



February 21, 2019

RE: Protect Small Businesses; Amend S. 2262

Dear Senator Singleton,

As the leading coalition of nonprofit and private-sector organizations committed to protecting the rights of small businesses, we **thank you for your leadership** in proposing S. 2262 to protect small businesses from predatory lending. We commend your efforts to strengthen this bill, particularly by including an annual percentage rate (APR) disclosure requirement for merchant cash advances.

Several outstanding **issues remain that would allow some financing providers to game the system** and underreport the price of their products. These undermine your goal of preventing inaccurate disclosures from misleading small business owners. Today, some financing companies are charging APRs of 100%, and even 350%, without ever disclosing those APRs to the small businesses borrower.¹ The Bloomberg Businessweek editorial board has cited policy recommendations of our coalition as “the best solution” to address this lack of transparency.² We recommend the following language revisions to ensure S. 2262 achieves its intended purpose of creating transparency for small businesses:

1. Refine the language on APR calculation methods to close loopholes

Merchant Cash Advances:

Recent Bloomberg Businessweek news coverage describes the merchant cash advance industry as “telephone salesmen who offer small businesses fast money at costs that can exceed an annualized interest rate of 400 percent.”³ The current language of the bill would enable these companies to game the system by using different APR calculation methods for each transaction. They could essentially cherry pick an unreasonably low APR every time.

To prevent gaming, a specific calculation method should be proposed based on historical sales over a defined number of months. A more flexible method could also be considered, if that *flexibility* is paired with *accountability* through reporting to DOBI. The language should also address abusive “double dipping,” by which small businesses today are being double-charged when refinancing with the same financing provider.

Asset-Based Lending:

The current language would unintentionally permit products that are practically identical to merchant cash advances to disclose no APR at all, if they structure their financing contracts to be legally considered “asset-based lending.” Instead, they would disclose an “advanced rate” that looks and feels like an APR, and yet would be a much lower number than the actual APR. APR for these products should be calculated in the same manner as for merchant cash advances.

Open-End Credit:

If a clear methodology for including fees in the Estimated APR is not prescribed, some products that charge no interest and only fees would inaccurately disclose an Estimated APR of 0%. The solution is to calculate Estimated APR to include interest and fees, based on the simple assumption that the open-end credit is fully drawn at origination and repaid by making minimum payments.

2. *Improve payment amount disclosure to enable comparison of payment amounts per month*

Small businesses need to be able to make informed comparisons of the payment amounts they would be required to pay. Some products today are paid daily, weekly, or monthly, and some payments are a percentage amount. To enable comparison, all products should disclose Total Payments per Month (or Projected Total Payments per Month) in dollars.

3. *Improve prepayment language to create transparency around hidden prepayment penalties*

Today, small businesses are often paying hidden prepayment charges. They are charged a large balloon financing charge when they pay off the loan, even while their lender advertises “no prepayment penalties.” We recommend specific disclosure language to bring transparency to hidden prepayment charges which we will share with your office.

We applaud the admirable work that you and your staff have put into bringing needed transparency to small business financing. If amended to include these important recommendations, this bill can provide New Jersey small businesses the transparency they need and deserve. We thank you for your leadership on this issue. The Responsible Business Lending Coalition can be reached at 202-317-0261. Please do not hesitate to reach out with any questions regarding our recommendations.

Signed,

Accion

Funding Circle

LendingClub

Multifunding

Nav

New Jersey Main Street Alliance

Opportunity Fund

The Responsible Business Lending Coalition

Small Business Majority

StreetShares

Venturize

¹ Opportunity Fund, “Unaffordable and Unsustainable: The New Business Lending,” 2016.

<https://www.opportunityfund.org/media/blog/unaffordable-and-unsustainable-new-opportunity-fund-report/>.

² Bloomberg Opinion, “Editorial Board: Protect Small Businesses from Predatory Lending.” November 28, 2018.

<https://www.bloomberg.com/amp/opinion/articles/2018-11-28/confessions-of-judgment-small-business-and-predatory-lending>.

³ Bloomberg Businessweek, “Sign Here to Lose Everything: Part 3,” Nov 20th 2018. <https://www.bloomberg.com/graphics/2018-confessions-of-judgment-new-york-court-clerks/>