to disclose under this section.

#### **Section 600.05 General formatting requirements.**

Disclosures provided in accordance with the CFDL shall comply with the requirements of this section.

(a) At the top of the disclosure, centered on the page or other display medium, the provider shall print "OFFER SUMMARY FOR" in bold font, followed by a one-to-five-word description of the type of product offered (e.g. "Merchant Cash Advance"), which may include the financier's branding terminology.

(b) At the bottom of the disclosure, below any other information required by the CFDL, the provider shall print the following statement: "New York 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 the recipient's signature, labeled "Date."

(c) If the term or estimated term of a transaction is:

(1) one year or less, the term or estimated term shall be disclosed in days; or

(2) greater than one year, the term or estimated term 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.

(d) 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.

(e) Fonts.

(1) The provider may present the required disclosure in fonts and colors that are clear, complete, conspicuous, easy to compare with other disclosures, and consistent with the requirements of this Part.

(2) A provider shall use fonts for the disclosures substantially similar in size to:

(i) Times New Roman 12-point to 14-point font, for information appearing in the first and second columns where those columns are not combined with other columns;

(ii) Times New Roman 10-point to 12-point font, for information appearing in the third column, information appearing in cells where the second and third columns are combined, and information appearing in cells where the first, second, and third columns are combined; and

(iii) Times New Roman 16-point font for the content required by subdivision (a) of this section.

(3) Notwithstanding subdivision (e)(2) of this section, a provider may use a font substantially similar in size to Times New Roman 16-point font for "OFFER SUMMARY FOR" and content appearing in the first and second columns of the disclosure where those columns are not combined with other columns.

(f) A provider shall ensure that the width of the columns in the required disclosure is such that the disclosure does not unnecessarily extend onto multiple pages. A provider that formats the columns in the required disclosure such that the ratio between the first, second and third columns is 3:3:7 complies with the requirements of this section.

(g) Where a provider is required or permitted to provide a short explanation under this section, the provider shall provide an explanation of not more than 60 words.

(h) Each of the cells in the required disclosures shall be outlined.

(i) If disclosures are provided to a recipient electronically, to comply with Section 600.05(b) the provider shall include a method for the recipient to submit an electronic signature that complies with the New York Electronic Signatures and Records Act, State Technology Law sections 103-109, receive an automatic date stamp

upon submission of such signature, and obtain a copy of the signed disclosure in a format that the recipient may save indefinitely for future reference.

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

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

(ii) 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 section; and

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

(k) When making the disclosures required by this section, 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.

(l) Numerical values, including but not limited to percentages, dates, and dollar amounts, shall be expressed numerically, (e.g., 23), and not alphabetically, (e.g., twenty-three).

(m) If a provider issues a disclosure where the amount financed includes funds used to pay down or pay off a pre-existing financing agreement, and the amount due under that preexisting financing agreement changes prior to consummation of the agreement between the financier and the recipient, the provider need not provide a new disclosure to the recipient solely because the amount due under the preexisting financing agreement has changed.

#### **Section 600.06 Sales-based financing disclosure formatting.**

Disclosures for all sales-based financing provided in accordance with Financial Services Law section 803, except for asset-based lending that meets the definition of sales-based financing, shall comply with the requirements of this section.

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

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

(1) in the first column, the following language: “Funding Provided.”;

(2) in the second column, the amount financed; and

(3) in the third column, in the order listed and in one paragraph:

(i) “This is how much funding [name of financier] will provide.”;

(ii) if the amount financed is less than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on the amounts that will be deducted, please review the attached document ‘Funding You Will Receive.’”;

(iii) if the amount financed is less than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be deducted/provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [‘a broker’/‘brokers’]. For more information on the amounts that will be deducted, please review the attached document ‘Funding You Will Receive.’”; and

(iv) if any portion of the amount owed will be used to satisfy obligations under another financing, the provider may also include the following statement: “Because this financing will be used to [‘pay down’/‘pay off’] another financing contract, and the amount due under that contract may change, the amount we pay you directly may change.”

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

(1) in the first column, the following language: “Estimated Annual Percentage Rate (APR)”;

(2) in the second column, the annual percentage rate calculated in accordance with section 600.03;

(3) 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 average monthly income through [description of particular payment channel or mechanism] will be [monthly income estimate determined in accordance with 23 NYCRR section 600.08 or 600.09]. Since your actual income may vary from our estimate, your effective APR may also vary.”; and

(4) if no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (c)(3) of this section: “APR it is not an interest rate. The cost of this financing is based upon fees charged by [financer] rather than interest that accrues over time.”

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

(1) in the first column, the following language: “Finance Charge”;

(2) in the second column, the finance charge calculated in accordance with section 600.02 of this Part; and

(3) in the third column, the provider’s calculation of the finance charge, with the amount and description of each expense that is included in the finance charge. In addition, if the finance charge will not increase under any circumstance if repayment takes longer than estimated, the provider may include the following statement: “Your finance charge will not increase if you take longer to pay off what you owe.”

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

(1) in the first column: “Estimated Total Payments”;

(2) in the second column: The total estimated payments the recipient will make during the term of the contract; and

(3) in the third column: “This is the total amount of payments we estimate you will make under the contract.”

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

(1) in the first column, the following language: “Estimated Payment”; and

(2) the second and third columns shall be combined, and contain the following information:

(i) the average amount of estimated periodic payments calculated in accordance with section 600.07, followed by a forward slash (/) and the frequency of periodic payments;

(ii) the date and amount of any irregular payments listed in chronological order; and

(iii) the date and amount of any reasonably anticipated true-ups.

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

(1) in the first column, the following language: “Payment Terms”; and

(2) the second and third columns shall be combined, and contain the following information:

(i) if the contract provides for daily periodic payments, a short explanation of when daily payments will be required (e.g., on weekdays or every calendar day);

(ii) if applicable, a short explanation of how the financier will use the split rate to calculate the recipient’s required payments and/or that the financing does not have a fixed payment schedule or minimum payments (e.g., “Each business day, your credit card processor will remit 15% of your gross receipts to us and send any remaining amounts to you. This financing does not have a fixed payment schedule and there is no minimum payment amount.”); and

(iii) if the contract contains a true-up mechanism, a short explanation of:

(a) how the provider calculated the pre-set periodic payment(s) described in Section 600.01(a)(35)(i). 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) 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.”; and

(c) any minimum payment terms under the contract. For example: “You must pay us a minimum of \$2,000 per month under the contract.”

(h) The seventh row of the table shall include only the following information:

(1) in the first column, the following language: “Estimated Term”;

(2) in the second column, the estimated term of the transaction, calculated in accordance with section 600.07; and

(3) in the third column, a short explanation stating that the estimated term is based upon assumptions about the recipient’s income (e.g., “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 account.”).

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

(j) In the eighth row, the second and third columns shall be combined and shall include only the following information:

(1) 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 and unpaid since the recipient’s last payment, the following statement, “If you pay off the financing faster than required, you still must pay all or a portion of the finance charge, up to \$[maximum non-interest finance charge] based upon our estimates.”; and

(2) 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 unpaid interest accrued.”

(k) In the ninth row, the second and third columns shall be combined and shall include only the following information:

(1) 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 relating to the prepayment, the following statement: “If you pay off the financing faster than required, you must pay additional fees of [amount and description of fees].”; and

(2) 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.”

(l) The tenth row of the table shall include only the following information:

(1) in the first column, the following language: “Collateral Requirements”;

(2) the second and third columns shall be combined and shall include only a description of the collateral requirements or security interests of the transaction, if any.

(m) 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:

(1) in the first column, the following language: “Estimated Monthly Cost”;

(2) in the second column, the estimated monthly cost that the recipient will pay over the term of the transaction calculated in accordance with section 600.07. 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 (e.g., Months 1-2: \$600/month; Months 3-6: \$1200/month; Month 7: \$1000/month); and

(3) in the third column, a short explanation of how the provider calculated the estimated monthly cost (e.g., “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.”).

**Section 600.07 Sales-based financing –estimated annual percentage rate.**

(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 section 600.08(b) of this Part or the internal estimated sales projection described in section 600.9(a)(3), accounting for:

- (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;

and

(5) any other finance charges that may be reasonably anticipated based upon the estimated monthly sales projection or the provider’s internal estimated sales 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 section 600.08(b), or internal estimated sales projection described in section 600.9(a)(3), 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 projection.

**Section 600.08 Sales-based financing –historical method.**

(a) This section shall apply only to sales-based financing utilizing the “historical method” as described in Financial Services Law section 803.

(b) With respect to any assumptions about a recipient’s future monthly sales necessary to calculate the disclosures required by this Part, a provider shall use the “estimated monthly sales projection” described below:

(1) the estimated monthly sales projection shall be calculated as the recipient’s historical average of:

(i) the monthly sales, income or receipts volume received through the particular payment channel or mechanism; and

(ii) the monthly sales received through any other payment channel or mechanism that the financing contract would have required recipients to redirect to the particular payment channel or mechanism had the financing contract been operative previously;

(2) the provider shall fix the historical time period used to calculate the average historical volume and use such period for all disclosure purposes for all sales-based financing products offered. The fixed historical time period shall either be the preceding time period from the specific offer or, alternatively, the provider may use average sales for the same number of months with the highest sales volume within the past twelve months. The fixed historical time period shall be no less than one month and no more than twelve months;

(3) when a recipient has not been in operation for twelve months, the provider may calculate the recipient’s historical average sales volume, income, or receipts using an average from the months the recipient has been in operation;

(4) a provider may exclude from the average calculation required by subdivision (b)(1) of this section the monthly sales from any month that is less than the average monthly sales of the months required to be considered under subdivisions (b)(2) and (b)(3) of this section if the provider determines that the decreased monthly sales in that month arose from a cause that is unlikely to recur (such as a natural disaster or uncommon business interruption) during performance of the contract. A provider shall have no liability if it declines to make this optional exclusion.

(5) a provider may exclude from the average calculation required by subdivision (b)(1) of this section the monthly sales from any month for which the recipient failed to provide documentation of average monthly sales following the provider’s request; and

(6) when a provider fixes the number of months it will consider pursuant to section 600.08 (b)(2) or section 600.08 (b) (3), the provider shall record this decision in an internal document that includes the effective date of the provider's decision. If the provider modifies the months fixed pursuant to section 600.08 (b)(2) or section 600.08 (b) (3), the provider shall create a new version of the document required by section 600.06. The provider shall maintain a copy of every version of the document while it is in effect and for a period of four years thereafter.

(c) If a provider must make additional estimates or assumptions other than a recipient's estimated monthly sales projection to provide disclosures required by this Part, 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 Part; and

(3) state clearly any assumptions or estimates used as the basis for the disclosure in any description associated with the disclosure.

#### **Section 600.09 Sales-based financing – opt-in method.**

(a) This section shall apply only to sales-based financing utilizing the opt-in method as described in Financial Services Law section 803.

(b) With respect to any assumptions about a recipient's future sales, income or receipts, and as an alternative to the methods described in section 600.08 of this Part for calculating disclosures required by this Part, a provider may elect to calculate the required disclosures in accordance with this section.

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

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

(e) Once every twelve months, a provider who makes disclosures based upon internal estimated sales projections shall conduct an internal audit of its commercial financings. 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, including transactions with contractually required true-up payments, but excluding transactions where:

(1) the provider or financier initiated legal action against the recipient in court or arbitration for breach of the contract or to collect amounts due under the contract;

(2) the provider or financier stopped collection of amounts due under a contract after determining that the recipient had violated the terms of the contract; or

(3) the provider modified the contract terms pursuant to an agreement with a recipient.

(f) 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.

(g) The provider shall calculate the percentage of the difference between the disclosed annualized rate and the retrospective annualized rate for each sales-based financing in the audit. The provider shall subtract the disclosed annualized rate from the retrospective annualized rate for each sales-based financing in the audit, divide the resulting amount by the disclosed annualized rate, and multiply that number by 100. The percentage resulting from this calculation shall be called the “APR spread.”

(h) 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.”

(i) After completing its audit, the provider shall calculate the weighted average of the audited APR spreads for the last three audits, the last five audits, and the last seven audits using the total number of transactions used to calculate the audited APR spreads for each audit period. A provider is not required to calculate a weighted average for the last three audits if the provider has not conducted three audits, the weighted average for the last five audits if the provider has not conducted five audits, or the weighted average for the last seven audits if the provider has not conducted seven audits.

(1) If the weighted average for the last three audits is greater than 15%, the provider shall not utilize the method described in this subdivision (i) to calculate the required disclosure terms for 24 months, but shall instead employ the methods described in section 600.08 unless the provider determines that the method described in section 600.08 would have yielded a higher weighted average.

(2) If the weighted average for the last five audits is greater than 10%, the provider shall not utilize the method described in this subdivision (i) to calculate the required disclosure terms for 24 months, but shall instead employ the method described in section 600.08 unless the provider determines that the method described in section 600.08 would have yielded a higher weighted average.

(3) If the weighted average for the last seven audits is greater than 5%, the provider shall not utilize the method described in subdivision (i) to calculate the required disclosure terms for 24 months, but shall instead employ the method described in section 600.08 unless the provider determines that the method described in section 600.08 would have yielded a higher weighted average.

(4) If the weighted average for the last three audits is 5% or less, the provider may reduce the frequency of the audit process required by section 600.09(e) to once every twelve months. For any audit conducted twelve months following the previous audit pursuant to this subdivision (i), the provider shall review all sales-based financings paid off during the previous twelve-month period, rather than the previous four-month period, but shall otherwise comply with the process required by section 600.09(e).

(j) Following the end of the 24-month period described subdivision (i) the provider may begin calculating estimated payments, and 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 projections to make its disclosures more accurate.

(k) 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 Part, 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 Part; and

(3) state clearly any assumptions or estimates used as the basis for the disclosure in any description associated with the disclosure.

### **Section 600.10 Closed-end financing disclosure formatting.**

Disclosures for closed-end financing provided in accordance with Financial Services Law section 804 shall comply with the requirements of this section unless the closed-end transaction meets the definition of sales-based financing.

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

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

(1) in the first column, the following language: "Funding "Provided";

(2) in the second column, the amount financed;

(3) in the third column, the following in the order listed and in one paragraph:

(i) "This is how much funding [name of financier] will provide.";

(ii) if the amount financed is less than the funds available to the recipient and the amount financed does not include funds paid to brokers: "Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on the amounts that will be deducted, please review the attached document 'Funding You Will Receive.'";

(iii) if the amount financed is less than the funds available to the recipient, and the amount financed includes funds paid to brokers: "We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay ['a broker'/'brokers']. For more information on the amounts that will be deducted, please review the attached document 'Funding You Will Receive.'"; and

(iv) if any portion of the amount owed will be used to satisfy obligations under another financing, the provider shall also include the following statement: "Because this financing will be used to ["pay

down”/“pay off”] another financing contract, and the amount due under that contract may change, the amount we pay you directly may change.”

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

(1) in the first column:

(i) if the contract provides for a fixed interest rate or rates that are predetermined by the contract, 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: “Estimated Annual Percentage Rate (APR)”;

(2) in the second column, the annual percentage rate calculated in accordance with section 600.03 of this Part;

(3) 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.

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

(ii) 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.

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.;

(iv) the following language, if no part of the finance charge is based upon an 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, fees you pay and the payments you make.

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

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

(1) in the first column:

(i) if the contract provides for a fixed interest rate or rates that are predetermined by the contract, or no part of the finance charge is based upon an interest rate, the following language: "Finance Charge"; or

(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";

Part;

(2) in the second column, the total finance charge, calculated in accordance with section 600.02 of this

(3) in the third column:

(i) "This is the dollar cost of your financing."; or

(ii) if the contract provides for an adjustable interest rate or rates that are not predetermined by the contract: "The interest rate under your contract will adjust over time, so your actual finance charge may vary."

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

(1) in the first column:

(i) if, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total payments the recipient will make during the contract's term: "Total Payments."; or

(ii) if, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total payments therecipient will make during the contract's term: "Estimated Total Payments.";

(2) in the second column: The total payments or total estimated payments the recipient will make during the term of the contract if the recipient makes minimum required payments;

(3) in the third column:

(i) if, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total payments the recipient will make during the term of the contract: “This is the total amount of payments you will make during the term of the contract.”; or

(ii) if, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total payments the recipient will make during the term of the contract: “This is our estimate of the total amount of payments you will make during the term of the contract.”

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

(1) 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”; or

(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”;

(2) if periodic payments during the term of the transaction will not vary:

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

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

(3) if periodic payments during the term of the transaction vary and it is possible to calculate the payment amounts in advance, the second and third columns in the fourth row shall be combined and the provider shall list the periodic payment amounts and 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;

(4) 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, followed by the date and amount of any irregular payments listed in chronological order; and

(ii) in the third column: “This is your initial periodic payment. Your periodic may adjust over time.”

(g) The sixth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:

(1) in the first column, the following language: “Term”; and

(2) in the second column, the term of the transaction.

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

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

(1) 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 and unpaid since the recipient’s last payment, the following statement: “If you pay off the financing early you will still need to pay all or portion of the finance charge, up to \$[maximum non-interest finance charge].”; and

(2) 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 unpaid interest accrued.”

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

(1) 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 relating to the prepayment, the following statement: “If you pay off the financing early you must also pay the following additional fees:” followed by the amounts and descriptions of each additional fees and charges; and

(2) in all other cases, the following statement: “If you pay off the financing early you will not pay additional fees.”

(k) The tenth row of the table shall include only the following information:

(1) in the first column, the following language: “Collateral Requirements”; and

(2) the second and third columns shall be combined and shall include only a description of the collateral requirements or security interests of the transaction, if any.

(l) 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:

(1) in the first column: “Average Monthly Cost”;

(2) in the second column, the average monthly cost that the recipient will pay over the term of the transaction; and

(3) in the third column: “Although this financing does not have monthly payments, this is our calculation of your average monthly cost for comparison purposes.”

(m) 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 the following: “This financing has multiple payment options. This disclosure assumes you will make the minimum payments permitted under the contract.”

### **Section 600.11 Open-end commercial financing disclosure formatting.**

Disclosures for commercial open-end credit plans, provided in accordance with Financial Services Law section 805 shall comply with the requirements of this section.

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

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

(1) if the contract allows only for a single payment option: “The calculations below are based on an initial draw of 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.”; or

(2) 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.

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

(1) in the first column, the following language: “Funding Provided”;

(2) in the second column, the amount financed;

(3) in the third column, in the order listed and in one paragraph:

(i) “This is the maximum amount of funding [name of financier] may provide.”;

(ii) if the amount financed is less than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly if you request the maximum amount is [recipient funds]. For more information on what amounts will be deducted, please review the attached document ‘Funding You Will Receive’.”;

(iii) if the amount financed is less than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be provided to you directly if you request the maximum amount is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [‘a broker’/‘brokers’]. For more information on the amounts that will be deducted, please review the attached document “Funding You Will Receive”; and

(iv) if any portion of the amount owed will be used to satisfy obligations under another financing, the provider may also include the following statement: “Because this financing will be used to [pay down/ pay off] another financing contract, and the amount due under that contract may change, the amount we pay you directly may change.”

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

(1) in the first column:

(i) if the contract provides for a fixed interest rate or rates that are predetermined by the contract, the following language: “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)”;

(2) in the second column, the provider’s calculation of the annual percentage rate calculated in accordance with section 600.03 of this Part;

(3) 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.”; or

(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.”

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

(1) in the first column the following language: “Estimated Finance Charge”;

(2) in the second column, the total finance charge calculated in accordance with section 600.02 of this Part;  
and

(3) in the third column:

(i) “This is the dollar cost of our financing based upon the assumptions described above.”; and

(ii) if the contract provides for an adjustable interest rate or rates that are not predetermined by the contract: “The interest rate under your contract will adjust over time, so your actual finance charge may vary.”

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

(1) in the first column: “Estimated Total Payments”;

(2) in the second column, the total estimated payments the recipient will make during the term of the contract if the recipient makes minimum required payments; and

(3) in the third column: “This is the total amount of payments you will make during the term of the contract based upon the assumptions described above.”

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

(1) in the first column “Estimated Payment”;

(2) if periodic payments during the term of the transaction will not vary over the term of the transaction:

(i) in the second column, the amount of the 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; and

(ii) in the third column, a short explanation of when each payment will become due;

(3) if periodic payments during the term of the transaction vary and it is possible to calculate the payment amounts in advance, the second and third columns in the fifth row shall be combined and the provider shall list the periodic payment and 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;

(4) if periodic payments during the term of the transaction vary and it is not possible to calculate all payment amounts in advance because the transaction has an adjustable interest rate 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; and

(ii) in the third column, a short explanation that the periodic payment amount disclosed is based upon the initial interest rate, and that the actual rate may change over time. The provider may also include a short explanation describing when the payment will adjust and how it will be calculated; and

(5) 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 (5)(i) above, 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 short explanation that the Initial Interest Payment Amount disclosed is based upon the initial interest rate, and that the actual rate may change over time; and

(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 (5) (iii) above, a short explanation of the principal payment amount and frequency.

(h) The seventh row of the table shall include only the following information:

- (1) in the first column, the following language: “Draw Period”;
- (2) in the second column, the draw period for the transaction; and
- (3) in the third column, a short explanation of the draw period for the transaction;

(i) The eighth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:

- (1) in the first column, the following language: “Term”; and
- (2) in the second column, the term of the transaction.

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

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

(1) 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 and unpaid 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].”; or

(2) 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 unpaid interest accrued.”

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

(1) 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 relating to the prepayment, the following statement: “If you pay off the financing early you must also pay the following additional fees: ” followed by the amounts and descriptions of the additional fees and charges; or

(2) in all other cases, the following statement, “If you pay off the financing early you will not pay additional fees.”

(m) The eleventh row of the table shall include only the following information:

(1) in the first column, the following language: “Collateral Requirements”; and

(2) the second and third columns shall be combined and shall include only a description of the collateral requirements or security interests of the transaction, if any.

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

(1) in the first column, the following language: “Average Monthly Cost”;

(2) in the second column, the average monthly cost that the recipient will pay over the term of the transaction; and

(3) in the third column: “Although this financing does not have monthly payments, this is our calculation of your average monthly cost for comparison purposes.”

(o) If differing rates or terms result from the recipient’s selection of different equipment, inventory, or other assets to be financed with the extension of credit the provider shall make a separate disclosure for each advance type.

**Section 600.12 Factoring transaction disclosure formatting.**

Disclosures for factoring transactions provided in accordance with Financial Services Law section 806 shall comply with the requirements of this section.

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

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

(1) in the first column, the following language: “Funding Provided”;

(2) in the second column, the amount financed; and

(3) in the third column, and in the order listed and in one paragraph: “This is how much [name of financier] will pay when you assign [description of legally enforceable claim, e.g. “the invoice”] to [name of financier].”;

(i) if the amount financed is less than the funds available to the recipient and the amount financed does not include funds paid to brokers: “Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on what amounts will be deducted, please review the attached document ‘Funding You Will Receive.’;

(ii) if the amount financed is less than the funds available to the recipient, and the amount financed includes funds paid to brokers: “We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [‘a broker’/‘brokers’]. For more information on the amounts that will be deducted, please review the attached document ‘Funding You Will Receive.’”; and

(iii) if any portion of the amount owed will be used to satisfy obligations under another financing, the provider may also include the following statement: “Because part of the funding we provide will be used to [“pay down”/ “payoff”] another financing contract, and the amount due under that contract may change, the amount we pay you directly may change.”

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

(1) in the first column, the following language: “Estimated Annual Percentage Rate (APR)”;

(2) in the second column, the estimated annual percentage rate calculated in accordance with sections 600.03 and 600.13 of this Part; and

(3) 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 financier].”;

(ii) a short explanation of the assumptions relating to payment timing that the provider used to calculate the estimate. For example: “This estimate assumes the account debtor will pay the invoice on the invoice due date.”; and

(iii) if no part of the finance charge is based upon an interest rate, the following language in addition to the language required by subdivision (c)(3)(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.”

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

(1) in the first column, the following language: “Finance Charge”;

(2) in the second column, the total finance charge calculated in accordance with section 600.02 of this Part; and

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

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

(1) in the first column, the following language: “Payment”;

(2) in the second column, the following language: “NA” or “Not applicable”; and

(3) in the third column, a short explanation describing why the recipient is not ordinarily required to make payments under the contract. For example: “You are selling an invoice to us, so you will not be required to make any payments to us unless your customer fails to pay the invoice and we find that you breached your warranty to us by failing to deliver the invoiced goods to your customer.”

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

(1) in the first column, the following language: “Estimated Term”;

(2) in the second column, the term of the transaction; and

(3) in the third column, a short explanation 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 or later than the due date.”

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

(1) in the first column, the following language: “(A) Repurchase Costs”; and

(2) 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 still 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 unpaid interest accrued 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 relating to the prepayment, 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].”; and

(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.”; and

(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.”; and

(c) when calculating the required disclosures for factoring transactions, in order to provide a disclosure based upon a single transaction, 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.

(h) The seventh row of the table shall include only the following information:

(1) in the first column, the following language: “Collateral Requirements”; and

(2) the second and third columns shall be combined and shall include only a description of the receivables purchased and any additional collateral requirements or security interests.

### **Section 600.13 Additional assumptions for factoring transactions.**

When calculating the required disclosures in accordance with section 600.03 of this Part for factoring transactions, to provide a disclosure based upon a single transaction as described by Financial Services Law section 806, 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.

### **Section 600.14 Lease financing transaction disclosure formatting.**

Disclosures for lease financing, as defined in section 600.01(a)(17) of this Part, shall comply with the requirements of this section.

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

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

(1) in the first column, the following language: “Funding Provided”;

(2) in the second column, the amount financed; and

(3) in the third column, “This is how much funding [name of financier] will provide.”

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

(1) in first column the following language: “Annual Percentage Rate (APR)”;

(2) in second column, the annual percentage rate calculated in accordance with section 600.03 of this Part;  
and

(3) 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.”

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

(1) in first column the following language: “Finance Charge”;

(2) in second column, the total finance charge, calculated in accordance with section 600.02 of this Part;  
and

(3) in the third column, the provider’s calculation of the finance charge, with the amount and description of each expense included in the finance charge.

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

(1) i the first column: “Total Payments”;

(2) in the second column, the total payments the recipient will make during the term of the contract if the recipient makes minimum required payments and exercises the purchase option under the agreement; and

(3) in the third column: “This is the total amount of payments you will make during the term of the contract (including the cost of the purchase option).”

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

(1) in the first column the following language: “Payment”;

(2) if periodic payments during the term of the transaction will not vary then:

(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; and

(ii) in the third column, a short explanation of the payment and purchase option. 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 explanation describing when each payment will become due. For example: “Your monthly payments are due on the 1st day of every month.”; and

(3) 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 and 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

(g) The sixth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:

(1) in the first column, the following language: “Term”; and

(2) in the second column, the term of the transaction.

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

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

(1) 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 and unpaid since the recipient’s last payment, then 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 charge other than accrued and unpaid interest, up to \$[maximum non-interest finance charge].”; and

(2) in all other cases, the following statement: “If you pay off the financing before the end of the Term, then you will not be required to pay any portion of the finance charge other than unpaid interest accrued.”

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

(1) 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 relating to the prepayment, then the following statement: “If you pay off the financing before the end of the term, then you must pay additional fees or charges, including” followed by a description of any prepayment charges; and

(2) in all other cases, the following statement: “If you pay off the financing before the end of the term, then you will not be required to pay additional fees or charges.”

(k) The ninth row of the table shall include only the following information:

(1) in the first column, the following language: “Collateral Requirements”; and

(2) the second and third columns shall be combined and shall include only a description of the collateral requirements or security interests of the transaction, if any.

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

(1) in the first column, the following language: “Average Monthly Cost”;

(2) in the second column, the average monthly cost that the recipient will pay over the term of the transaction; and

(3) 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.”

### **Section 600.15 General asset-based lending transaction disclosure formatting.**

Disclosures for asset-based lending transactions, provided in accordance with Financial Services Law section 807, shall comply with the formatting requirements of this section.

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

(b) All three columns of the first row of the table shall be combined, and within the cell created, the provider shall 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 assume you draw [the approved credit limit] at origination, you maintain an outstanding balance of that amount for [length of draw period or “one year”, whichever is less], and that the amount owed us is paid off thereafter according to the terms of the contract. Actual costs may differ substantially.”

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

(1) in the first column, the following language: “Funding”;

(2) in the second column, the amount financed; and

(3) in the third column, in the order listed and in the same paragraph:

(i) “This is the maximum amount of funding [name of financier] will provide.”;

(ii) if the amount financed is less than the funds available to the recipient and the amount financed does not include funds paid to brokers, then: “Due to deductions or payments to others, the total funds that will be provided to you directly if you request the maximum amount is [recipient funds]. For more information on the amounts that will be deducted, please review the attached document, ‘Funding You Will Receive’.”;

(iii) if the amount financed is less than the funds available to the recipient, and the amount financed includes funds paid to brokers, then: “We expect the total funds that will be provided to you directly if you request the maximum amount is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [‘a broker’/‘brokers’]. For more information on the amounts that will be deducted, please review the attached document, ‘Funding You Will Receive’.”; and

(iv) if any portion of the amount owed will be used to satisfy obligations under another financing, then the provider may also include the following statement: “Because this financing will be used to [“pay down”/“pay off”] another financing contract, and the amount due under that contract may change, the amount we pay you directly may change.”

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

(1) in the first column, the following language: “Estimate Annual Percentage Rate(APR)”;

(2) in the second column, the annual percentage rate calculated in accordance with section 600.03 of this

Part;

(3) 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.”; and

(ii) a short explanation of the applicable interest rate or rates for the transaction, if applicable.

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

(1) in the first column, the following language: “Estimated Finance Charge”;

(2) in the second column, the finance charge calculated in accordance with section 600.02 of this Part; and

(3) in the third column:

(i) “This is the dollar cost of your financing.”; and

(ii) if the contract provides for an adjustable interest rate or rates that are not predetermined by the contract, then: “The interest rate under your contract will adjust over time, so your actual finance charge may vary.”

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

(1) in the first column, the following language: “Payment”; and

(2) the second and third columns shall be combined, and in the resulting cell, the provider shall provide a short explanation of how balances on the account are repaid.

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

- (1) in the first column, the following language: “Draw Period”;
- (2) in the second column, the draw period for the transaction; and
- (3) in the third column, a short explanation of the draw period for the transaction.

(h) The seventh row of the table shall include no information in the third column, and the remaining columns shall include only the following information:

- (1) in the first column, the following language: “Term”;
- (2) in the second column, the term of the transaction; and

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

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

(1) 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 and unpaid since the recipient’s last payment, then the following statement: “If you pay off the financing faster than required, you still must pay all or a portion of the finance charge, up to \$[maximum non-interest finance charge] based upon our estimates.”; and

(2) 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 unpaid interest accrued.”

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

(1) 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 relating to the prepayment, then the following statement: “If you pay off the financing faster than required, you must pay additional fees of [amount and description of fees].”; and

(2) 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.”

(l) The tenth row of the table shall include only the following information:

- (1) in the first column, the following language: “Collateral Requirements”; and

(2) the second and third columns shall be combined and shall include only a description of the collateral requirements or security interests of the transaction, if any.

**Section 600.16 Disclosure formatting for all other commercial financing transactions.**

Disclosure 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, provided in accordance with Financial Services Law section 807, shall comply with the formatting requirements of this section.

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

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

(1) in the first column, the following language: “Funding”;

(2) in the second column, the amount financed; and

(3) in the third column, the following in the order listed and in one paragraph:

(i) “This is how much funding [name of financier] will provide.”;

(ii) if the amount financed is less than the funds available to the recipient and the amount financed does not include funds paid to brokers, then: “Due to deductions or payments to others, the total funds that will be provided to you directly is [recipient funds]. For more information on the amounts that will be deducted, please review the attached document ‘Funding You Will Receive’.”;

(iii) if the amount financed is less than the funds available to the recipient, and the amount financed includes funds paid to brokers, then: “We expect the total funds that will be provided to you directly is [recipient funds] due to deductions or payments to other parties. For example, we will deduct [funds paid to brokers] to pay [‘a broker’/‘brokers’]. For more information on the amounts that will be deducted, please review the attached document ‘Funding You Will Receive’.”; and

(iv) if any portion of the amount owed will be used to satisfy obligations under another financing, then the provider may also include the following statement: “Because this financing will be used to [“pay down”/“pay off”] another financing contract, and the amount due under that contract may change, the amount we pay you directly may change.”

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

(1) in the first column, the following language: “Annual Percentage Rate (APR)”;

(2) in the second column, the annual percentage rate calculated in accordance with section 600.03 of this Part; and

(3) 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.”; and

(ii) a short explanation of any assumptions made by the provider to calculate APR.

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

(1) in the first column, the following language: “Finance Charge”;

(2) in the second column, the finance charge calculated in accordance with section 600.02 of this Part; and

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

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

(1) in the first column:

(i) if, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total payments the recipient will make during the contract’s term, then: “Total Payments”; and

(ii) if, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total payments the recipient will make during the contract’s term, then: “Estimated Total Payments”;

(2) in the second column, the total payments or total estimated payments the recipient will make during the term of the contract if the recipient makes minimum required payments; and

(3) in the third column:

(i) if, assuming the recipient makes minimum required payments under the contract, it is possible to calculate with certainty the total payments the recipient will make during the term of the contract, then: “This is the total amount of payments you will make during the term of the contract.”; or

(ii) if, assuming the recipient makes minimum required payments under the contract, it is not possible to calculate with certainty the total payments the recipient will make during the term of the contract, then: “This is our estimate of the total amount of payments you will make during the term of the contract.”

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

(1) in the first column, the following language: “Payment”; and

(2) 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, then 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; and

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

(g) The sixth row of the table shall include no information in the third column, and the remaining columns shall include only the following information:

(1) in the first column, the following language: “Term”; and

(2) in the second column, the term of the transaction.

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

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

(1) 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 and unpaid since the recipient’s last payment, then the following statement, “If you pay off the financing faster than required, you still must pay all or a portion of the finance charge, up to \$[maximum non-interest finance charge].”; and

(2) 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 unpaid interest accrued.”

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

(1) 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 relating to the prepayment, then the following statement: “If you pay off the financing faster than required, you must pay additional fees of [amount and description of fees].”; and

(2) 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.”

(k) The ninth row of the table shall include only the following information:

(1) in the first column, the following language: “Collateral Requirements”; and

(2) the second and third columns shall be combined and shall include only a description of the collateral requirements or security interests of the transaction, if any.

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

(1) in the first column, the following language: “Monthly Cost”;

(2) 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, then 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; and

(3) in the third column, a short explanation 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.”

(m) 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 short explanation of how the provider has based the disclosure on the minimum payment permitted under the contract.

#### **Section 600.17 Funding recipient will receive.**

(a) When a provider provides a disclosure (either directly to the recipient or to a broker) under sections 600.06 through 600.16 of this Part, and the amount financed is greater than the recipient funds, the provider shall also provide a disclosure entitled “Funding You Will Receive”. The disclosure shall be substantially similar in form to the example disclosure provided in subdivision (b) of this section, including at a minimum:

(1) the amount financed labelled “Funding Provided”;

(2) the amount of any deductions from the amount financed labelled “Deductions”, itemized separately and listed as negative numbers, and a description of those deductions and the names of persons or entities receiving payments as a result of those deductions;

(3) the amount of recipient funds labeled “Funding You Will Receive”; and

(4) the information described in subdivision (a)(1)-(3) of this section displayed in a format to demonstrate to the recipient that the deductions from the funding provided result in the amount disclosed as the “Funding You Will Receive”.

(b) Example disclosure:

<b>Funding You Will Receive</b>		
<b>Funding Provided</b>	\$10,000	
<b>Deductions</b>	-\$1,000	Brokerage fee to be paid to [Name of Broker]
	-\$100	Property Valuation Fee paid to [Service Provider]
<b>Funding You Will Receive</b>	<b>\$8,900</b>	

(c) The disclosure required by subdivision (a) of this section:

(1) shall appear as a document separate from the disclosures required by sections 600.06 through 600.16 of this Part;

(2) shall appear immediately following the disclosures required by sections 600.06 through 600.16 of this Part;

(3) need not be signed by the recipient; and

(4) may include an explanation of any assumptions the provider used to make the disclosure required by subdivision(a).

**Section 600.18 Signatures.**

(a) Pursuant to Financial Services Law section 809, prior to consummating a commercial financing, a financier shall obtain a copy of the disclosures made pursuant to the CFDL 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, then a provider may obtain a recipient’s signature on the required disclosures electronically or by facsimile.

(c) A provider is not required to obtain the recipient’s signature on any disclosure for a commercial financing transaction that is not consummated. When a provider provides multiple disclosures to a recipient during the negotiation of a commercial financing transaction that is ultimately consummated, the provider need only obtain the recipient’s signature on the final disclosure that corresponds to the consummated transaction.

**Section 600.19 Thresholds for disclosure.**

For the purpose of determining whether the amount of a commercial financing offer is equal to or less than \$2,500,000, a provider shall comply with the requirements of this section.

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

(b) For asset-based lending transactions:

(1) 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 \$2,500,000; and

(iii) the parties to the asset-based lending transaction agree in writing prior to execution of their agreement (and prior to the amendment of an existing agreement) that an amount exceeding \$2,500,000 is reasonably expected to be unpaid and outstanding at some point during the agreement.

(2) If the asset-based lending transaction does not meet all of the requirements listed in subdivision (b)(1) above, then the commercial financing offer shall be considered less than or equal to \$2,500,000.

(c) For a factoring transaction,

(1) 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 \$2,500,000; and

(iii) the parties to the factoring transaction agree in writing prior to execution of their agreement (and prior to the amendment of an existing agreement) that at some point during the agreement, an amount exceeding \$2,500,000 is reasonably expected to be advanced to the recipient for legally enforceable claims that have not yet been paid.

(d) If the factoring transaction does not meet all of the requirements listed in subdivision (a)(3)(A) of this section, then the commercial financing offer shall be considered less than or equal to \$2,500,000.

(e) For lease financing:

(1) if the financier does not select, manufacture or supply the goods to be leased, then use the net cost to the financier to acquire the property to be leased; or

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

(f) 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).

**Section 600.20 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, then the disclosures shall be based on that date.

**Section 600.21 Duties of financiers and brokers.**

(a) A financier shall:

(1) provide a copy of compliant disclosures to a broker, whenever a financier 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 financier;

(2) maintain a copy of each disclosure that it generates pursuant to this Part 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 financier in compliance with subdivision (b) of this section for a period of at least four years following the date that the disclosure is presented to the recipient; and

(4) develop procedures reasonably designed to ensure that recipients receive the disclosures compliant with this Part at the time that the financing amount, rate or price quote is provided to the recipient by the broker, if the financier communicates financing amount, rate or price quotes to brokers. These procedures shall include:

(i) contractual requirements that brokers timely provide to the financier documentation of transmission of the disclosure (including timing of transmission) to the recipient;

(ii) timely investigation of facts that would give a financier reasonable notice that a broker has not provided disclosures to recipients as required by subdivision (b) of this section; and

(iii) discontinuation of relationships with any broker who the financier has found has not complied with subdivision (b) of this section.

(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 financier, 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 financier;
- (2) create any liability for a broker if the disclosures that the financier provides do not comply with this Part; or
- (3) limit any liability that may arise when a broker makes representations concerning the commercial financing.

### **Section 600.22 Reporting.**

(a) On or before the thirtieth day of April each year, beginning in 2023, each provider subject to the CFDL that, during the preceding calendar year, has utilized the opt-in method of calculating estimated APR, as described in section 600.09 of this Part shall report to the superintendent, in a statement subscribed and affirmed as true under penalties of perjury, the information requested by the superintendent covering the period of the preceding calendar year.

(b) The report shall include:

(1) for each commercial financing transaction undertaken as defined by the CFDL, the estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions;

(2) the annual mean of all differences between the estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions, which mean shall be reported both weighted by financing amount, and unweighted;

(3) a statement of any unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual annual percentage rate; and

(4) such other information prescribed by the superintendent as necessary or appropriate for the purpose of making a determination of whether the deviation between the estimated annual percentage rate and actual retrospective annual percentage rates of completed transactions was reasonable.

(c) Upon request of the superintendent, each provider described in section 600.22(a) of this Part shall provide any other documents and/or information prescribed by the superintendent as necessary or appropriate for the superintendent's review and consideration of the report(s) submitted pursuant to section 600.22(b) of this Part.

(d) In addition to any reports expressly required by the CFDL and section 600.22(a)-(c) of this Part, the superintendent may require any provider to make special reports to the department at such times as the superintendent prescribes, as may be necessary for the enforcement of the CFDL.