



STATEMENT FOR THE RECORD
BEFORE THE MARYLAND HOUSE ECONOMIC MATTERS COMMITTEE ON
SB 496 “CONSUMER CREDIT- COMMERCIAL FINANCING TRANSACTIONS” BILL

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Thank you Chair Eildon, Vice Chair Crosby, and members of the committee.

My name is Awesta Sarkash and I am the Public Policy Director for Small Business Majority, a national small business organization that empowers America’s diverse entrepreneurs to build a thriving and equitable economy. I also serve on the Executive Committee of the Responsible Business Lending Coalition (RBLC), a network of for-profit and non-profit lenders, investors and small business advocates, that organized in 2015 around a shared commitment to promoting innovation in small business lending and growing concerns about the rise of deceptive and irresponsible small business financing practices. As the only cross-sector collaboration, the RBLC is uniquely positioned to promote responsible practices in small business financing.

Thank you for the opportunity to discuss SB 496, as introduced by Senator Kramer, which would enact critical protections for small business borrowers in Maryland that are falling prey to predatory lending practices.

There are few protections provided to small business owners seeking financing because the federal Truth-in-Lending Act does not apply to most commercial financing. This legislation, modeled after successful Small Business Truth in Lending laws enacted in California and New York, would provide commonsense protections for small business borrowers in Maryland. The bill is applicable to financing products below \$2.5 million because smaller, Main Street businesses are the ones being misled by the lack of transparency today. This legislation provides transparency about the lending product, tells the online lender how to calculate APR and what to disclose to the borrower.

The original rationale for not extending federal truth-in-lending or disclosure protections to commercial loan transactions was based on the belief that businesses had much greater financial expertise at their disposal—they had comptrollers or chief financial officers on staff, or CPAs who could provide financial advice when they sought financing. This is certainly true for some businesses, but not for most small businesses. A majority of small businesses in the U.S. are sole proprietors, not corporations. They operate home day care centers; cleaning and landscaping businesses; food trucks, catering firms and cafes; small retail shops; hair and nail salons. They do their finances using QuickBooks, often in the evenings or around their core working hours. They may or may not have a part-time bookkeeper or accountant to help them set up their books, or an accountant or tax prep firm that helps them file taxes.

This legislation is needed because small businesses in Maryland could unknowingly agree to higher cost loan terms because predatory lenders can legally offer opaque terms through deceptive practices. A

common reality for small businesses is thinking you're paying one price for your loan, and instead realizing, sometimes too late, that your actual annual percentage rate or "APR," is in fact in the triple digits. Sometimes borrowers discover that there are additional costs associated with their loan that that they were not made aware of.

APR is the only metric that enables an individual to make apples-to-apples comparisons among financing products with different fees, interest, and term lengths over a common unit of time. As has been documented by research conducted by the Federal Reserve, small business owners applying for financing online may be receive offers that quote prices in very different ways. For example, they may be offered a five-year term loan with a 15% interest rate and \$1,000 origination fee, a 12-month cash advance with a 4% fee rate (not an interest rate), and a credit card with a 24.9% APR.¹ For the typical small business owner, it is very difficult to analyze and compare the relative costs of these products, and to determine their potential effect on their cash flow. As a result, small businesses today are often overpaying for financing, sometimes with devastating results for the business.

In fact, Federal Reserve [research](#) indicated that minority-owned firms more frequently applied for "potentially higher-cost and less-transparent credit products," specifically merchant cash advance and factoring products. This practice reinforces existing access to capital disparities and diminishes entrepreneurship. Small businesses recognize the need for this type of protection, which is why [75% of small businesses](#) support the type of legislation we're discussing today.

We must pass SB 496 because APR is the only metric that enables an apples-to-apples comparison of products of different types, amounts and lengths. Despite what you might hear today, this bill will not outlaw any financing products or restrict access to capital in any way. Simply requiring price transparency for Maryland's small businesses is a benefit to the small business ecosystem.

You may also hear from companies that offer merchant cash advances that they can't estimate APRs and disclose them. That is incorrect. Some merchant cash advance providers already disclose APR. And as of December 8, all financing companies serving small businesses in California are disclosing APR and starting on August 1, 2023 providers in New York will be as well. We strongly encourage Maryland to follow suit and implement SB 496. Maryland's small businesses are depending on it.

¹ Barbara Lipman and Ann Marie Wiersch, "Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites," 2019. <https://www.federalreserve.gov/publications/files/what-small-businessborrowers-find-when-browsing-online-lender-websites.pdf>