



## Responsible Small Business Lending Policy Proposal for New York State

In 2018, the Responsible Business Lending Coalition (RBLC) inspired and passed the first law in the country to respond to the rise of predatory small business lending, California SB 1235, by a bipartisan vote of 72-3. While this law was a first, the RBLC learned from this process and believes even stronger bill can be passed in New York.

Our policy proposal for New York is passage of the best and broadest small business financial protection law of the modern era, and the model for the country. The RBLC believes an even stronger bill can be passed in New York in following ways:

- *Oversight and enforcement* – The CA law may have limited efficacy on solving the problem Gov. Cuomo’s 2019 Justice Agenda called “stopping predatory merchant cash advances” because it did not grant the CA regulator oversight or clear enforcement powers over merchant cash advances. A more effective law would require these unlicensed financing providers to be licensed, and subject to DFS’s supervision and enforcement.
- *APR* – The CA law does not explicitly establish APR as a standard and also does not define how APR is to be calculated. It requires some form of “annualized rate,” which is to be defined by CA’s financial regulator. A better bill would require APR, calculated as described in the [RBLC’s comment letter \[borrowersbillofrights.org\]](https://www.responsiblebusinesslending.org/letter-borrowersbillofrights.org) to the California Department of Business Oversight. It is imperative that the calculation method of APR for merchant cash advances and similar products not allow the merchant cash company to “cherry pick” the APR they would disclose by using whatever calculation produces the lowest number.
- *Payment amount in dollars per month* – The CA law does not require disclosure of the payment amount in an apples-to-apples manner. Rather the bill simply identifies 6 topics of disclosure, and delegates all details of how the disclosures should work to the regulator. For small businesses to make informed comparisons between products with daily, weekly, and monthly payment amount, they should see a “total payments per month” in dollars. And similarly, any payment amount that is currently disclosed as “X% of your sales through XYZ payments processor on a daily basis” should include an estimated “total payments per month” in dollars, so costs can be compared.
- *Prepayment* – Lenders are currently charging hidden prepayment charges to NY small businesses. Prepayment disclosures should be written to bring transparency to these charges, as described in RBLC’s comment letter linked above.
- *Prohibit misleading “rates”* - Today it is common for financing companies to quote “rates” that look like an interest rate or APR but are a much lower number than the actual interest rate. For example, a small business owner may be offered a “factor rate,” “simple interest rate,” or even just a “rate” of 20% on financing with an actual interest rate or APR of 57%. Federal Reserve research indicates that small business owners are often misled. These misleading “rates” should not be permitted in percentage form.



- *Double Dipping* – Price disclosures should prevent lenders from this tricky practice of double charging borrowers without them realizing it. Details are again in the comment letter linked above.
- *Collateral* – Collateral requirements are not included in the CA disclosure regime, and should be included in a stronger NY bill.
- *Confessions of judgment* – These should be prohibited.

Other policy ideas to enhance access to responsible capital, potentially as part of a larger package to foster responsible small business lending.

- *Create price competition* - First, we note that establishing transparent price disclosure is necessary for price competition to foster responsible lending in the market. APR disclosure would drive prices down and lead to the growth of responsible lending.
- *Clean up brokering* - Today, small business are being steered away from responsible capital, and towards the most expensive products, through conflict-of-interest brokering practices that resemble subprime mortgage brokering yield-spread-premiums. For responsible lending to grow, responsible lenders need to be able to reach credit-seeking small businesses. We should apply some of the same solutions that were applied in mortgage lending after the crisis: require brokers to be licensed, and institute a duty of care to act in the borrowers' interests.
- *Enhance the CDFI ecosystem* - CDFIs are an important part of the responsible capital solution. To foster the growth of these models of responsible lending, NY State could bolster CDFI lending activity by increasing funding for the [grant program \[esd.ny.gov\]](https://esd.ny.gov/grant-program) and [revolving loan fund \[esd.ny.gov\]](https://esd.ny.gov/revolving-loan-fund).