



February 14, 2023

Maryland Senate Finance Committee
House Office Building
11 Bladen Street
Annapolis, Maryland 21401

RE: Support for SB 0496 (Consumer Credit Commercial Financing Transactions)

Dear Members of the Maryland Senate Finance Committee:

The Responsible Business Lending Coalition (RBLC) writes in support of SB 0496, *Consumer Credit Commercial Financing Transactions*, as introduced by Senator Ben Kramer. The bill aims to bring transparency to the small business lending marketplace through standardized disclosures, particularly disclosure of the annual percentage rate (APR). When small business owners are empowered with clear information about their financing options, they have the agency to choose the best product for their needs.

The undersigned organizations represent members of the RBLC, a leading cross-sector voice on small business financial protection. The coalition includes nonprofit and for-profit fintechs, community development financial institutions (CDFIs), investors, and small business advocates who all share a commitment to innovation in small business lending as well as serious concerns about the rise of irresponsible small business lending. Two of our member organizations, Small Business Majority (SBM) and Accion Opportunity Fund (AOF), will testify in support of this bill as it is considered through the Maryland Senate Finance Committee.

As introduced, SB 0496 would bring sunshine to the commercial financing marketplace by requiring all providers to disclose APR for all small business loan products. APR is the only established metric that enables informed comparisons of the cost of capital over time and between products of different dollar amounts and term lengths. APR is the time-tested rate that people know and expect because it is the legally required standard for mortgages, auto loans, credit cards, student loans and personal loans, including short-term loans.

When small businesses currently shop for financing, they are not able to make an apples-to-apples comparison across financing providers and products. Without standardization of disclosure requirements across lenders, small businesses are more likely to choose higher-cost products. For instance, a [research study](#) found that when asked to compare a sample short-term loan product with a 9% “simple interest” rate to a credit card with a 21.9% interest rate, most participants in the study incorrectly guessed the short-term loan to be less expensive. [Further research](#) indicates that small businesses can pay APRs of 94%, and as high as 350%, without these high rates being properly disclosed. This is why including both



APR and all financing products in the legislation will better protect small businesses. What’s more, a [Federal Reserve study](#) demonstrated that Black and Hispanic-owned businesses are more likely to use “high-cost” and “non-transparent” financing, referring specifically to merchant cash advances as well as factoring products. This legislation would protect these entrepreneurs, which currently [comprise 33% of all small businesses in Maryland](#).

It is important to note that calculating APR is not burdensome for providers or the marketplace. It does not explicitly prohibit products or providers. Providers can easily calculate APR using common spreadsheet software. Many commercial financing providers across the country already disclose APR without disclosure impeding their operations. Other providers, including revenue-based financing companies, need to disclose annualized yields to their investors without disclosing the true cost of funds, with all fees, for their borrowers. These companies will soon be required to calculate and disclose APR in California and New York. Without the ability to make comparisons across products and providers with terms that small business owners understand from a consumer perspective, fair competition would be stifled, and misleading providers gain an advantage. Once comprehensive disclosures are implemented, the only reason that a provider would stop operating is as a natural consequence of market competition. We can look to the consumer financing marketplace as an example of a vibrant, healthy, and competitive marketplace over fifty years after implementation of the consumer Truth-in-Lending Act and APR disclosure.

In the below appendices, we included a document that dispels some of the common myths regarding transparent disclosure requirements and the need for APR.

We ask you to support SB 0426, swiftly pass this critical small business protection bill through the Maryland Senate Finance Committee, and signed into law as soon as possible. We are happy to serve as a resource as you move forward.

Sincerely,
The Responsible Business Lending Coalition



Claims and Facts in Support of Small Business Truth in Lending

Small business Truth in Lending is supported by leading fintech and bank for-profit lenders, nonprofit CDFIs, civil rights groups, and small business groups. However it may face opposition as well, such as from finance companies that charge relatively higher APRs and do not disclose them.

Claims critical of Truth in Lending were considered extensively in California and New York. After consideration, the legislatures of both states passed strong Truth in Lending Bills by wide, bipartisan margins (132-9 in the New York Assembly and 72-3 in the California Assembly). The following are common claims and facts about small business Truth in Lending:

Claim: Disclosure of the APR is not needed in small business financing

Fact: APR is the only metric that enables comparison of the price of financing of different types, amounts, and term lengths. In response to the rise of high-rate small business financing, the need for transparent disclosure in APR in small business financing has been raised by:

1. Multiple research studies published by the Federal Reserve¹
2. National Consumer Law Center²
3. Bloomberg News editorial board (“Protect Small Businesses from Predatory Lending... The best solution would be for Congress to pass a [truth-in-lending](#) law for small business, along the lines of the rules that already exist for consumer loans.”)³
4. Federal Reserve Governor Lael Brainard⁴
5. Federal Reserve Board of Governors Community Advisory Council⁵
6. The Conference of State Bank Supervisors’ Fintech Industry Advisory Panel
7. 110+ industry and nonprofit signatories and endorsers of the Responsible Business Lending Coalition’s *Small Business Borrowers Bill of Rights*⁶

¹ Federal Reserve Board of Governors, “Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites,” Dec 2019.

<https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf>

Federal Reserve Bank of Cleveland, “Alternative Lending through the eyes of ‘Mom & Pop’ Small-Business Owners,” August 2015.

<https://www.clevelandfed.org/newsroom-and-events/publications/special-reports/sr-20150825-alternative-lending-through-the-eyes-of-mom-and-pop-small-business-owners.aspx>

Federal Reserve Board of Governors, “Browsing to Borrow: ‘Mom & Pop’ Small Business Perspectives on Online Lenders,” June 2018. <https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf>

Federal Reserve Bank of Atlanta, “Small Business Credit Survey: Report on Minority-Owned Firms,” Dec 2019.

<https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf> This study notes that “Minority-owned firms more frequently applied for potentially higher-cost and less-transparent credit products.”

² See letter in Appendix B:

http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/sb_1235_support_coalition_and_rblc_comment_-_small_business_disclosures_file_no_pro_01-18.pdf

³ <https://www.bloomberg.com/amp/opinion/articles/2018-11-28/confessions-of-judgment-small-business-and-predatory-lending>

⁴ Board of Governors of the Federal Reserve System, “Remarks by Lael Brainard: Community Banks, Small Business Credit, and Online Lending,” 2015. <https://www.federalreserve.gov/newsevents/speech/brainard20150930a.pdf>

⁵ See page 7, <https://www.federalreserve.gov/aboutthefed/files/cac-20181005.pdf>

⁶ <http://www.borrowersbillofrights.org/signatories.html>

8. A dozen member companies of the Innovative Lending Platform Association⁷
9. Bipartisan Policy Center⁸
10. Former Democratic and Republican SBA Administrators Karen Mills⁹ and Chris Pilkerton
11. US Treasury officials¹⁰
12. Numerous news articles (e.g. McClatchy, “Even Finance Whizzes Say It’s Impossible to Compare Online Small Business Loan Options.” June 2018)¹¹

Why is APR so critical? The CFPB website explains that: “The APR, or annual percentage rate, is the standard way to compare how much loans cost. It lets you compare the cost of loan products on an ‘apples-to-apples’ basis.”¹² It can be especially useful for comparing different types of financing products. The CFPB encourages credit seekers to compare short-term payday loans to longer-term installment loans or credit cards by focusing on APRs.¹³

Claim: The CFPB and Federal Reserve have published studies stating that APR is misleading, ineffective, or not used by consumers.

Fact: While the quotes do reference arguments made by the Board and CFPB, the way the quotes are used leaves out important context. One of these CFPB studies concerned an instance in which the Board was eliminating a proposed additional APR for credit cards. Another study concerned home mortgage lending. In this instance, the CFPB gave prominence to the interest rate, but retained the APR in another location. Unlike in small business financing, the interest rate and APR are generally very close in mortgage lending—within 0.03% on bankrate.com today. But small business owners are often shown no interest rate or APR at all. According to a report issued by Opportunity Fund, the average alternative small business loan carried an APR of 94%, with some loans carrying APRs upwards of 350%.¹⁴

Claim: Revenue-based financing companies, also known as “merchant cash advances (MCAs)” can’t calculate APR.

Fact: Some MCA companies already disclose APR. Others advertise their high annualized yields to their investors, but don’t disclose these annualized percentage rates to their small business customers. Additionally, APR can easily be calculated using common spreadsheet software. All revenue-based

⁷ <https://innovativelending.org/>

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<https://bipartisanpolicy.org/wp-content/uploads/2018/07/Main-Street-Matters-Ideas-for-Improving-Small-Business-Financing.pdf>

⁹ http://www.hbs.edu/faculty/Publication%20Files/17-042_30393d52-3c61-41cb-a78a-ebbe3e040e55.pdf

¹⁰ <https://www.treasury.gov/connect/blog/Pages/Opportunities-and-Challenges-in-Online-Marketplace-Lending.aspx>,
https://www.progressivepolicy.org/wp-content/uploads/2017/11/PPI_SmallBizCredit_2017.pdf

¹¹ <https://www.mcclatchydc.com/news/nation-world/national/article212491199.html>

¹² www.consumerfinance.gov/consumer-tools/credit-cards/answers/key-terms/

¹³

www.consumerfinance.gov/ask-cfpb/my-payday-lender-said-my-loan-would-cost-15-percent-but-my-loan-documents-say-the-annual-percentage-rate-apr-is-almost-400-percent-what-is-an-apr-on-a-payday-loan-and-how-should-i-use-it-en-1625/

¹⁴

https://aofund.org/app/uploads/2021/03/Unaffordable-and-Unsustainable-The-New-Business-Lending-on-Main-Street_Opportunity-Fund-Research-Report_May-2016.pdf

financing companies will soon disclose APR in California and New York. Our small businesses deserve the same transparency.

Claim: California and New York regulators haven't finalized their regulations because the topic is complicated.

Fact: In June 2022, the California Department of Financial Protection and Innovation (DFPI) released the final rule implementing Senate Bill 1235 - the first state bill extending Truth In Lending Act protections to small business financing. The CA final rule, which requires APR disclosure on any financing to a California-based small business, took effect on December 9th, 2022. DFPI refuted the idea that APR disclosure is too complicated to adopt, saying "While the DFPI recognizes that APR is more difficult to calculate mathematically than ACC, calculating an APR based upon estimated payments is not a complicated task for individuals with minimal training and can be accomplished in widely available spreadsheet programs."

In February 2023, the New York Department of Financial Services (DFS) released the final rule implementing the Small Business Truth in Lending Act (SB5470B) which was signed into law in 2021. The final rule will take effect on August 1, 2023.

Claim: Studies show that small business owners do not understand APRs.

Fact: Four successive Federal Reserve studies have demonstrated that small businesses are currently misled towards higher-cost financing by disclosures that lack APR, and that APR would be among the most helpful disclosure elements to small business owners.¹⁵

Claim: Use of estimates in small business truth in lending disclosures will open commercial financing providers to a wave of litigation.

Fact: Estimates are anticipated and acceptable. Senator Proxmire, sponsor of the federal Truth in Lending Act, explained on the floor of the Senate in 1967 that in cases when an exact APR cannot be calculated, the Truth in Lending Act "makes it abundantly clear that lenders need only state an approximate annual rate and would not be held to absolute accuracy down to the last decimal point."¹⁶

Claim: The bill's disclosures related to the practice of double-charging borrowers while refinancing their loans is unnecessary, as this practice, called "double dipping," is not a problem.

Fact: Double dipping is described as an irresponsible practice, even among small business financing providers. See, for example, "Beware: Double Dipping!" by financing company Next.¹⁷

¹⁵ See note i

¹⁶ Senator Proxmire, William, "Congressional Record - Senate," Jan 1967.
<https://web.archive.org/web/20120415005111/http://www.llsdc.org/attachments/wysiwyg/544/TILA-LH-CR-1967-01-31.pdf>

¹⁷ See, e.g. <https://next-financing.com/double-dipping/>, and, <https://www.breakoutfinance.com/double-dipping-explained/>

Claim: The regulatory burden of standardized disclosures will cause providers to stop offering financing. Affected providers will not be able to continue operating or offering certain products. The net result will be reduced access to capital for small businesses.

Fact: Private-sector and nonprofit providers in the RBLC are already disclosing APR and other metrics required by the legislation, voluntarily, and it is not impeding their ability to continue operating. Consumer financing providers have had to comply with Truth-in-Lending regulations for decades and the marketplace remains vibrant and diverse. From these examples, we know that the costs of compliance are not overly burdensome for providers. The only reason that a provider would stop operating is as a natural consequence of market competition; some high-cost providers could lose customers after transparently disclosing their pricing and terms.