SMALL BUSINESS FINANCING DISCLOSURE ACT of 2023 (HR 4192 / S.2021)
Section-by-Section Summary

The Small Business Financing Disclosure Act of 2023 (HR 4192 / S.2021) would amend the Truth in Lending Act (15 U.S.C. 1601 et seq) to require finance companies to disclose the same information for business capital that has been mandated for consumer financing products under the Truth in Lending Act (TILA) for more than 50 years, including Annual Percentage Rate (APR). This gives entrepreneurs the tools to accurately compare products and choose the best option for their business.

Section 1. Short Title
The bill is titled the "SMALL BUSINESS FINANCING DISCLOSURE ACT OF 2023."

Section 2. Application of The Truth In Lending to Small Business Financing
Amends the Truth in Lending Act (TILA) (15 U.S.C 1601 et seq.) by extending TILA protections to small business owners seeking financing of $2.5M or less.

§ 191. Definitions.
Sets forth the terms for purposes of this Chapter, including the following:

- Closed-end Commercial Credit[1]
- Consumer Financial Product or Service [2]
- Factoring[3]
- Finance Charge[4]
- Open-End Commercial Credit Plan[5]
- Sales Based Financing[6]
- Small Business and Small Business Financing[7]
- Specific Offer[8]

§ 192. Application of this title to small business financing.
Directs the Director of the Consumer Financial Protection Bureau (CFPB) to draft the regulations necessary to implement and enforce the rules applying TILA disclosure protections to small business financing.

§193. Additional disclosures.
Requires small business financers to clearly disclose the following information when offering financing. This information must be disclosed in writing, at the time a specific offer is made, and in a manner that is clear, conspicuous, complete, and allows the small business owner to compare the product with other available financing options. Further, these disclosures should most prominently display the financing amount, APR, and payment amount.
- Financing Amount[9]

- Annual Percentage Rate (APR)[10]
- Payment Amount[11]
- Term[12]
- Finance Charge[13]
- Prepayment Cost or Savings[14]
- Collateral Requirements.[15]

§194. Restrictions on double-dipping.
This subsection forbids financing providers from charging a fee on the outstanding principle of an existing loan with a fixed fee as the primary financing charge, unless there is a tangible benefit to the small business.

§195. Additional provisions.
This subsection outlines guidelines for financing providers that wish to disclose additional terms beyond those required by the Act to ensure that these terms don't effectively mislead business owners about the product's costs and terms. This includes prohibiting the use of the terms, "rate" and "interest," to describe any metrics that are not an annual interest rate or APR.

The bill sets a two-year (24 month) deadline from its enactment for the Director of the CFPB to issue final rules to implement the law. The law would go into effect three years (36 months) after the Act is signed into law.

Endnotes

1. ‘Closed-end commercial credit plan’ includes financing with an established principal amount and duration.
2. The term ‘consumer financial product or service’ has the meaning given the term in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).
3. ‘Factoring’ means a transaction that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment held by a recipient for goods the recipient has supplied or services the recipient has rendered that have been ordered but for which payment has not yet been made.
4. ‘Finance Charge’ means the dollar amount that is imposed directly or indirectly to business owners as a condition for taking on financing, including any prepayment penalties. The definition includes assumptions for the calculation of the finance charge for various types of business financing products, including open-ended commercial credit plans, factoring transactions, and lease financing transactions.
5. ‘Open-end commercial credit plan’ means any small business financing provided by a person under a plan that—the person reasonably contemplates repeat transactions; (B) prescribes the terms of the trans4 actions; and (C) provides for a finance charge that may be computed from time to time on the outstanding unpaid balance
6. ‘Sales-based financing’ means a transaction for an extension of financing to a recipient that is repaid by the recipient, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient; includes transactions with a true-up mechanism.
7. The definition of ‘small business’ follows the Small Business Administration’s current definition, which can be found under section 3 of the Small Business Act (15 U.S.C. 632), ‘small-business concern.’ “Small Business Financing” applies to financing of up to $2.5M and excludes any obligations that are primarily used for personal purposes.
8. ‘Specific Offer’ means the specific pricing and terms quoted to a business owner. This definition is important to inform when and how financing companies would be required to disclose mandated information on financing pricing and terms to the business owner.
9. The total amount to be paid to the small business, taking into account all fees and charges to be withheld at disbursement.
10. The effective annualized interest rate or estimated rate, taking into account any fees and finance charges that cannot be avoided by a recipient. The bill text addresses how this rate should be calculated for various types of commercial finance products, including closed-end credit, open-end credit, sales-based financing, and factoring products.
11. The amount and frequency of payments (e.g. daily, monthly, weekly), and the estimated average total monthly payment for products with variable payments.
12. The term or estimated term for repayment, expressed in months or years.
13. The total amount of charges associated with the product, broken down to show what expenses and fees are included in the finance charge.
14. If the recipient elects to repay or refinance the product prior to the expected term of repayment, the provider must disclose: whether the recipient would be required to pay any finance charges other than interest accrued since the last payment; the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and, any additional fee not already included in the finance charge that they would be required to pay,
15. Any collateral requirement imposed on the recipient in connection with the small business financing.