



SMALL BUSINESS BORROWERS' BILL OF RIGHTS

Small Business Borrowers' Bill of Rights, 2019¹

The way small businesses borrow money is being transformed. Innovation is creating faster and easier ways to borrow and increasing access to credit in communities that have historically been underserved. However, irresponsible practices have grown as well. The transformation in small business financing that we are experiencing will achieve its potential only if it is built on transparency, fairness, and putting the rights of borrowers at the center of the lending process.¹ The Small Business Borrowers' Bill of Rights identifies fundamental financing rights that we believe all small businesses deserve. These rights are not yet protected by law, in most cases. We encourage the entire small business financing industry to join us in upholding these rights.

1. The Right to Transparent Pricing and Terms

You have a right to see the cost and terms of any financing being offered in writing and in a form that is *clear, conspicuous, complete, and easy to compare* with other options, so that you can make the best decision for your business.

In order to protect your Right to Transparent Pricing and Terms, lenders and brokers must uphold the following practices:

- **Transparent Rate** – Disclose the Annual Percentage Rate (APR) or Estimated APR,ⁱⁱ and the annualized interest rate if one is used.
- **No Hidden Fees** – ~~Disclose all upfront and scheduled charges.~~
- **Clear Comparison** – Present ~~all the following seven key of these pricing and other key~~ terms clearly and prominently, in writing, to the borrower when the loan offer is summarized for the borrower and whenever a term sheet, offer summary, or equivalent is provided:
 1. Loan amount, and total amount provided after deducting fees or charges
 2. APR or Estimated APR, and interest rate if one is used
 3. Payment amount and frequency, including the actual or estimated total payment amount per month if payment frequency is other than monthly,
 4. Term or estimated term
 5. All upfront and scheduled charges

¹ The Small Business Borrowers Bill of Rights was updated in spring of 2019 to incorporate feedback and learning since the previous revision in 2017. The Small Business Borrowers' Bill of Rights was first launched in August 2015.

6. Collateral requirements
7. Any financing charge potentially due at prepayment

- **Plain-English Terms** – Describe all key terms in an easy-to-understand manner. Do not quote pricing in percentage “rates” that are not the interest rate or APR. Pricing quoted as a “factor rate,” “simple interest rate,” or other novel forms of percentage rates may be easily misunderstood to be interest rates or APRs, but mask that the actual interest rate or APR is much higher.

2. The Right to Non-Abusive Products

You have a right to loan products that will not trap you in an expensive cycle of re-borrowing. Lenders’ profitability should come from your success, not from your failure to repay the loan according to its original terms.

In order to protect your Right to Non-Abusive Products, lenders must uphold the following practices:

- **No Debt Traps** – If the borrower is unable to repay an existing loan, extend new credit only if due diligence indicates that the borrower’s situation has changed, enabling them to repay the new loan.
- **No “Double Dipping”** – Do not double-charge the borrower. When ~~refinancing or modifying~~ ~~offering additional financing~~ ~~loan~~ with a fixed repayment amount ~~fee as the primary financing charge~~ to an existing borrower, if requiring their outstanding financing from this same provider to be repaid, do not charge ~~forgive any unpaid charges~~ ~~fees~~ on the borrower’s outstanding principal ~~unless there is a tangible cost benefit to the borrower~~ balance.
- **No Hidden Prepayment Charges** – If, in the event of prepayment, the borrower will be required to make a balloon payment, including pay financing charges other than interest accrued since the last payment, disclose these charges as “prepayment charges.” Also disclose any additional charges or fees added in the case of prepayment as “prepayment penalties.” Disclose the potential amount of these prepayment charges and penalties in the pre-origination term sheets or offer summaries, and the actual prepayment charge in the event of prepayment. In the case of financing with payments that vary as a percentage of the borrower’s sales, a payoff event is considered prepayment if the borrower states the intent to pay off the financing, or in any event of refinancing.
- ~~receives no savings, or limited savings, in early payoff, disclose this in the original loan term sheet or offer summary, and again at the time of payoff. For financing with a fixed term, if a prepaying borrower owes a fixed repayment amount or a certain percentage of that amount regardless of when they pay off the financing, disclose this as prepayment charge. This charge is equal to the remaining financing charge owed at payoff, which is the cost the borrower is paying for the unused portion of the loan.~~

- **Appropriate Product** – Match loan product design and loan product use. If presenting a loan product as designed for one use, do not encourage borrowing behavior contrary to that use. For example, short-term products may be well suited for short term use, but not for ongoing, long-term recurring use. Long-term products with prepayment penalties may be well suited for long-term use, but not for short-term needs.
- **Pressure Free** – Allow borrowers a reasonable time to consider their loan options free from pressure or artificial timelines.
- **Prompt-Fair Prepayment Assistance**— If a borrower seeks to prepay a loan, provide any information required for prepayment within two business days of the borrower's request. Final payoff amount should not vary based on the source of funds used for payoff, funds from a third-party should be considered equivalent to funds from the borrower.
- **Responsive Complaint Management** – If a complaint is submitted, provide a confirmation of receipt in writing within five days. When possible, research and resolve the complaint in a timely manner.

3. The Right to Responsible Underwriting

You have a right to work with lenders who will set you up for success, not failure. High loss rates should not be accepted by lenders simply as a cost of business to be passed on to you in the form of high rates or fees.

In order to protect your Right to Responsible Underwriting, lenders must uphold the following practices:

- **Believe in the Borrower** – Offer financing only with high confidence that the borrower can repay its *entire* debt burden without defaulting or re-borrowing.
- **Alignment of Interests** – Lenders who receive repayment directly from the borrower's gross sales must also verify, through documents, data from third parties, and/or due diligence, that the borrower can repay all debt and remain profitable, or that it has a credible path to profitability. Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid.
- **Right-sized Financing** – Size loans to meet the borrower's need, rather than to maximize the lender's or broker/lead generator's revenue. Seek to offer the borrower the size of loan that they need, rather than offering the largest amount they could qualify for.
- **Responsible Credit Reporting** – Report loan repayment information to major credit bureaus and consult credit data when underwriting a loan. Such reporting enables other lenders to responsibly underwrite the borrower and helps the borrower build a credit profile that may facilitate access to more affordable loans in the future. Lenders must inform the borrower and

any guarantors if they intend to report loan repayment performance to guarantors' credit bureaus only in certain circumstances, such as after a default.

4. The Right to Fair Treatment from Brokers and Lead Generators

You have a right to transparency, honesty, and impartiality in all of your interactions with brokers and lead generators.

In order to protect your Right to Fair Treatment from Brokers, brokers and lead generators must offer:

- **Transparent Loan Options** – Disclose all loan options for which the borrower qualifies through the broker or lead generator's services, emphasizing the lowest APR option, ~~and disclose all lenders to which the broker sends loan applications on the borrower's behalf.~~
- **Transparent ~~Broker Fees~~ Compensation** – Disclose all compensation paid to the broker or lead generator, by either the lender or borrower, in connection with each loan offer presented. ~~Disclose all compensation paid to the broker, and all charges that will be paid directly or indirectly by the borrower, whether paid up front or financed in the loan.~~
- ~~**Transparent Results**— Post clearly and prominently on the broker's website the anonymous and aggregated results of borrowers who obtain financing through the brokers' services, in terms of APR and financing product.~~
- ~~**Empower Borrowers to Make Informed Financing Decisions**— Educate the borrower on each loan option and ensure that the borrower reasonably understands the cost and terms as well as the pros and cons of financing decisions before they sign a loan document. Brokers should use tools that help the potential borrower comparison shop, including APRs and loan calculators.~~
- **Disclosure of Conflicts of Interest** – Disclose any conflicts of interest, the broker's or lead generator's fee structure, and any financial incentives they have, including whether they ~~broker~~ receives higher fees for brokering certain loans. Brokers or lead generators who ~~are paid higher fees with certain lenders, loan types, or terms other than the size of the loan,~~ have not legally agreed to act in the best interests of the potential borrower may not state they are acting in the best interest of the potential borrower.
- **No Fees for Failure** – No brokering or related fees can be charged to the potential borrower if the broker or lead generator is unable to find them a loan and if the borrower does not accept a loan secured through their services.
- **Responsive Complaint Management** – If a complaint is submitted, provide a confirmation of receipt in writing within five days. When possible, research and resolve the complaint in a timely manner.

5. The Right to Inclusive Credit Access

You have a right to fair and equal treatment when seeking a loan.

In order to protect your Right to Inclusive Credit Access, lenders and brokers must uphold:

- **Non-Discrimination** – Respect the letter and intent of fair lending laws, including the Equal Credit Opportunity Act. Do not discriminate against small business owners on the basis of race, color, religion, national origin, gender identity, marital status, age, or sexual orientation.

6. The Right to Fair Collection Practices

You have a right to be treated fairly and respectfully throughout a collections process. Collections on defaulted loans should not be used by lenders as a primary source of repayment.

In order to protect your Right to Fair Collections Practices, lenders must uphold the following practices:

- **Fair Treatment** – Abide by the intent of the Fair Debt Collection Practices Act and provide borrowers similar protections as described in that Act.
- **Fair Agreements** – Do not utilize confessions of judgment or equivalent legal agreements by which a borrower preemptively agrees to lose disputes with the lender.
- **Responsible Oversight** – Diligently vet and oversee the collections practices of third-party collectors and debt buyers. Do not work with collectors or debt buyers who fail to treat borrowers fairly.
- **Accurate Information** – Transmit accurate, current, and complete information about the loan to third-party collectors and debt buyers.

ⁱ The term “loan” and related terms used here, such as “lending,” are intended to be interpreted in the broadest sense possible so as to include loans, lines of credit, merchant cash advances, and similar products offered and provided to U.S. small businesses, whether or not such credit products are characterized legally or otherwise as loans. Similarly, the terms “lender” and “borrower” are intended to be interpreted in the broadest sense possible so as to include, in the case of lenders, credit marketplaces that facilitate loans on behalf of lenders, cash advance providers, and all manner of persons providing loans to U.S. small businesses or evaluating the creditworthiness of such small businesses in connection with providing a loan, and, in the case of borrowers, all U.S. small businesses who seek or obtain a loan.

ⁱⁱ APR (annual percentage rate) is the annual rate that is charged for borrowing, including interest, fees, and other required charges, annualized and expressed as a single percentage number. It includes fees as well as interest rate, and represents the actual yearly cost of funds. APR is the only established metric that enables informed comparisons of the cost of capital over time, and between products of different dollar amounts and term lengths. This is why APR has become the long-standing price metric that people are familiar with, vetted over 50 years of the Truth in Lending Act. Estimated APR is used when a product has a variable term, and enables informed cost comparison with other types of products.