



June 4, 2021

Jeff Stout
Director
Office of Federal Program Finance
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Re: Notice and Request for Information – State Small Business Credit Initiative (SSBCI)

Dear Jeff:

The Responsible Business Lending Coalition (RBLC) appreciates the opportunity to submit comments and recommendations regarding the design and implementation of the State Small Business Credit Initiative (SSBCI). The mission of the RBLC is to drive responsible practices in the small business lending sector. We are writing to support Treasury’s effort to implement the SSBCI in a way that promotes access to responsible small business financing for new and existing small businesses.

The Responsible Business Lending Coalition (RBLC) is a network of nonprofit and for-profit lenders, investors, and small business advocates that share a commitment to innovation in small business lending and serious concerns about the rise of irresponsible small business lending. In 2015, the RBLC created the Small Business Borrowers' Bill of Rights (BBoR), the first cross-sector consensus on the rights that small business owners deserve and the practices that financing providers, brokers, and lead generators should employ to uphold those rights. Since the release of the BBoR, over 60 small business lenders, brokers, and lead generators have committed to upholding these rights, more than 50 advocacy and support organizations have endorsed them, and key elements of the BBoR have been enacted into law in New York and California.

The RBLC’s members are the Aspen Institute, a nonpartisan policy studies organization and the facilitator of the coalition; Opportunity Finance Network, the national association of community development financial institutions (CDFIs), Funding Circle and LendingClub, two leading FinTech innovators in marketplace lending; Accion Opportunity Fund, the largest nonprofit CDFI small business lender; Community Investment Management, an impact-driven investor in small business financing; and Small Business Majority, a nonprofit trade association and advocate for small businesses.

Reauthorization of the SSBCI as part of the *American Rescue Plan Act of 2021* included the important and laudable goal of ensuring that credit is made available to socially and economically disadvantaged businesses and the very smallest firms. As our country looks to ensure that small business credit markets function effectively to help our economy rebuild from the COVID-19 pandemic, and also works to respond to the need for racial justice, the RBLC believes that a variety of lender types including regulated depository institutions and CDFIs and well as non-depository, non-CDFI companies

(hereinafter referred to as fintech lenders¹) have the potential to contribute to the successful implementation of the SSBCI, especially with the significant amount of capital made available to states participating in the expanded initiative. However, we believe that fintech lenders must be required to demonstrate their adoption of responsible practices before they are able to participate in the program.

As the Department of the Treasury considers whether and how fintech lenders might participate in the implementation of the SSBCI in order to support new and existing small businesses, the RBLC offers the following recommendations:

- **Direct states to require that all fintech lenders participating in their state program attest to all practices required in the Small Business Borrowers' Bill of Rights (BBoR).** The RBLC requires that every signatory to the BBoR attest, with the signature of the Chief Executive Officer of the company, that the institution upholds all of the practices identified in the BBoR. We attached a copy of both the BBoR and the BBoR lender attestation form, which states could use in the attestation process. (See Attachment A and B)
- **Require fintech lenders to disclose data that demonstrate their experience in reaching and financing enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI businesses) and very small businesses and to reveal the average annual percentage rates (APRs) on the products that they have provided to those businesses.** The important role that fintech lenders played in enabling many small businesses – including those owned by business owners of color – to access Paycheck Protection Program (PPP) loans, and as we understand it, is the primary reason that the Department of Treasury is interested in their participation in SSBCI. However, there are significant differences between the PPP loan product and the variety of SSBCI products that need to be considered. The PPP involved a defined product that posed minimal potential risk to business owners. There was also significant public awareness of the PPP, which supported the ability of many lenders to reach large numbers of customers. Because the SSBCI offers a wide framework of programs and potential types of products, and because it will be much more incumbent on the lenders participating in state programs to create effective customer acquisition mechanisms, it is important to ensure that fintech lenders participating in the program have the potential to reach the desired target markets with responsible products.

To that end, we recommend that Treasury require fintech lenders to submit data on the size of firms reached, and an estimate of the race and ethnicity of borrowers reached using Bayesian Improved Surname Geocoding (as is now used by the Consumer Financial Protection Bureau). In addition, because the expansion of credit to excluded individuals is sometimes paired with high-cost or predatory products, we also recommend that Treasury require lenders to disclose the average annual percentage rates (APRs) charged by lenders to these borrowers. Because PPP

¹ There is no clear definition or term to describe the range of non-depository, non-CDFI companies that may offer financing to small businesses. The definition of “fintech” is broad and can vary based on regulatory, funding, and origination models. Furthermore, there are small business finance providers that might not be considered “fintech” lenders and might contribute to implementation of the SSBCI. However, for purposes of simplicity, in these comments, “fintech” means any non-CDFI, non-depository lenders that are subject to regulation by a state(s) including but not limited to lenders in origination partnerships with banks.

was an exceptional product and because most lenders ceased or severely limited all non-PPP lending during the pandemic, we recommend requiring lenders to submit this data for all non-PPP financing products offered during 2018 and 2019.

- **Ensure that a clear and consistent methodology is used for disclosing the cost and terms of all SSBCI-backed financing products offered.** The RBLC has not advocated for rate caps as a means to ensure responsible small business financing products. The economics of small-dollar small business lending are extremely challenging, and we believe there are some cases for higher-cost small business financing that can be consistent with responsible lending practices. While the SSBCI provides federal subsidy to lenders, the initiative is largely designed to support the costs associated with higher risk. Whether or not the Treasury decides to implement a rate cap or pricing limits, it will be important to ensure that the cost and terms of all financing products are clearly and consistently disclosed to the small business borrowers. Thus, we recommend that Treasury implement basic uniform disclosure requirements that provide borrowers with the essential information the Federal Reserve has identified as necessary to understand and compare the full costs of borrowing.² These disclosures are embodied in the recently-passed *New York State Small Business Truth in Lending Act* as well as the truth in lending disclosure provisions included in the *Small Business Lending Disclosure Act* (H.R. 7921) introduced in the 116th Congress and poised to be reintroduced in the 117th. The RBLC's summary of the elements of responsible disclosure (see Attachment C) as well as the text of the *New York State Small Business Truth in Lending Act* (see Attachment D) are attached. Note that both require disclosure of an APR or estimated APR, and guidance for the calculation of an estimated APR for products that do not have a fixed term is included in the BBoR lender attestation document (Attachment B).

The RBLC offers the following recommendations to increase efficiency and eliminate unnecessary barriers that would inhibit the ability of a small business to access capital:

- **Exempt all SSBCI lenders from state-specific domicile requirements.** Small businesses are increasingly seeking financing from CDFIs and non-depository lenders that may not be based in their community but offer more attractive and responsible products that meet the needs of the business owner. Responsible CDFI and fintech lenders seeking to participate in SSBCI should not be restricted to the state in which they are physically headquartered or licensed and should be exempt from state-specific domicile requirements.
- **Prioritize implementation of the 4506-T and the IRS adoption of the Application Program Interface (API).** The *Taxpayers First Act*, signed into law in 2019, requires the IRS to develop an automated system to receive third-party income verification forms (4506-T) which would allow the IRS to instantly transfer a business borrower's data to a lender. Doing so would facilitate timely and efficient small business lending transactions that benefit both the borrower and the lender. However, the IRS has not yet adopted the API technology needed to instantly transfer the data collected via the 4506-T form.

² <https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm>

- **Promote efficient implementation and alignment of SSBCI across states.** We recommend to the extent possible that Treasury create uniform forms, documents and systems to boost the efficiency of implementing SSBCI programs across states, to reduce complexity and encourage alignment of programs and products that will benefit both lenders and small business borrowers.

In conclusion, we encourage Treasury to issue SSBCI implementation guidance that accommodates the participation of responsible, non-depository fintech lenders that are subject to state regulation (including but not limited to lenders in origination partnerships with banks) while securing clear, consistent, and strong protections for the small business borrower and a system to ensure transparency and efficiency in lending.

The RBLC believes that our recommendations will strengthen the SSBCI and ensure that the programs and products supported by the SSBCI are reaching the most vulnerable small businesses, including SEDI businesses and very small business ventures in participating states. Thank you for your commitment to maximizing the reach and impact of this important initiative.

Sincerely,

Kim Wilson

The Responsible Business Lending Coalition
202-317-0261 | kim@borrowersbillofrights.org
660 Pennsylvania Ave SE, Suite 303
Washington, DC 20003

Attachments:

- (A) The Small Business Borrowers' Bill of Rights (BBoR)
- (B) BBoR Lender Attestation Form
- (C) RBLC's Truth in Lending Two-Pager
- (D) New York State Small Business Truth in Lending Act



SMALL BUSINESS BORROWERS' BILL OF RIGHTS

Small Business Borrowers' Bill of Rights, 2021¹

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.² This *Small Business Borrowers' Bill of Rights* identifies six 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, 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”).³

¹ The Small Business Borrowers Bill of Rights has been updated in the December of 2020 to incorporate feedback and learnings since the previous revision in 2017. The Small Business Borrowers' Bill of Rights was first launched in August 2015.

² The term “loan” and related terms used here, such as “lending,” are intended to be interpreted in the broadest sense to refer to all business financing, including loans, lines of credit, merchant cash advances, factoring, and similar products offered and provided to U.S. small businesses. Similarly, the terms “lender” and “borrower” are intended to be interpreted in the broadest sense to include, in the case of lenders, merchant cash advance providers and credit marketplaces that facilitate loans on behalf of lenders.

³ The annual percentage rate (“APR”) is the total cost of financing, including interest, fees, and other required charges, annualized and expressed as a single percentage number. APR is the only established metric that enables informed price comparisons between products of different types, 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. An “Estimated APR” should be used for financing such as merchant cash advances, factoring, and similar

- **Clear Comparison** – Present the following seven key terms clearly and prominently, in writing, to the borrower whenever a specific loan offer is presented or summarized for the borrower, such as in a term sheet, offer summary, or equivalent. This complete disclosure should be re-presented if the loan offer changes.
 1. Loan amount, and total amount provided after deducting fees or charges
 2. APR, or Estimated APR in the case of products with variable term lengths
 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
 6. Collateral requirements
 7. Any financing charge potentially due at prepayment

The *Small Business Borrowers' Bill of Rights* does not mandate a standardized form for these disclosures. Where the formatting of these disclosures is not mandated by state law, lenders may use their own designs that are consistent with the *Small Business Borrowers' Bill of Rights*.

- **Plain-English Terms** – Describe all key terms in an easy-to-understand manner. Do not, at any stage of the financing process, use percentages or the term “rate” to describe pricing in metrics that are not the actual interest rate or APR but may be reasonably mistaken for an interest rate or APR. Pricing described 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.

products with variable term lengths. For a more detailed description of APR calculation, please see the *Small Business Borrowers' Bill of Rights* attestation forms.

- **No “Double Dipping”** – Do not double-charge the borrower. When offering additional financing with a fixed repayment amount to an existing borrower, if requiring their outstanding financing from this same provider to be repaid, forgive any unpaid fixed charges on the borrower’s outstanding balance.
- **No Hidden Prepayment Charges** – If, in the event of prepayment, the borrower will be required to 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 (a) the potential amount of these prepayment charges and penalties in any loan offer summaries, and (b) the actual prepayment charge and penalties at the time of any 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.
- **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.
- **Fair Prepayment** – If a borrower requests to prepay or refinance a loan, provide any information required for prepayment within two business days of the borrower's request. To enable small businesses to access the most appropriate financing, the 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 requesting action or a response, 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, indicating the lowest APR option.
- **Transparent Compensation** – Disclose all compensation paid to the broker or lead generator, by either the lender or borrower, in connection with each loan offer presented.
- **Disclosure of Broker Incentives** – Disclose the broker’s or lead generator’s fee structure and any other financial incentives they have, including whether they receive higher fees for brokering certain loans. Brokers or lead generators who 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 requesting action or a response, 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** – Uphold 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 judgement or equivalent legal agreements by which a borrower preemptively agrees to lose disputes with the lender.⁴
- **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.

⁴ Lenders currently utilizing confessions of judgement (COJ) are granted 180 days from the date of signing their attestation form to comply with the COJ prohibition. A limited exception to the prohibition is provided for certain Small Business Administration (SBA) loans, for which SBA requires a COJ clause (borrowers based in MD, VA, and PA). The Responsible Business Lending Coalition urges the SBA to remove all COJ requirements, both optional and mandated, from SBA loan documents moving forward.



Small Business Borrowers' Bill of Rights

In order for a lender or marketplace to become a signatory of the Small Business Borrowers' Bill of Rights, its chief executive must attest that it abides by all practices described in the Small Business Borrowers' Bill of Rights by completing the **Attestation** below, and, if requested, promptly provide additional documentation evidencing compliance with any or all of the enumerated practices (the "**Supporting Documents**").

Terms of this Attestation

- a. I have read and understand the *Small Business Borrowers' Bill of Rights*.
- b. I have completed the attached Attestation Worksheet, indicating in writing that my organization abides by *all* of the enumerated practices.
- c. If requested, I have provided or will promptly provide (as the case may be) all Supporting Documents in a form acceptable.
- d. I understand that this Attestation Form and my organization's logo may be removed from the Small Business Borrowers' Bill of Rights website if (i) my organization does not complete and submit a satisfactory updated Attestation Form within one calendar year from the date of my signature below, and (ii) each successive year thereafter, or (iii) if my organization ceases to abide by this Attestation or (iv) if, after receiving a request from the Responsible Business Lending Coalition, my organization fails to promptly provide any Supporting Documents or provides inadequate Supporting Documents (as applicable).
- e. 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, factors, and all manner of persons providing financing to U.S. small businesses or evaluating the creditworthiness of such small businesses in connection with providing financing, and, in the case of borrowers, all U.S. small businesses who seek or obtain financing.
- f. Anyone with questions for my organization regarding this Attestation Form completed by my organization can contact the following individual (include name, title, email address, and phone number): _____
- g. I attest that the information above is accurate and represents the standard practices for all financing products and services offered through my organization to small businesses. Furthermore, I hereby certify that I am authorized to sign this Attestation Form on behalf of my organization.

Organization Name

Chief Executive Signature

Chief Executive Name

Date

The Right to Transparent Pricing and Terms

Transparent Rate

Disclose the Annual Percentage Rate (APR), or Estimated APR in the case of variable-term financing.

APR is the total cost of financing, including interest, fees, and other required charges, annualized and expressed as a single percentage number. This enables apples-to-apples price comparison between financing of different amounts and term lengths.

APR disclosure for small business financing may be required under state laws including California's SB 1235 and New York's Small Business Truth in Lending Act, which are based on the federal Truth in Lending Act. Where these state laws do not apply, APR should be calculated according to the Truth in Lending Act, as implemented in Regulation Z §1026.22, including the following guidelines:

- When disclosed, APR should not be of lesser prominence than any other term in the disclosure.
- For merchant cash advances and other sales-based financing, the estimated APR, payment amounts, and term disclosed should be calculated based on the projections for repayment that are used in underwriting the financing.
- For lines of credit and similar open-ended financing, APR should be calculated to include fees by assuming that the borrower draws the full amount on the origination date, and makes the minimum payments required.
- For factoring financing, the projected timing of payment should be established by the due date of the accounts receivable factored or based on data for the historical payment behavior of the firm named on the accounts receivable factored.
- If payment amounts vary, APR should be calculated based on the projected payment amounts, rather than an average payment amount.
- If a rate is promotional or introductory, the term sheet or its equivalent should

clearly state this, and how the rate could change in the future.

- For assistance in calculating APR using standard formulas in programs such as Microsoft Excel, please see Appendix: "Sample APR Calculation Formulas."

Clear Comparison

Present the following seven key terms listed clearly and prominently, in writing, to the borrower whenever a specific loan offer is presented or summarized for the borrower, such as in a term sheet, offer summary, or equivalent:

1. Loan amount, and total amount provided after deducting fees or charges
2. APR or Estimated APR
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
6. Collateral requirements
7. Any financing charge potentially due at prepayment

The Small Business Borrowers' Bill of Rights does not mandate a standardized form for these disclosures. Where the formatting of these disclosures is not mandated by state law, lenders may use their own designs that include these seven key terms, as described here in the Transparent Rate and Clear Comparison sections.

I have included in this Attestation, as a Supporting Document, a screenshot or other document demonstrating disclosure of these seven terms to borrowers in the manner described here in the Transparent Rate, Clear Comparison, and Plain-English Terms sections.

I have included in this Attestation, as a Supporting Document, a short description of when the screenshot or other disclosure documents I have included are presented to the borrower, and when any other summaries of loan terms are disclosed.

Plain-English Terms

Describe all key terms in an easy-to-understand manner. Do not, at any stage of the financing process, use percentages or the term "rate" to describe pricing metrics that are not the actual interest rate or APR. Pricing described 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.

The Right to Non-Abusive Products

No Debt Traps

If a 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 a new loan.¹

No "Double Dipping"

Do not double-charge the borrower. When offering additional financing with a fixed-fee as the primary financing charge to an existing borrower, if requiring their outstanding financing to be repaid forgive any unpaid fixed charges on the borrower's outstanding balance.

No Hidden Prepayment Charges

- If, in the event of prepayment, the borrower will be required to pay financing charges other than interest accrued since the last payment, disclose these charges as "prepayment charges." Disclose any additional charges of fees added in the case of prepayment as "prepayment penalties."
- Disclose (a) the potential amount of these prepayment charges and penalties in any loan offer summaries, and (b) the actual prepayment charges and penalties at the time of any 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, makes a payment in addition to the regulatory scheduled payments which pays off the financing, or in any event of refinancing.

Fair Prepayment

- If a borrower requests to prepay or refinance a loan, provide any information required for the 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.

The Right to Responsible Underwriting

Alignment of Interests

Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid. If the lender receives repayment directly the borrower's gross sales (i.e. credit card or payments processing or daily payments) before the borrower has the opportunity to pay for their required operating expenses, the lender must also verify, through documents, data from third parties, and/or due

¹ Government loan programs, such as the PPP, with defined underwriting approaches are also compliant.

diligence, that the borrower can repay all debt and remain profitable (i.e. a debt service coverage ratio of greater than 1.00), or that it has a credible path to profitability.

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.

The Right to Inclusive Credit Access

Non-Discrimination

Uphold 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, sexual orientation.

The Right to Fair Collection Practices

Fair Agreements

Do not utilize confessions of judgement or equivalent legal agreements by which a borrower preemptively agrees to lose disputes with the lender.²

Appendix: Sample APR Calculation Formulas

APR calculation can be made simple by using standard formulas in common spreadsheet software programs. If used correctly, the following formulas in Microsoft Excel or Google Sheets can calculate APR for loans, merchant cash advances, lines of credit, factoring, and other types of financing, consistent with the Truth in Lending Act formulas in Regulation Z. Other formulas and calculators not shown here also calculate APR accurately; the formulas below are provided as one resource. To confirm that any specific application of these formulas complies with legal requirements, please consult with legal counsel.

² A limited exception is provided for certain Small Business Administration (SBA) loans, for which SBA requires a COJ clause (borrowers based in MD, VA, and PA). The Responsible Business Lending Coalition urges the SBA to remove all COJ requirements, both optional and mandated, from SBA loan documents moving forward.

1. For financing products with payments of equal amounts paid at equal intervals

This may be appropriate for most loans, lines of credit, and merchant cash advances with flat sales projections and payments made daily, weekly, bi-weekly, or monthly.

*APR = RATE (Number of payments, payment amount as a negative number, disbursed amount after fees deducted) * Number of payment periods in one year to annualize*

2. For financing products with payments of differing amounts paid at equal intervals

This may be appropriate for loans with scheduled payments of different amounts, or for merchant cash advances considering sales projections that rise or fall over the payment period and with payments made daily, weekly, bi-weekly, monthly. It can also be used to include periods when charges are compounded but no payment is made.

This formula may be used for standard factoring financing by including the amount disbursed to the small business in the first cell, followed by cells with values of zero for each period in which charges are compounded but no payment is made, and a final payment cell when the invoice is paid representing the value of the invoice minus any amount not refunded to the small business.

*APR = IRR (select a series of cells indicating the flow of money, with the disbursed amount in the first cell, followed by cells representing the total payments in each subsequent payment period as negative numbers) * Number of payment periods in one year to annualize*

3. For financing products paid at irregular intervals

This may be appropriate for financing paid on weekdays only, skipping weekends, for example.

APR = (XIRR (select a series of cells in two columns with the first column indicating the flow of payments, with the disbursed amount in the first cell as a positive number and payments back to the financing provider in subsequent cells as negative numbers, and the second column indicating the corresponding dates of each disbursement or payment).



➔ UNDISCLOSED APRS AS HIGH AS 350%

Small business demand for capital increased during the pandemic, while loan offerings declined. Now, alternative financing companies promising fast cash seek to fill this void, with prices that are not clearly disclosed to borrowers.

Some **unregulated financing companies charge hidden APRs of up to 350%** but tell businesses their "rates" are in the single digits.

➔ BIPOC BUSINESSES DISPROPORTIONATELY IMPACTED BY DECEPTIVE LENDING

The 2021 Small Business Credit Survey found that:

- Business owners of color are worse off financially due to the pandemic, and
- Credit availability is Black entrepreneurs' top concern.

Moreover, **Black and Hispanic business owners are twice as likely** to apply to high-cost and less transparent financing companies.

Continue reading at next page >

SMALL BUSINESSES NEED RESPONSIBLE CAPITAL TO REBUILD FROM THE COVID-19 CRISIS. A LACK OF TRANSPARENCY PUTS THEIR FUTURES AT RISK.



NOW MORE THAN EVER, SMALL BUSINESSES NEED LENDING TRANSPARENCY TO AVOID UNSUSTAINABLE DEBT AS THEY REBUILD FROM COVID-19.

The federal government has regulated financing **consumer** financing disclosures for over 50 years. In that time, business financing has grown exponentially, without any disclosure requirements. **It is time for a Small Business Truth in Lending Act.**

Passed in 1968, the Truth in Lending Act requires lenders to disclose key pricing and term information to consumers, enabling them to compare options and make informed credit decisions.

A Small Business Truth in Lending Act would give business owners the same level of transparency from commercial financing providers.

FINANCING TRANSPARENCY COULD SAVE SMALL BUSINESSES BILLIONS OF DOLLARS PER YEAR IN EXCESS FINANCING CHARGES.

ONE MILLION SMALL BUSINESSES

Using data from the Federal Reserve's Small Business Credit Survey and U.S. Census Bureau, we estimate that each year, nearly one million price-sensitive small businesses will select lower-cost financing if presented with clear, comparable cost disclosures. Disclosures must include APR so that businesses can compare offers with different term lengths.

SAVING OVER 4.7 BILLION PER YEAR

Small businesses will save an estimated \$4.7 billion annually with the ability to switch to lower-cost loan products. These savings could fund median-wage-rate jobs for over 115,000 unemployed workers.



ADDITIONAL BENEFITS

Businesses will not only save on finance charges, but also avoid secondary costs of unaffordable debt.

Time is money: Entrepreneurs often seek to refinance out of unaffordable debt, spending an average of 26 hours on each loan application. By understanding the cost of financing upfront, entrepreneurs can avoid the need to refinance.

Missed payments can increase the cost of credit for years to come: Unaffordable products lead to missed payments and charge offs. Transparency can help businesses avoid credit score damage that increases the cost of future borrowing.

Preserving future business revenue: Unaffordable debt can force businesses to close prematurely. Business owners risk losing billions of dollars in future revenue without access to clear disclosures.

Attachment D - New York State Small Business Truth in Lending Act

S T A T E O F N E W Y O R K

979

2021-2022 Regular Sessions

I N A S S E M B L Y

January 6, 2021

Introduced by M. of A. ZEBROWSKI -- read once and referred to the Committee on Banks

AN ACT to amend the financial services law, in relation to exempting certain commercial financing transactions from certain disclosure requirements; and to amend a chapter of the laws of 2020 amending the financial services law relating to requiring certain providers that extend specific terms of commercial financing to a recipient to disclose certain information about the offer to the recipient, as proposed in legislative bills numbers S.5470-B and A.10118-A, in relation to the effectiveness thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Sections 802, 803, 804, 805, 806, 807 and 812 of the financial services law, as added by a chapter of the laws of 2020 amending the financial services law relating to requiring certain providers that extend specific terms of commercial financing to a recipient to disclose certain information about the offer to the recipient, as proposed in legislative bills numbers S.5470-B and A.10118-A, are amended to read as follows:

§ 802. Exemptions. This article shall not apply to, and shall not place any additional requirements or obligations upon, any of the following:

(a) a financial institution;

(b) a person acting in its capacity as a technology services provider, such as licensing software and providing support services, to an entity exempt under this section for use as part of the exempt entity's commercial financing program, provided such person has no interest, or arrangement or agreement to purchase any interest in the commercial financing extended by the exempt entity in connection with such program;

(c) a lender regulated under the federal Farm Credit Act (12 U.S.C. Sec. 2001 et seq.);

(d) a commercial financing transaction secured by real property;

(e) a lease as defined in section 2-A-103 of the uniform commercial code;

(f) any person or provider who makes no more than five commercial financing transactions in this state in a twelve-month period;

(g) an individual commercial financing transaction in an amount over two million five hundred thousand dollars; or

(H) A commercial financing transaction in which the recipient is a dealer as defined in section four hundred fifteen of the vehicle and traffic law, or an affiliate of such a dealer, or a rental vehicle company as defined in section three hundred ninety-six-z of the general business law, or an affiliate of such a company pursuant to a commercial financing agreement or commercial open-end credit plan of at least fifty thousand dollars, including any commercial loan made pursuant to such a commercial financing transaction.

§ 803. Sales-based financing disclosure requirements. A provider subject to this article shall provide the following disclosures to a recipient at the time of extending a specific offer of sales-based financing according to formatting prescribed by the superintendent:

(a) The total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The estimated annual percentage rate, using the words annual percentage rate or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with the federal Truth in Lending Act,

Regulation Z, 12 C.F.R. §1026.22, based on the estimated term of repayment and the projected periodic payment amounts, regardless of whether such act or such regulation would require such a calculation. The estimated term of repayment and the projected periodic payment amounts shall be calculated based on the projection of the recipient's sales, called the projected sales volume. The projected sales volume may be calculated using the historical method or the opt-in method. The provider shall provide notice to the superintendent on which method they intend to use across all instances of sales-based financing offered in calculating estimated annual percentage rate pursuant to this section.

(i) The provider using the historical method shall use an average historical volume of sales or revenue by which the financing's payment amounts are based and the estimated annual percentage rate is calculated. 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 not exceed twelve months.

(ii) The provider using the opt-in method shall determine the estimated annual percentage rate, the estimated term, and the projected payments, using a projected sales volume that the provider elects for each disclosure, provided, that they participate in a review process prescribed by the superintendent. A provider shall, on an annual basis, report data to the superintendent of estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions. The report shall contain such information as the superintendent, by rule or regulation, may prescribe 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. The superintendent shall establish the method of reporting and may, upon a finding that the use of projected

sales volume by the provider has resulted in an unacceptable deviation between estimated and actual annual percentage rate, require the provider to use the historical method. The superintendent may consider unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual annual percentage rate in the determination of such finding.

(d) The total repayment amount, which is the disbursement amount plus the finance charge.

(e) The estimated term is the period of time required for the periodic payments, based on the projected sales volume, to equal the total amount required to be repaid.

(f) The payment amounts, based on the projected sales volume:

(i) for payment amounts that are fixed, the payment amounts and frequency (e.g., daily, weekly, monthly), and, if the payment frequency is other than monthly, the amount of the average projected payments per month; or

(ii) for payment amounts that are variable, a payment schedule or a description of the method used to calculate the amounts and frequency of payments, and the amount of the average projected payments per month.

(g) A description of all other potential fees and charges not included in the finance charge, including, but not limited to, draw fees, late payment fees, and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 804. Closed-end commercial financing disclosure requirements. A provider, subject to this article, shall provide the following disclosures to a recipient at the time of

extending a specific offer for closed-end financing according to formatting prescribed by the superintendent:

(a) The total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The annual percentage rate, using only the words annual percentage rate or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient, and calculated in accordance with the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22, regardless of whether such act or such regulation would require such a calculation.

(d) The total repayment amount, which is the disbursement amount plus the finance charge.

(e) The term of the financing.

(f) The payment amounts:

(i) for payment amounts that are fixed, the payment amounts and frequency (e.g., daily, weekly, monthly), and, if the term is longer than one month, the average monthly payment amount; or

(ii) for payment amounts that are variable, a full payment schedule or a description of the method used to calculate the amounts and frequency of payments, and, if the term is longer than one month, the estimated average monthly payment amount.

(g) A description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, late payment fees and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 805. Open-end commercial financing disclosure requirements. A provider, subject to this article, shall provide the following disclosures to a recipient at the time of extending a specific offer for open-end financing according to formatting prescribed by the superintendent:

(a) The maximum amount of credit available to the recipient (e.g., the credit line amount), and the amount scheduled to be drawn by the recipient at the time the offer is extended, if any, less any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The annual percentage rate, using only the words annual percentage rate or the abbreviation "APR", expressed as a nominal yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient, and calculated in accordance with the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22 and based on the maximum amount of credit available to the recipient and the term resulting from making the minimum required payments term as disclosed, regardless of whether such act or such regulation would require such a calculation.

(d) The total repayment amount, which is the draw amount, less any fees deducted or withheld at disbursement, plus the finance charge. The total repayment amount shall assume a draw amount equal to the maximum amount of credit available to the recipient if drawn and held for the duration of the term or draw period.

(e) The term of the plan, if applicable, or the period over which a draw is amortized.

(f) The payment frequency and amounts, based on the assumptions used in the calculation of the annual percentage rate, including a description of payment amount requirements such as a minimum payment amount, and if the payment frequency is other than monthly, the amount of the average projected payments per month. For payment amounts that are variable, the provider should include a payment schedule, or a description of the method used to calculate the amounts and frequency of payments, and the estimated average monthly payment amount.

(g) A description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, draw fees, late payment fees, and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 806. Factoring transaction disclosure requirements. A provider, subject to this article, shall provide the following disclosures to a recipient at the time of extending a specific offer for a factoring transaction according to formatting prescribed by the superintendent:

(a) The amount of the receivables purchase price paid to the recipient and, if different from the purchase price, the amount disbursed to the recipient after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The estimated annual percentage rate, using that term, calculated according to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. §1026 Appendix J, as a "single advance, single payment transaction", regardless of whether such act or such regulation would require such a calculation. To calculate the estimated annual percentage rate, the purchase amount is considered the financing amount, the purchase amount minus the finance charge is considered the payment amount, and the term is established by the payment due date of the receivables. As an alternate method of establishing the term, the provider may estimate the term for a factoring transaction as the average payment period, its historical data over a period not to exceed the previous twelve months, concerning payment invoices paid by the party owing the accounts receivable in question.

(d) The total payment amount, which is the purchase amount plus the finance charge.

(e) A description of all other potential fees and charges that can be avoided by the recipient.

(f) A description of the receivables purchased and any additional collateral requirements or security interests.

§ 807. Other forms of financing disclosure requirements. The superintendent may require disclosure by a provider extending a specific offer of commercial financing which is not open-end financing, closed-end financing, sales-based financing, or factoring transaction but otherwise meets the definition of commercial financing as provided in this article. Subject to such rules and regulations by the superintendent, a provider subject to this article shall provide the following disclosures to a recipient at the time of extending a specific offer of other forms of financing according to formatting prescribed by the superintendent:

(a) The total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The annual percentage rate, using only the words annual percentage rate or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with the relevant sections of the federal Truth in Lending Act, Regulation Z or this article, regardless of whether such act or such regulation would require such a calculation.

(d) The total repayment amount which is the disbursement amount plus the finance charge.

(e) The term of the financing.

(f) The payment amounts:

(i) for payment amounts that are fixed, the payment amounts and frequency (e.g., daily, weekly, monthly), and the average monthly payment amount; or

(ii) for payment amounts that are variable, a payment schedule or a description of the method used to calculate the amounts and frequency of payments, and the estimated average monthly payment amount.

(g) A description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, late payment fees and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 812. Penalties. (a) Upon a finding by the superintendent that a provider has violated the provisions of this article or the rules or regulations promulgated hereunder, the provider shall be ordered to pay to the people of this state a civil penalty for each violation of this article or any regulation or policy promulgated hereunder a sum not to exceed two thousand dollars for each violation or where such violation is willful ten thousand dollars for each violation.

(b) In addition to any penalty imposed pursuant to subdivision (a) of this section, upon a finding by the superintendent that a provider has knowingly violated this article, the superintendent may order additional relief, including, but not limited to, restitution or a permanent or preliminary injunction on behalf of any recipient affected by the violation.

§ 2. Section 2 of a chapter of the laws of 2020, amending the financial services law relating to requiring certain providers that extend specific terms of commercial financing to a recipient to disclose certain information about the offer to the recipient, as proposed in legislative bills numbers S.5470-B and A.10118-A, is amended to read as follows:

§ 2. Nothing in this act shall authorize transactions in this state which are otherwise illegal or allow an entity or individual to operate in this state without a license where a license would otherwise be required.

§ 3. This act shall take effect January 1, 2022. effective immediately, the addition, amendment and/or repeal of any rule or regulation, necessary for the implementation of this act on its effective date are authorized to be made and completed by the superintendent of financial services on or before such effective date.

§ 3. This act shall take effect immediately; provided, however, that the amendments to sections 802, 803, 804, 805, 806, 807 and 812 of the financial services law made by section 1 of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the financial services law relating to requiring certain providers that extend specific terms of commercial financing to a recipient to disclose certain information about the offer to the recipient, as proposed in legislative bills numbers S.5470-B and A.10118-A.