SB0754 - MBA - FAV - GR25.pdf
Uploaded by: Evan Richards
Position: FAV

MARYLAND BANKERS ASSOCIATION

SB 754 – Commercial Financing - Small Business Truth in Lending Act
Committee: Senate Finance Committee
Date: February 20, 2025
Position: Favorable

The Maryland Bankers Association (MBA) **SUPPORTS** SB 754. This legislation establishes a regulatory framework for businesses engaged in commercial financing transactions. This new framework would appropriately fall under the regulatory and enforcement authority of the Office of Financial Regulation (OFR).

While OFR currently has the power to investigate financial transactions to determine any violations, SB 754 would positively impact Maryland small businesses by implementing consistent standards and transparency requirements for commercial lenders to ensure equity and accountability in lending.

Maryland banks are proud to work with thousands of Maryland businesses to offer extensive responsible commercial financing products and services and strongly support transparency for all small business financing.

This bill is a smart step forward in protecting Maryland small businesses and accordingly, MBA urges a **FAVORABLE** report on SB 754.

The Maryland Bankers Association (MBA) represents FDIC-insured community, regional, and national banks, employing thousands of Marylanders and holding more than $194 billion in deposits in almost 1,200 branches across our State. The Maryland banking industry serves customers across the State and provides an array of financial services including residential mortgage lending, business banking, estates and trust services, consumer banking, and more.

Support for SB 754 - Commercial Financing – Small
Uploaded by: Louis Caditz-Peck
Position: FAV

February 18th, 2025

Senator Pamela Beidle, Chair
Senate Finance Committee
6 Bladen St., Annapolis, Maryland 21401
Miller Senate Office Building, 3 East Wing
11 Bladen St., Annapolis, MD 21401 - 1991

RE: Support for SB 754, Commercial Financing – Small Business Truth in Lending Act

Dear Chair Beidle, Vice Chair Hayes, and members of the Senate Finance Committee:

There are some things we can still all agree on. The undersigned coalition represents not only small businesses, but also banks, fintechs, nonprofit lenders, civil rights groups, and advocacy nonprofits. Despite so many differences, we all agree: small businesses deserve to see the transparent price they are expected to pay for financing. We urge your strong support for SB 754, Commercial Financing - The Small Business Truth in Lending Act (Kramer).

Many are surprised to learn that the transparency standards that lenders have complied with for 50 years under the Truth in Lending Act (1968) don't protect you when you borrow for your small business. SB 754 would simply provide small businesses with equivalent transparent price disclosures on their financing options. When small business owners are empowered with transparency, they can choose the best financing option for their needs. These exact disclosures are already being provided in New York and California. Marylanders deserve the same transparency.

This issue is urgent. Today, Maryland small business owners are routinely paying annual percentage rates (APRs) of 200% or more without ever seeing those prices disclosed.[1] Maryland small

[1] United States Treasury Department, "Financing Small Business: Landscape and Recommendations," Jan 10th, 2025.

businesses are overpaying an estimated $237 million in unnecessary interest and fees, *every year*. Of this, Black business owners are overpaying an estimated $72 Million, and Hispanic business owners an estimated $26 million.[2] By empowering business owners to comparison shop, you can help them keep their hard-earned funds to build generational wealth, send kids to college, give raises to employees, and hire in their communities.

Below are four new developments that resolve the questions the committee raised previously, and underscore the need to pass this bill this year before another $237 million is taken away:

1) **New Data Shows Transparency Supports Business' Access to Capital –** There are now two years of data from New York and California, where the legislatures voted on a bipartisan basis to provide the same transparency standards proposed here. The data shows that financing options remain available and continue to flourish in both states:
    - Merchant cash advances continue to be available in California and New York. In fact, 100% of those financing companies partnered with Nav, a fintech company that provides access to financial products and services for small businesses, continued after the transparency requirements came into effect. 0% stopped.[3]
    - Numerous merchant cash advance companies continue to advertise their availability specifically in New York, California, and "all 50 states."[4]

2) **New US Treasury Dept. Report Highlights the Need for This Bill –** The Biden US Treasury Report released a Policy Brief on small business financing on Jan 10th, 2025. Treasury's *first* key finding is that the lack of price transparency in small business financing is harming small businesses and undermining competition among financing providers. [5]
    - For solutions, the US Treasury Department pointed to the Responsible Business Lending Coalition, which supports this bill.[6]
    - Treasury's findings complement the five successive studies by the Federal Reserve showing that, in the absence of transparent disclosures, small businesses today are being misled into unnecessarily expensive financing.[7]

---

[2] This estimated is the $4,864 to $23,098 per loan that small businesses are routinely overpaying when lower-price options are available (per Financial Health Network research), multiplied by the number of small businesses in Maryland (per US Census) who are seeking capital online and who also say the price of financing is a top priority for them (per Federal Reserve Small Business Credit Survey).

[3] See testimony provided by Nav, Feb 7, 2025

[4] See, e.g. https://www.google.com/search?q=merchant+cash+advance+"50+states"

[5] United States Treasury Department, Jan 10th, 2025.

[6] Id.

[7] Federal Reserve Bank of Cleveland, "Clicking for Credit: Experiences of Online Lender Applicants from the Small Business Credit Survey," August 2022; Board of Governors of the Federal Reserve System, "Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites," December 2019; Board of Governors of the Federal Reserve System, "Searching for Small Business Credit Online," Consumer and Community Context, Nov 2019, Vol 1, No 2; Federal Reserve Board of Governors, "Browsing to Borrow: 'Mom & Pop" Small Business Perspectives on Online Lenders," June 2018; Federal Reserve Bank of Cleveland, "Alternative Lending through the eyes of 'Mom & Pop' Small-Business Owners," August 2015.

3) **New Tools Help Lenders Compute APRs –** Computing an APR is a basic finance skill. After all, the rate a financing company expects to charge is the same rate they expect to earn. What finance is sending money out the door with no expectation of the rate they will earn?
    - However, for financiers without these skills, companies like Bethesda-based Rapid Finance now offer software that enable other financing companies to "*quickly and easily produce compliant disclosure statements at a state-by-state level*."[8]
    - The bill now also includes a safe harbor that protects lenders using Estimated APRs.

4) **Federal Court Settled the Facts –** A few financiers who may prefer not to disclose their high APRs sued California. The federal judge, a Bush appointee, ruled APR disclosure is "purely factual, noncontroversial, and not unduly burdensome."[9]

Financing companies offering "higher-cost, less-transparent credit products" (to quote the Federal Reserve) will try and convince you to carve them out of this transparency framework, or exempt them from APR disclosure. But their "less-transparent" practices are why this bill is needed.

Entrepreneurs deserve access to capital that will help their businesses thrive, not force them out of business. And yet 28% of business owners report that they were harmed by predatory lending *within the past year*. Among Black business owners, 37% say they were harmed.[10] Marylanders deserve to know they price they would pay. Please email CLocklair@MDRA.org if we can be of any assistance.

Sincerely,

Maryland-Based Organizations
- Maryland Retailers Alliance
- Maryland Bankers Association
- Baltimore Community Lending
- CASH Campaign of Maryland
- Community Development Network of Maryland
- Economic Action Maryland
- Greater Baltimore Urban League
- Rebirth, Inc.
- Small Business Anti-Displacement Network

National and DMV-Based Organizations
- African American Alliance of CDFI CEOS
- American Fintech Council
- City First Enterprises
- Latino Economic Development Center
- Lendistry
- National Urban League
- Nav
- Woodstock Institute

Responsible Business Lending Coalition
- Accion Opportunity Fund
- Aspen Institute
- Bluevine
- Camino Financial
- Community Investment Management
- LendingClub
- National Association for Latino Community Asset Builders (NALCAB)
- National Community Reinvestment Coalition (NCRC)
- Opportunity Finance Network (OFN)
- Small Business Majority

---

[8] Rapid Finance, "Rapid Finance Announces Availability of API Service to Support State-Level Business Lending Disclosure Requirements," Dec 2022.
[9] ABA Banking Journal, "California Court Grants DFPI's Motion for Summary Judgement," Jan, 2024.
[10] Goldman Sachs, "New Survey Data Shows Black Small Business Owners Less Likely to Secure Loans," Feb 2024.

Testimony Slides in Support of SB 754 - Small Busi
Uploaded by: Louis Caditz-Peck
Position: FAV

Testimony in Support of SB 754
Small Business Truth in Lending Act (Kramer)

February 18 2025

LOUIS CADITZ-PECK
EXECUTIVE DIRECTOR
RESPONSIBLE BUSINESS LENDING COALITON
louis@borrowersbillofrights.org

RESPONSIBLE BUSINESS LENDING COALITION

Support for SB 754 is exceptionally broad. It's a compromise among many constituencies who rarely all agree:

- Small Business trades
- Industry (Bank *and* fintech trades)
- Nonprofits (Civil rights groups, advocacy nonprofits, nonprofit lenders)

MRA Maryland Retailers Alliance
BCL Baltimore Community Lending
MBA Maryland Bankers Association
Economic Action MD Fund
Greater Baltimore Urban League
Community Development Network of Maryland
Cash Campaign of Maryland
cityfirst Enterprises
AFC American Fintech Council
National Urban League
African American Alliance of CDFI CEOs
Responsible Business Lending Coalition
rebirth Inc
Opportunity Finance Network
Latino Economic Development Center
lendistry
Small Business Anti-Displacement Network
LendingClub
Woodstock Institute Advancing Economic Security and Community Prosperity
NCRC National Community Reinvestment Coalition
National Association for Latino Community Asset Builders
bluevine
Small Business Majority
Nav
Accion Opportunity Fund

We need this bill because today, Maryland small business owners are being overcharged an estimated:

- **$237 MILLION IN UNNECESSARY INTEREST AND FEES–EACH YEAR.** Of this, Black business owners are being overcharged an estimated $72 Million, and Hispanic business owners an estimated $26 million—each year.[1]

- **WE CAN HELP SMALL BUSINESSES OWNERS KEEP THE WEALTH THEY CREATE** to grow their dreams, build generational wealth, send kids to college, give raises to employees, and hire in communities.

[1] This estimated is the $4,864 to $23,098 per loan that small businesses are routinely overpaying when lower-price options are available (per Financial Health Network research), multiplied by the number of small businesses in NY and CA (per US Census) who are seeking capital online and who also say the price of financing is a top priority for them (per Federal Reserve Small Business Credit Survey).

HERE IS THE DISCLOSURE the bill requires →

This is from a real transaction in California, where these disclosures have been required by law for 2+ years. This disclosure is also already required by law in New York state.

The bill does not limit access to capital in any way. It sets no limits on prices or products. It just requires transparent price disclosure.

OFFER SUMMARY – PAYMENT RIGHTS SALE DISCLOSURE AGREEMENT

Funding Provided	$ 7,500	This is how much funding Bitty Advance 2, LLC will provide. Due to deductions or payments to others, the total funds that will be provided to you directly is $ 6,806. For more information of what amounts will be deducted, please review the attached document "Itemization of Amount Financed." The amount paid directly to you may change based on required pay-off/pay downs to third-parties, which amounts have not yet been confirmed at the time of this disclosure.
Estimated Annual PercentageRate (APR)	177.74%	APR is the estimated cost of your financing expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay and the payments you make. This calculation assumes your estimated average monthly income through sales of goods and services will be $ 14,453. Since your actual income may vary from our estimate, your effective APR may also vary. APR is not an interest rate. The cost of this financing is based upon fees charged by Bitty Advance 2, LLC rather than interest that accrues over time.
Finance Charge	$ 5,139	This is the dollar cost of your financing.
Estimated Total Payment Amount	$ 11,945	This is the total dollar amount of payments we estimate you will make under the contract.
Estimated Monthly Cost	$ 2,284	Although this financing does not have monthly payments, this is our calculation of your estimated average monthly cost for comparison purposes.
Estimated Payment	$ 102 / Day	
Payment Terms	The contact provides for Daily periodic payments. The specified percentage of 35% will be delivered to the buyer Daily. The initial estimated Daily debit amount is intended to represent the Specified percentage of your future receipts. You or the buyer may request a reconciliation to the estimated debit amount to more closely reflect your actual future receipts times the specified percentage. Refer to "Changes to the Estimated Debit Amount" on page 3 in the Payments Rights Purchase and Sale Agreement.	
Estimated Term	115 days	This is the estimated term of how long it will take to collect amounts due to the buyer.
Prepayment	If you pay off the financing faster than required, you still must pay all or a portion of the finance charge, up to $ 5,139 based upon our estimates.	
	If you pay off the financing faster than required, you will not be required to pay additional fees.	

Small Businesses are Being Taken Advantage of

- Small business owners today are often charged **APRs of 50% to 350%** without ever seeing these prices disclosed.[1]
- **More than 1 in 4** business owners say they were harmed by predatory lending *within the past year*.[2]
- Federal Reserve research finds that business owners of color are **2x as affected**.[3]

That's because laws like the Truth in Lending Act don't cover small business owners, leaving them in a regulatory gap, unprotected.

" The problems that we're starting to see in the small business lending market, to me, are extremely troubling… in some respects, **reminiscent of some of the problems in the subprime mortgage sector** that we saw in the leadup to 2008. "

FMR FEDERAL RESERVE VICE CHAIR MICHAEL BARR, SPEAKING AT THE LAUNCH EVENT OF THIS COALITON[4]

[1] Accion Opportunity Fund, "Unaffordable and Unsustainable: The New Business Lending On Main Street" July 2016. see also Woodstock Institute, "Analysis of Business Loan Terms," Accessed 2024.
[2] Goldman Sachs, "New Survey Data Shows Black Small Business Owners Less Likely to Secure Loans," Feb 2024.
[3] Federal Reserve Bank of Atlanta, "Report on Minority-Owned Firms," Dec 2019. Page IV, describing "higher-cost and less-transparent credit products."
[4] Forbes, "Lenders Voluntarily Create a Bill of Rights to Protect Businesses from Lending Abuses," Aug 2016.

Please Act To Stop A Return of Subprime Mortgage Mistakes

This time targeting small business owners

Forbes

Why Online Small Business Loans Are Being Compared To Subprime Mortgages

Bloomberg

The Predatory Lending Machine Crushing Small Businesses Across America

Bloomberg

Brokers Get Big Commissions for Selling Entrepreneurs Costly Loans

Wall Street Finds New Subprime With 125% Business Loans

McClatchy DC

Even finance whizzes say it's impossible to compare online small business loan options

THE WALL STREET JOURNAL.

English Edition ▾ | Print Edition | Video | Audio | Latest Headlines | More ▾

An Easy Financing Source Pushes Some Small Businesses Into Bankruptcy

RESPONSIBLE BUSINESS LENDING COALITION

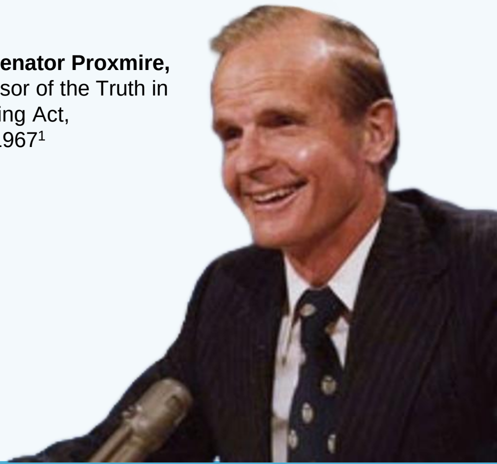
APR is the unit price of financing

APR combines interest, fees, and other required charges into a single percentage number that financing applicants can use to compare prices. The APR is…

(**WHAT YOU PAY** (including all required interest & fees) **AS A % OF** **WHAT YOU GET** (the balance of financing you can use as you repay)) / **OVER A COMMON UNIT OF TIME (THE YEAR)**

> “Just as the consumer is told the price of gasoline per gallon, so must the buyer of credit be told the ‘unit price.’
>
> Historically in our society that unit price for credit has been the annual rate of interest or finance charge applied to the unpaid balance of the debt.”

US Senator Proxmire,
Sponsor of the Truth in Lending Act,
Jan 1967[1]



[1] Congressional Record, US Senate, 1967, https://web.archive.org/web/20120415005111/http://www.llsdc.org/attachments/wysiwyg/544/TILA-LH-CR-1967-01-31.pdf

"MCA" companies argue that it's too hard to compute the Estimated APRs they charge our small businesses. But…

This is a merchant cash advance contract

good FUNDING

Purchase and Sale of Future Receipts Agreement

Purchase Price: $12,000.00 **Purchased Amount:** $16,560.00 **Average Monthly Sales:** $15,763.25

Specified Percentage: 13.1318% **Initial Fees:** $360.00

Net Amount to Seller: $11,640.00 (Purchase Price – Initial Fees)

Initial Weekly Amount: $517.50 (Average Monthly Sales x Specified Percentage / Average Business Days in a Calendar Month)

"MCA" companies argue that it's too hard to compute the Estimated APRs they charge our small businesses. But…

This is a merchant cash advance contract

This is how you compute APR, simply by plugging in these #s to Excel

good FUNDING

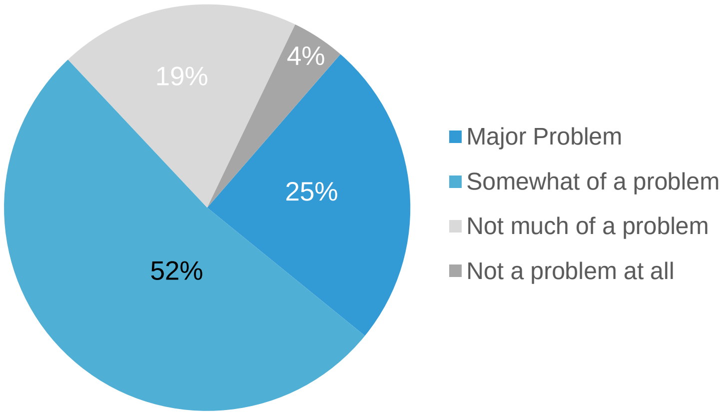
Purchase and Sale of Future Receipts Agreement

Purchase Price:	$12,000.00	**Purchased Amount:**	$16,560.00	**Average Monthly Sales:**	$15,763.25
Specified Percentage:	13.1318%			**Initial Fees:**	$360.00
Net Amount to Seller:	$11,640.00	(Purchase Price – Initial Fees)			
Initial Weekly Amount:	$517.50	(Average Monthly Sales x Specified Percentage / Average Business Days in a Calendar Month)			

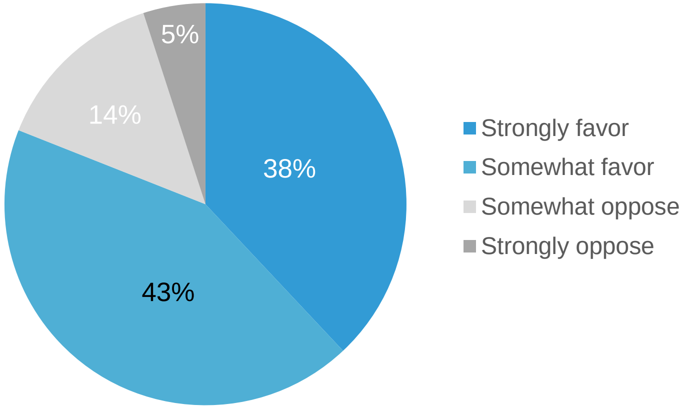
	B	C	D
2	Funding Provided	$11,640	This is the "Net Amount to Seller"
3	Total Repayment owed	-$16,560	This is the "Purchased Amount"
4	Expected Payment Amount	-$517.50	This is the "Initial Weekly Amount." Charged weekly in this case.
5	Estimated Term Length	32	This is cell C3 ÷ cell C4. It's the expected number of weekly payments.
6			
7	**Estimated APR**	**119%**	This is computed by plugging in the numbers above to Microsoft Excel's "RATE" formula: =RATE(C5, C4, C2)*52 You plug in cell C5 (the number of payments), cell C4 (the payment amount), and cell C2 (the funding provided), and annualize using the number of weeks in a year (52). Different Excel formulas like "IRR" can also be used to the same result.

Small Business Owners Want Transparency

78% SAY PREDATORY BUSINESS LENDING IS A PROBLEM



80% FAVOR REGULATION TO REQUIRE PRICE TRANSPARENCY



Poll of 500 small business owners, conducted between Sept 29 and Oct 4, 2017 by Greenberg Quinian Rosner Research
Small Business Majority, "Small Business Owners Concerned with Predatory Lending, Support More Regulation of Alternative Lenders," Dec 2017.

SMALL BUSINESS MAJORITY

RESPONSIBLE BUSINESS LENDING COALITION

Maryland Companies Now Sell Software to enable lenders to produce the disclosures “quickly and easily”

businesswire
A BERKSHIRE HATHAWAY COMPANY

Home Services News Education About Us

Search

Rapid Finance Announces Availability of API Service to Support State-Level Business Lending Disclosure Requirements

December 09, 2022 07:01 AM Eastern Standard Time

BETHESDA, Md.--(BUSINESS WIRE)--Rapid Finance, a market leader in helping small businesses find sustainable and customized financing solutions through a fast and simple application process, announced the availability of its new standalone Software as a Service (SaaS) Regtech module, SMB Disclosure Service, to enable business lenders and financing companies to quickly and easily produce compliant disclosure statements at a state-by-state level.

https://www.businesswire.com/news/home/20221209005058/en/Rapid-Finance-Announces-Availability-of-API-Service-to-Support-State-Level-Business-Lending-Disclosure-Requirements

Opposition? Federal Reserve research specifically describes the products sold by companies opposing this transparency legislation as “higher-cost and less transparent credit products.”

FEDERAL RESERVE BANK of ATLANTA

Federal Reserve Small Business Credit Survey: Report on Minority-Owned Firms

DECEMBER 2019

Minority-owned firms more frequently applied for potentially higher-cost and less-transparent credit products:

“

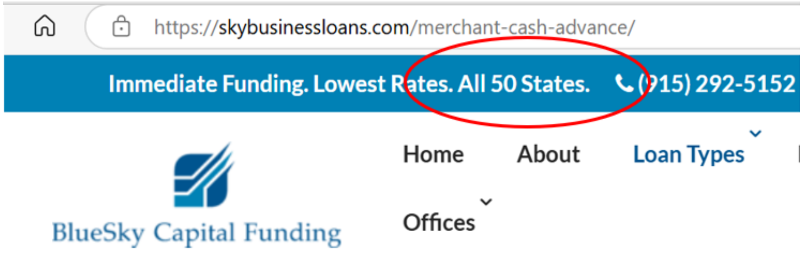
- Hispanic-owned firm applicants sought merchant cash advance products more frequently than did White-owned businesses:
- Black-owned business applicants applied for factoring more frequently compared to White-owned firm applicants

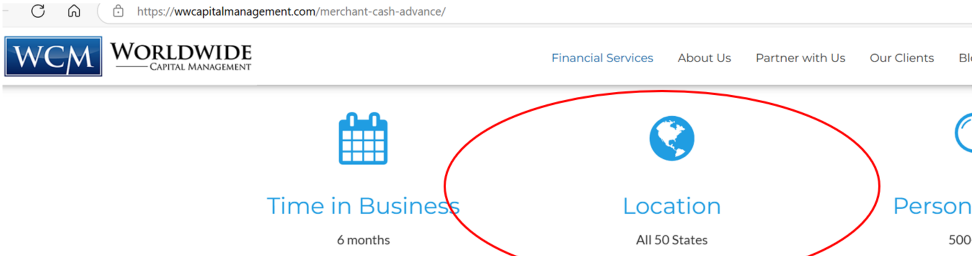
”

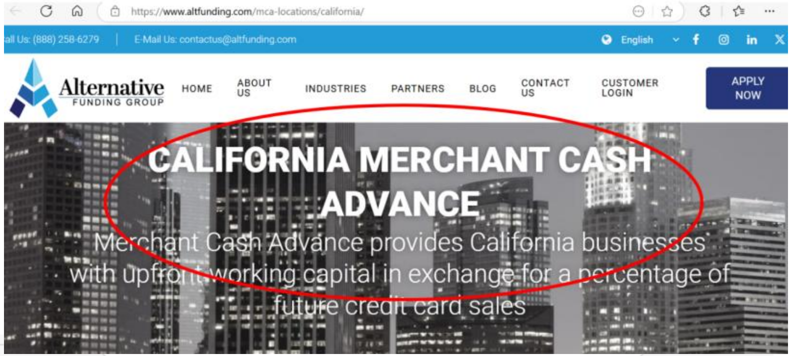
Source: https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf

Yes, Access to Capital Continues in CA and NY

States that have required transparency continue to have access to the “higher-cost and less-transparent credit products” who objected to becoming more transparent







Without Help, We're Losing Homes and Livelihoods

Bloomberg

Wall Street Finds New Subprime With 125% Business Loans

- PJ and Steve took out a loan to fund their pet rescue, The Little Red Dog.
- The lender quoted a **misleading rate** of 0.099% (actual APR was 465x that) and required their home as collateral.
- The lender's CEO previously led a subprime mortgage company that regulators fined $214 million for fraud and discrimination against Black and Hispanic homebuyers in the leadup to the 2008 crisis.[1] Then he moved into small business lending, where many regulations just don't apply.
- Now this lender is **suing PJ and Steve for $1.2 million, just one year after providing them $458k**. The lender packed on predatory fees, is **foreclosing on their home, and has pushed them into bankruptcy**.[2]

[1] Bloomberg Businessweek, "Wall Street Finds New Subprime With 125% Business Loans," May 2014
[2] Loan originated on 9/21/2024, PJ and Steve's home scheduled for foreclosure trustee sale 9/24/2024

RESPONSIBLE BUSINESS LENDING COALITION

SB 754_MTBMA_FWA.pdf
Uploaded by: Michael Sakata
Position: FWA

February 20, 2025

Senator Pamela Beidle, Chair
Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 754 – FAVORABLE WITH AMENDMENTS – Commercial Financing - Small Business Truth in Lending Act

Dear Chair Beidle and Members of the Committee:

The Maryland Transportation Builders and Materials Association ("MTBMA") has been and continues to serve as the voice for Maryland's construction transportation industry since 1932. Our association is comprised of 230 members. MTBMA encourages, develops, and protects the prestige of Maryland's transportation construction and materials industry by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry and advocate for adequate state and federal funding for Maryland's multimodal transportation system.

MTBMA respectfully requests that SB 754 be amended to exclude asset-based equipment lease transactions and financing extended by captive finance companies.

MTBMA represents a diverse coalition of businesses across the transportation, construction, and materials sectors—industries that rely on timely and affordable access to equipment to support essential infrastructure work in Maryland. SB 754's current scope is overly broad and includes transactions that have been exempted in similar legislation in other states.

Asset-based equipment lease transactions are already heavily regulated, and financing provided by equipment manufacturers—such as those represented by MTBMA—supports both businesses and state and local governments. Adding further regulation would increase operational costs without offering meaningful consumer protections. Additionally, the Truth in Lending Act creates contradictions that place unnecessary pressure on manufacturers and create further barriers for small businesses, especially in the transportation sector, where companies often rely on just 1-3 machines to carry out critical work.

We appreciate you taking the time to consider our amendments on Senate Bill 754. Thank you.

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

ILPA MD SB 754 UNF Testimony.docx.pdf

Uploaded by: Chris Grimm

Position: UNF

Innovative Lending Platform Association

Innovative Lending Platform Association

February 20, 2025

Honorable Chair Beidle
Senate Finance Committee
Unfavorable Testimony

Letter In Opposition to Senate Bill 754/House Bill 693

Chair Beidle, Vice Chair Hayes, and Members of the Senate Finance Committee,

The Innovative Lending Platform Association (ILPA) appreciates the opportunity to submit testimony opposing Senate Bill 754/House Bill 693, the Small Business Truth in Lending Act.

ILPA is the leading trade organization for online lenders and service companies serving small businesses. Our members[1] provide various innovative, digital commercial financing products. They proudly supply thousands of Maryland businesses with working capital to invest, purchase inventory, hire additional staff for the busy season, expand operations, or repair damaged or outdated equipment. Using innovative underwriting and advanced technology, our members assess credit risk and deliver financing in as little as 24 hours.

In 2016, ILPA created SMART Box®, the industry's first model disclosure tool. SMART Box offered clear, comprehensive pricing metrics and highlighted key loan terms in plain language. We were also prime supporters of New York's commercial financing law, modeled heavily on SMART Box.

We greatly appreciate Senator Kramer and Delegate Fraser-Hidalgo's intention to provide small businesses with consistent and simple financing disclosures. We have worked closely with Senator Kramer in previous sessions to provide constructive technical assistance. We still strongly support transparency in small business financing disclosures. However, in the almost ten years since SMART Box was first introduced, the market has continued to evolve and innovate. Today, financial technology companies are providing several alternative models of financing that provide small businesses with meaningful competition and choice.

Small business disclosure laws have also been enacted in several states, creating a de facto national standard. In every state since California and New York first moved on small business disclosure, the commercial finance disclosure laws have intentionally chosen total cost of capital over APR as the primary disclosure format. Parity across states is essential for our members to provide small businesses with critical capital, and the clear trend has been not to require APR.

APR was created initially for traditional, long-term financing products with fixed payment schedules or repayment dates to help borrowers understand the cost of their financing year over year. It is not the best metric for short-term products or those not including fixed payment terms, like sales-based financing or factoring. APR can actually mislead small business borrowers, masking the actual cost of capital and causing small business owners to enter into financing arrangements that cost more over a longer term because they were sold on a low APR.

---

[1] BackD Business Funding, Biz2Credit, Dedicated GBC, Fiserv, FundBox, iBusiness Funding, Lendio, Mulligan Funding, and OnDeck

Given the national trend of enacting commercial financing disclosure laws without APR but still providing critical metrics such as total cost of capital, length or estimated length of the financing, and estimated monthly payments, and the evolving and disparate models of financing being offered to small businesses, APR is no longer the most uniform or consistent disclosure metric for small businesses comparing multiple offers.

While well-intentioned, the Small Business Truth in Lending Act has not modernized with the industry and is no longer the most relevant and timely way to ensure small businesses have the critical disclosures they deserve and need. ILPA remains committed to promoting best practices, responsible innovation, and transparent access to capital. Our members are dedicated to offering small businesses clear, responsible financing options.

For these reasons, ILPA opposes Senate Bill 754/House Bill 693. Thank you for your consideration.

SB754_ETA_UNF
Uploaded by: Claire Hebert
Position: UNF

ELECTRONIC TRANSACTIONS ASSOCIATION

1300 Connecticut Avenue
Suite 475
Washington, DC 20036

202.828.2635
800.695.5509
electran.org

February 20, 2025

The Honorable Pamela Beidle
Chair of Senate Finance Committee
Maryland Senate
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: Opposition to SB 0754 – Small Business Truth In Lending Act

Chair Beidle, Vice Chair Hayes, and Distinguished Members of the Committee,

On behalf of the Electronic Transactions Association ("ETA"), the leading trade association representing the payments industry, I appreciate the opportunity to share our opposition and broad concerns with SB 0754.

ETA supports disclosures that promote transparency and accountability for small business borrowers. However, as drafted, the disclosures required in SB 0754 could be confusing for both online companies that provide financing to small business and the small business community. Moreover, ETA is concerned that the legislation's effective date will not provide regulators with the necessary time to promulgate rules required by the legislation and will not give providers of commercial financing enough time to comply.

Small businesses are the backbone of the economy and have different needs and objectives than consumers. In response, providers of commercial financing to small businesses have developed credit products specifically designed to meet those needs and objectives. ETA supports maintaining choice in small business financing, however, SB 0754, would impose burdensome barriers for providers of commercial financing, and likely result in less options for the very businesses the legislation aims to protect. Therefore, ETA would like to work with the committee to incorporate changes to the current bill and oppose SB 0754 as currently drafted.

<u>ETA's concerns with SB 0754 can be summarized as follows</u>:

<u>Annualized Percentage Rate:</u>

- **APR as applied to Commercial Financing**: ETA is concerned that SB 0754, by mandating an annual percentage rate or estimated annual percentage rate (collectively "APR") disclosure for commercial financing, will create significant confusion and uncertainty for Maryland small businesses trying to make informed decisions about the cost of financing products. The Truth in Lending Act ("TILA") was enacted strictly for consumer transactions, not commercial transactions and does not take into account the unique payment features of sales-based financing products, which do not have a fixed term, fixed payments, or have an absolute right to repay. The Consumer Financial Protection Bureau (CFPB) stated that because these types of products do not have a defined term or a periodic

1300 Connecticut Avenue
Suite 475
Washington, DC 20036

202.828.2635
800.695.5509
electran.org

payment amount, it would require a funding company to assume or estimate parts of the APR formula, which only increases complexity.

- **Alternative Measurement:** ETA urges the Committee to consider Total Cost of Capital ("TCC") as the method for disclosing the cost of financing products. The TCC method has been enacted in Connecticut, Florida, Georgia, Kansas, Missouri, Utah, and Virginia, and is a key measurement that matters to small business owners.

Effective Date: The current effective date and timeline for implementation of SB 0754 would place an undue regulatory compliance burden on the industry. ETA respectfully recommends allowing for a longer regulatory comment and approval process, and a 180-day compliance period that begins after final rules are published.

Requirements to Report Certain Items to the Commissioner:
SB 0754 requires a provider to disclose to the Commissioner: 1. the method in which a provider is calculating the estimated annual percentage rate (APR); 2. the estimated APR given to a recipient: 3. requiring a provider to retroactively calculate the actual APR of completed sales-based financing transactions. This is extremely overreaching and is not required by any other state that has implemented a disclosure law. There is no indication that the Commissioner wants to receive this information or even has the capability at this time to process this type of information. These requirements are overreaching and should be stricken from SB 0754.

Definitions:

- **Provider:** The definition of "provider" should exclude "1st party financing;" specifically, where the owner of the product or service is the one offering the financing opportunity.
- **Interest Accrued:** The legislation references "interest accrued," without definition. Clarifications are necessary to provide certainty of the bill's requirements and to help ensure the ability to provide accurate and meaningful disclosures.
- **Recipient:** The definition of "recipient" should be limited to businesses that are principally managed or directed from Maryland, and providers should be permitted to rely on either (1) a representation from the recipient, or (2) the business address provided by the recipient. This would parallel the approach taken by New York.
- **Total Repayment Amount:** The definition of "total repayment amount" should include any portion of the financing that is used to pay off a prior financing transaction, whether to a third-party or to the provider.

1300 Connecticut Avenue
Suite 475
Washington, DC 20036

202.828.2635
800.695.5509
electran.org

<u>TILA Disclosure Exemption</u>: The New York commercial financing disclosure law ("CFDL") provides that the definition of "commercial financing" *(b) does not include any transaction in which a financier provides a disclosure required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., that is compliant with such Act.* This provision should be incorporated into SB 0754 as it prevents the unnecessary duplication of disclosures from providers who already provide TILA compliant disclosures in commercial financing transactions, and it encourages uniformity across the country, which reduces the burden of complying with the different disclosures in each state.

<u>Open-End Financing</u>: Section 12-1207 requires the disclosure of the credit limit along with the amount to be drawn at the time the offer is extended. There are two issues here. Firstly, it is not always known what the initial draw will be at the time the specific offer is presented to the recipient because the recipient is only selecting a credit limit, not a credit limit plus initial draw. Secondly, it appears that the entire disclosure for an open-end product is based on the assumption that the total credit limit is being drawn. For products like a commercial credit card or line of credit, where a customer is receiving access to the card or line with an available credit limit, requiring an initial disclosure with the credit limit and initial draw is not possible. As such, we recommend removing the requirement to disclose the initial draw and only require disclosure of the overall credit limit. Moreover, the requirement to base the disclosures on the entire credit limit being drawn is misleading as the majority of small businesses do not draw the entire credit limit at the initial draw.

* * *

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me.
Respectfully Submitted,

Brian Yates
Senior Director, State Government Affairs
Electronic Transactions Association
202.677.7714 | byates@electran.org

Revenue Based Financing Coalition Letter_SB0754_02

Uploaded by: Katherine Fisher

Position: UNF

REVENUE BASED FINANCE COALITION

The Honorable Pamela Beidle, Chair
The Honorable Antonio Hayes, Vice Chair
Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

February 20, 2025

RE: SB 754 - Opposed Unless Amended

Dear Chair Beidle and Vice Chair Hayes,

The Revenue Based Financing Coalition ("RBFC") respectfully opposes SB 754 as currently drafted. RBFC members are responsible financing companies that provide needed capital to small and medium sized businesses nationwide. Our member companies offer fair and innovative financing and have filled the void created by the decline in small business lending by larger, traditional banks. Our members are committed to providing clear and accurate disclosures to our small business customers.

This letter outlines for the Committee:

- Why SB 754 is outdated and what other states have enacted in recent years.

- Virginia's disclosure law enacted in 2022 and the benefits of having a uniform disclosure law across the DC, MD and VA (DMV) region. The Maryland Legislature has a history of adopting specific disclosure forms, instead of leaving the development of a disclosure form to a regulatory agency. We respectfully ask the Maryland Legislature to consider adopting a disclosure form similar to Virginia's disclosure to ensure that business owners are receiving similar information across the DMV region.

- Why an "Estimated APR" disclosure does not work for the sales/revenue-based financing product and examples of why APR is a distorted cost disclosure.

The current version of SB 754 diverges from that of Virginia and the six other states that have rejected an APR disclosure in favor of a "Total Cost of Capital" disclosure. Uniformity across the DMV region will provide meaningful comparisons across financial products.

1. **SB 754 is Outdated and Diverges From Seven Other State Disclosure Models - Including Virginia. Businesses of the DMV Should Receive the Same Disclosure Information.**

Seven state legislatures across the country have adopted a “Total Cost of Capital” model of disclosure for commercial financing instead of models that include an “Estimated APR” disclosure.

- Virginia[1]
- Utah[2]
- Connecticut[3]
- Florida[4]
- Georgia[5]
- Kansas[6]
- Missouri[7]

In 2021, the Virginia legislature codified “Total Cost of Capital” legislation to enact a disclosure regime for sales-based financing products. Disclosures in the Virginia law include the total amount of the sales-based financing, the disbursement amount, if different from the financing amount, and any fees deducted or withheld at disbursement, among others.[8] The law went into effect on July 1, 2022.[9] We have included a copy of the Virginia Sales-Based Financing Disclosure form in this letter (Figure 5.).

In contrast, the Maryland legislature has been debating the passage of an “APR-style” disclosure law[10] for the past several years. The key differences between SB 754 as it compares to Virginia’s law are as follows:

- Expansion of the bill’s purview to cover all non-bank commercial financing products, equipment lease agreements, and factoring transactions; and
- Inclusion of the disclosure of an estimated Annual Percentage Rate (APR);
    - APR is not suitable for the sales-based financing product and leads to an inaccurate and misleading disclosure.[11]
    - Sales-based financing products are not loans and do not have interest rates or compounding interest.[12]
    - Calculating an APR, or estimated APR, for these commercial financing products does not give a small business owner a clear indication of how much money they will pay back to a funder.[13]

1 https://law.lis.virginia.gov/admincode/title10/agency5/chapter240/section30/
2 https://dfi.utah.gov/non-depository/commercial-financing/
3 https://www.cga.ct.gov/2023/act/pa/pdf/2023PA-00201-R00SB-01032-PA.pdf
4 https://www.flsenate.gov/Session/Bill/2023/1353/BillText/er/PDF
5 https://www.lexology.com/library/detail.aspx?g=9a8486de-37b4-4c6c-a9ab-6a83f9e6ca1a
6 https://kslegislature.gov/li_2024/b2023_24/measures/documents/summary_sb_345_2024
7 https://www.senate.mo.gov/24info/BTS_Web/Bill.aspx?SessionType=R&BillID=101
8 Sales-Based Financing Disclosure Form-20220503090011.pdf
9 10VAC5-240-30. Sales-Based Financing Disclosure Form.
10 Legislation - SB0509
11 20240124_03.pdf
12 What You Should Know About Revenue-Based Financing For The E-Commerce Industry
13 15ws6c9Rk_bWMVSXdkSanIdoPIJj0o5sZ.pdf

The non-bank commercial financing industry has been advocating for uniformity in disclosure standards across the country. New York and California are the only states to codify disclosure legislation with an APR disclosure. Since those laws were enacted seven other states, including Virginia, have codified disclosure laws without APR.

We respectfully ask that you consider adopting a Virginia-style disclosure model to promote a uniform disclosure across the DMV area. All businesses in the DMV area applying for commercial financing products should receive similar disclosures as they pertain to sales or revenue-based financing.

Size and Scope of Businesses in the DMV Area: According to recent census data, in the combined DC/MD/VA (DMV) area alone, there is a population of approximately 9 million people.[14] Figure 1. below shows the Washington-Baltimore-Arlington combined statistic area delineating the counties within the greater DMV area.[15]

Data compiled from the Small Business Administration (SBA)'s 2024 Small Business Profiles per state (with data pulled from the U.S. Census of 2021 SUSB Annual Data Tables)[16] show the various small business profiles of DC[17], MD[18], and VA[19] divided by county (see Figures 2.-4. below).

There is significant overlap within the DMV area of business operation (both small and medium/large) regardless of state and district boundaries. Within the Washington-Baltimore-Arlington combined statistical area there are approximately 200,000 business establishments employing over 3.4 million people[20].

The implications of the large amount of businesses with high population density in a relatively small space are enormous to interstate commerce. Millions of people are working for businesses and utilizing the services of businesses across the VA, MD and DC boundaries. Anecdotal data suggests that residents of the three states travel outside of those boundaries to work and support those businesses in mass scale quantities. There is significant overlap for business owners and business patrons within the DMV area. For example, business owners may live in Virginia but own a business in Maryland or vice versa.

RBFC & Industry Footprint in DMV Area: The 200,000 businesses in the Washington-Baltimore-Arlington area are serviced by not only RBFC members but by the wider sales/revenue-based financing industry.

---

14 https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html
15 Map of the 2012 OMB-designated Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Combined Statistical Area.
16 2021 SUSB Annual Data Tables by Establishment Industry
17 District of Columbia 2024
18 Maryland 2024
19 Virginia 2024
20 https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html

We estimate that our RBFC membership alone (consisting of about 35 funder companies) within the past year has serviced over 1,000 businesses in the state of Virginia and deployed over $24 million of capital. In Maryland, by our same estimations, our membership has serviced over 1200 businesses in the state and have deployed over $23 million of capital. In the District of Columbia, our membership serviced over 120 businesses deploying over $3.5 million in capital within the past year.

The year-to-year impact of the RBFC membership in all three states combined totals approximately 2400 businesses served each year with over $50 million in capital infused into the DMV region.

We can estimate a broader scope of the entire sales-based financing industry's impact on the region by examining Virginia's registration of sales-based financing companies. Virginia implemented a registry for sales-based providers in the state consisting of 213 companies.[21] Just by our RBFC membership volume we can estimate that Virginia and Maryland probably have similar sales/revenue-based financing footprints based on volume and businesses served with the District of Columbia having significantly less volume. If just 35 revenue-based financing companies are providing a combined amount of $50 million dollars to businesses in both MD, VA and DC each year, one could estimate that the entire industry is providing all three states approximately $300 million annually to approximately 14,000 businesses.

The Impact of Differing Disclosure Forms in the DMV Area: Businesses across the DMV deserve to have the same disclosure information presented to them when applying for financing from non-bank financial institutions. The Virginia disclosure law has been implemented since 2022 and is working year-to-year to provide businesses with uniform and informative disclosures so businesses can make informed decisions about the financing they are seeking. We urge the Maryland legislature to implement the same disclosure requirements for continuity across the DMV area.

Examples of Disclosure Forms Required by the Maryland General Assembly Instead of by a Regulator: We would also like to highlight briefly examples of forms that are required by Maryland statute, rather than by a regulation. During and after the foreclosure crisis, the Maryland General Assembly passed foreclosure-related legislation. In most cases, the General Assembly delegated the authority to prepare forms and notices to regulators but there were some instances when the General Assembly provided a specific form or notice.

Please see Md. Code Ann., Real Prop. §§ 7-105.11(b), (c), (d); 7-113(c)(1), and 7-306(a)(6) and 7-306(c)(1) and (2).

The legislature has the power to adopt a Virginia-style disclosure form to provide businesses in the DMV area uniform disclosure standards.

[21] DataWindow

2. **"Estimated APR" Defeats the Purpose of an APR Disclosure and does not allow for a true cost comparison across RBF offers or different financial products.**

An APR calculation is designed to provide the proverbial apples-to-apples comparison of the cost of various closed-end consumer loan offers. As explained in the American Bar Association's treatise, *The Law of Truth in Lending*:

> Of all the credit terms that TIL requires the creditor to disclose, consumer borrowers are most aware of the APR. Indeed the APR is probably the most valuable TIL disclosure, for APRs allow debt alternatives to be compared conveniently and meaningfully even if the borrowings differ in amount or duration or repayment arrangements…

A primary purpose of TIL is to enhance cost awareness and to promote market information about credit terms and price, any success that TIL enjoys in this regard is due in large part to the credit cost comparisons that APR permits. A rate comparison allows debts configured quite differently to be compared as to *level* of cost, that is, the relative cost of a unit of credit for a constant amount of time. Such a comparison is only possible if a comprehensive effective "interest rate" measure (such as APR) is available.[22]

Unfortunately, this is where the "Estimated APR" disclosure[23] for commercial financing falls flat. In particular, sales-based financing providers offer a product that is materially different from the closed-end consumer loans contemplated by the Truth in Lending Act. The "Estimated APR" disclosure required for sales-based financing is based on a fictitious payment schedule. By contrast, an actual APR disclosure is based on an actual payment schedule. Estimated APR will always fail to provide an apples-to-apples comparison with an actual APR.

A. <u>How to Calculate an "APR"</u>.

A financing provider needs three data points to calculate an APR:

1. The amount of financing provided;
2. The finance charge; and
3. The repayment schedule.

The financing provider then applies the mathematical formula supplied by Appendix J of Regulation Z, which implements the federal Truth-in-Lending Act.

B. <u>How to Calculate an "Estimated APR" for Sales-Based Financing – Create a Fictional Payment Schedule Based on Unreliable Estimates and Assumptions</u>.

A sales-based financing provider needs three data points to calculate an APR:

1. The amount of financing provided;

---

[22] Ralph Rohner & Frederick Miller (Alvin C. Harrell, editor), *The Law of Truth in Lending* (2014) at 255-257, citing T.Durkin & G. Elliehausen, 1977 Consumer Credit Survey 17 (Federal Reserve Board 1978) and associated tables.

[23] Forms of commercial financing with fixed repayment terms, such as closed-end loans, require disclosure of an Annual Percentage Rate, not an Estimated Annual Percentage Rate.

2. The finance charge; and
3. A fictional repayment schedule. A sales-based financing transaction does not have a repayment schedule. Payments are based on the amount of daily revenue a business receives. Estimated APR forces a sales-based financing provider to create a fictional payment schedule that does not reflect the legal obligation of the parties under the financing contract and using the following procedure:

Fictional Repayment Schedule Step 1: Choose whether to use the "Historical Method" or the "Opt-In Method" to calculate the business's estimated future monthly revenue:

- The "Historical Method" requires a financing provider to consider between one and 12 months' worth of average sales data, with each financing provider allowed to choose how many months' worth of data to review. As a result, two different financing providers could calculate different amounts of estimated future monthly revenue for the same business, depending on how many months of data they choose to review.

- The "Opt-In Method" instead allows a finance provider to use whatever "projected sales volume that the provider chooses for each disclosure." As a result, two different financing providers could calculate different amounts of projected sales volume for the same business, depending on whatever information they elect to review.

The Estimated APR disclosure assumes that the business's revenue in the future will be similar to the business's revenue in the past. As noted, it is not possible to know the schedule of payments the financing provider will receive in connection with sales-based financing because the payments are contingent on actual sales. The financing provider agrees to purchase a certain dollar amount of a business's receivables in return for (typically) daily remittances of a fixed percentage of the business's daily sales. Because the financing provider cannot know the amount of sales the business will achieve on any particular date, an initial estimated daily payment amount established by the financing provider.

Fictional Repayment Step 2: Consider how the "True-Up" mechanism changes the fictional repayment schedule:

- In sales-based financing, the business's payment obligation is based on the business's sales revenue. The business has the right to a "true-up", which recalculates the business's periodic payment to more closely approximate the percentage of sales the business is obligated to deliver to the financing provider. For example, it is possible that a "true-up" would reduce the business's daily or weekly payment from $1,000 per day to $500 per day. A sales-based financing provider cannot predict with certainty which businesses will be among those obtaining a true-up because it cannot know which businesses will have a slowdown in sales.

- It also is likely that two financing providers, even if both were to correctly anticipate a true-up, would assume different adjusted payment amounts and new payment schedules. Because the resulting new payment schedules would be different, the disclosed Estimated APR would be different, even for the same offer to the same business. The fact that the same financing terms can result in very different Estimated APRs highlights the ineffectiveness (and misleading nature) of an annualized rate disclosure for sales-based financing.

- Because longer repayment terms result in lower APRs (all else being equal), the requirement to account for true-ups allows manipulation of the Estimated APR. The lower the new payment after a true-up, the longer the repayment term and the lower the Estimated APR. A financing provider desiring to get a competitive edge may be encouraged to assume that businesses will request true-ups and that the resulting adjusted payments will be significantly less than the initial payments.

Fictional Repayment Step 3: Create a fictional repayment schedule based on Steps 1 and 2. Include additional assumptions that impact the payment schedule such as bank holidays.

To summarize, in order for an APR disclosure to be meaningful, identical offers should produce identical estimated annual percentage rates. As explained above, with an "Estimated APR" disclosure there is little likelihood of that.

C. <u>Hypothetical Examples Highlighting the Issues Cited Above</u>.

We calculated Estimated APRs for a single hypothetical sales-based financing transaction. These examples all assume the financing provider has agreed to purchase $60,000 of future receipts for $50,000 and that payments are due daily starting May 2, 2023. In each case, payments are set at an amount that is 10% of the anticipated daily income of the recipient. There are no prepaid finance charges. In each case, the "amount financed" is $50,000 and the "finance charge" is $10,000.

These examples highlight the wide discrepancy in Estimated APRs that result from different financing providers making different assumptions in preparing disclosures for the same offer. The Estimated APRs vary from 25.20% to 46.97%, depending on:

1. The method of determining the recipient's average monthly income (which impacts the daily payment amount);
2. Whether the financing provider reasonably anticipates a true-up;
3. The timing of any reasonably-anticipated true-up; and
4. The amount of the payment after a reasonably anticipated true-up. Spreadsheets showing the calculations and results for each of these examples available upon request.

- Calculation #1: In this example, the financing provider uses the Historical Method to estimate daily income of $2,500 using four months of historical data. This results in 240 payments of $250 per day.

Estimated Annual Percentage Rate: 39.09%

- Calculation #2: In this example, the financing provider also uses the Historical Method to estimate daily income but uses 10 months of historical data instead of four and, as a result, estimates daily income of $3,000. This results in 200 payments of $300 per day.

Estimated Annual Percentage Rate: 46.97%

- Calculation #3: In this example, the financing provider uses the Opt-In Method and estimates daily income of $2,000. This results in 300 payments of $200 per day. (This could also result from using the Historical Method and a different number of months of historical data than used in Calculations 1 and 2).

Estimated Annual Percentage Rate: 31.30%

- Calculation #4: In this example, the financing provider estimates $2,500 in daily income (the same as in Calculation #1), but believes it is reasonable to anticipate a true-up after the 20th payment. As a result of the reasonably anticipated true-up, the financier assumes a new payment of $200 per day for 275 payments (the remainder of the obligation) starting with the 21st payment.

Estimated Annual Percentage Rate: 32.40%

- Calculation #5: In this example, the financing provider estimates $2,500 in daily income (the same as in Calculation #1), but believes it is reasonable to anticipate a true-up after the 40th payment, instead of after the 20th payment as in Calculation #4. As a result of the reasonably anticipated true-up, the financing provider assumes a new payment of $200 per day for 250 payments (the remainder of the obligation) starting with the 41st payment. Here, the payment after true-up is the same as in Calculation #4, but the financing provider assumed a different timing for the true-up. This disparity would be further amplified by a more lengthy delay between origination and the assumed timing of the true-up.

Estimated Annual Percentage Rate: 33.45%

- Calculation #6: In this example, the financing provider estimates $2,500 in daily income (see Calculation #1), but believes it is reasonable to anticipate a true-up after the 20th payment (same as in Calculation #4). However, this financing provider assumes the daily payment after true-up will be $150 (not $200 per day). As a result of the reasonably anticipated true-up, the financing provider assumes a new payment of $150 per day for 366 payments and a final payment of $100 (the remaining balance).

Estimated Annual Percentage Rate: 25.20%

As made clear by the above examples, the annual percentage rate is a misleading measure of the cost of financing. The finance charge is $10,000 in each of these examples, but the disclosed “Estimated APR” swings from 25.20% to 46.97%. This actually hinders the goal of providing for apples-to-apples comparisons.

3. **What is Revenue Based Financing?**

RBFC members help meet the needs of American small business entrepreneurs by providing financing to qualified small businesses. Revenue-based financing (“RBF”) is a form of flexible financing in which payments are adjusted as a percentage of business revenue. RBF allows businesses to access funds for, as an example, a seasonal inventory surge or to replace an unexpected major equipment failure.

In an RBF agreement:

- As opposed to traditional lending products, the business remits a contractually specified percentage of its future revenue. If revenue decreases, then the business has the right to correspondingly decrease its remittances.

- The RBF funder agrees up front to take the risk that the business's revenue will be generated slower than expected and the risk that the business will fail or go bankrupt.

- ***Example***. If an RBF company purchases 10% of a business's future revenue up to a purchased amount of $10,000, the transaction would be completed whenever the business succeeded in generating $100,000 in revenue, and remitted 10% of that revenue to the RBF funder. This milestone could be achieved in a month, a year, or never.

RBF has many advantages for small businesses:

- Unlike traditional consumer loans, or other loan products, there is no absolute obligation to pay. If, in the ordinary course of doing business, the business fails, then the RBF funder will have no recourse against the business.
- Funds can be provided to the business in as little as 24-48 hours.
- The incentives of the RBF funder and the business are aligned because the RBF funder's compensation is contingent on the business's continued success.
- Unlike most Small Business Association loans, the business owner does not need to use his or her house as collateral.
- The business owner does not enter into a partnership, nor does it give up control/equity of the business.

Thank you for the opportunity to provide comments. We look forward to participating in discussions regarding this legislation.

Sincerely,

Mary Donohue

Mary Donohue
Executive Director
Revenue Based Finance Coalition

Figure 1. OMB-designated Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Combined Statistical Area Map

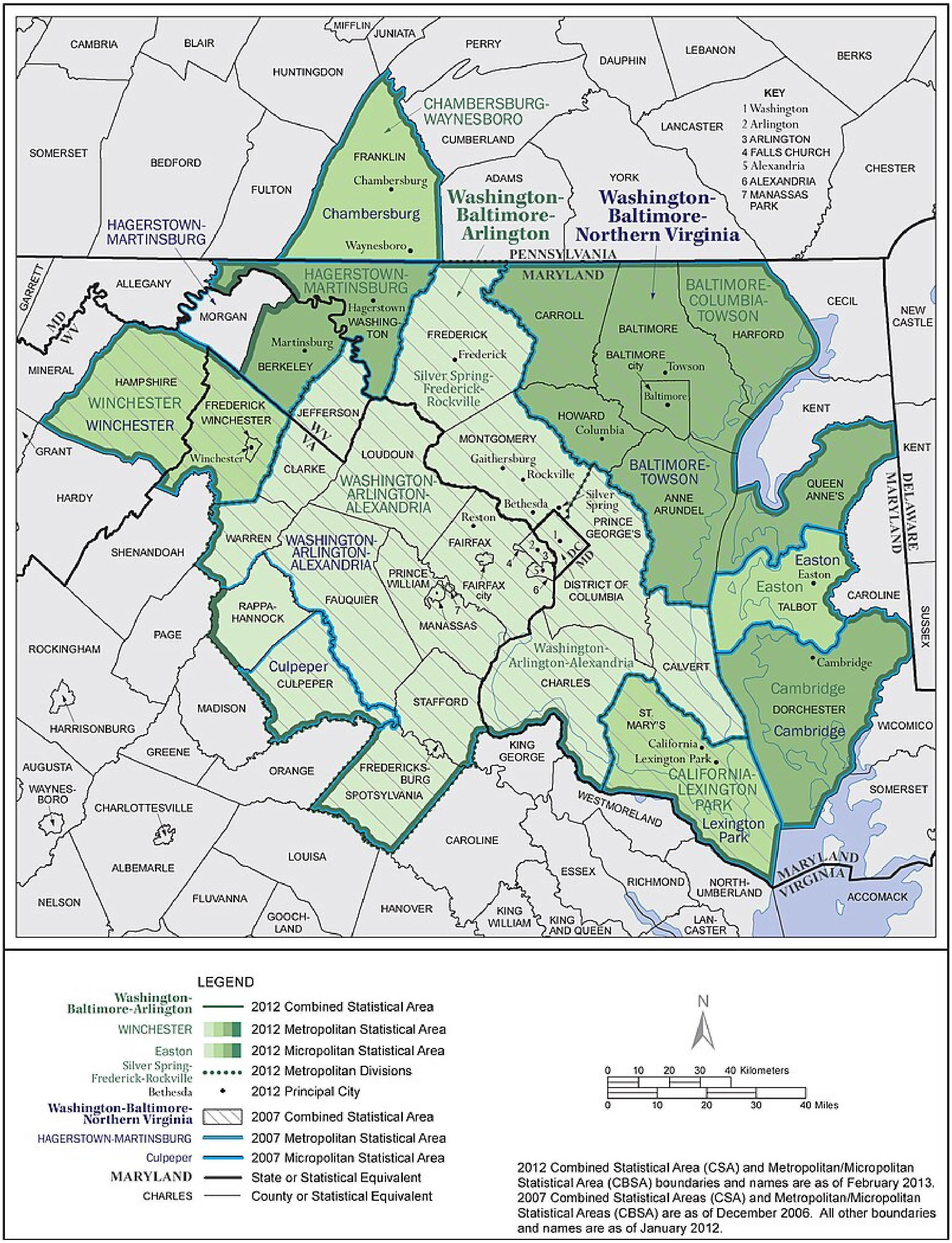


Figure 2. SBA 2024 Small Business Profile - Virginia

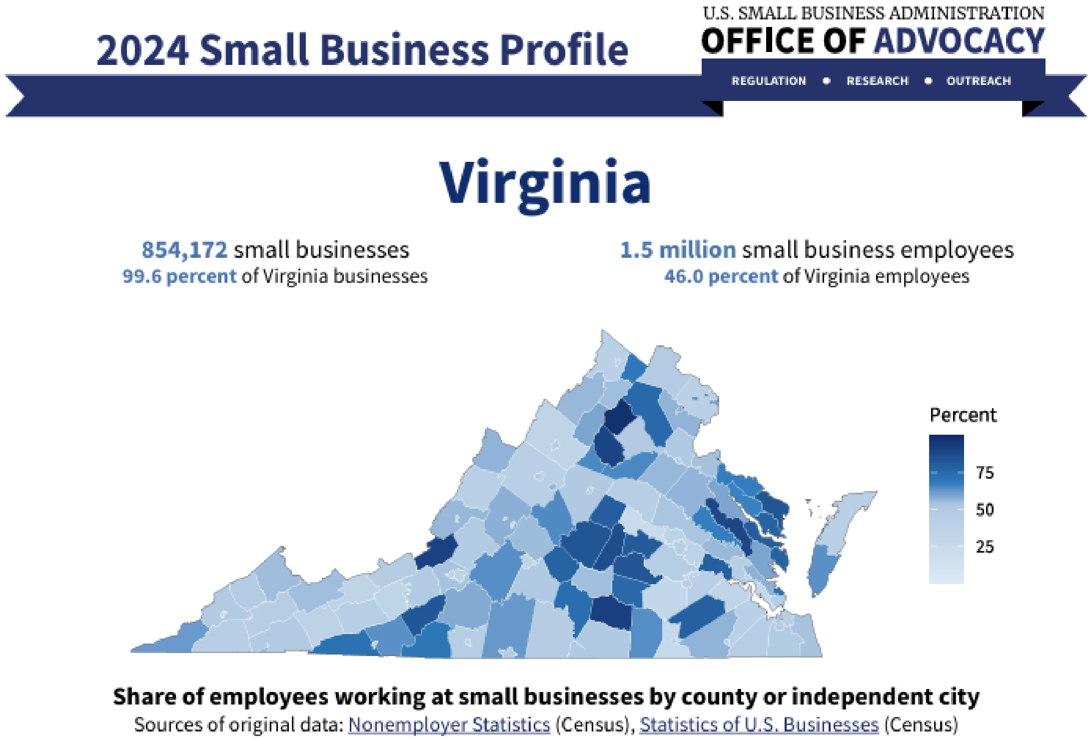


Figure 3. SBA 2024 Small Business Profile - Maryland

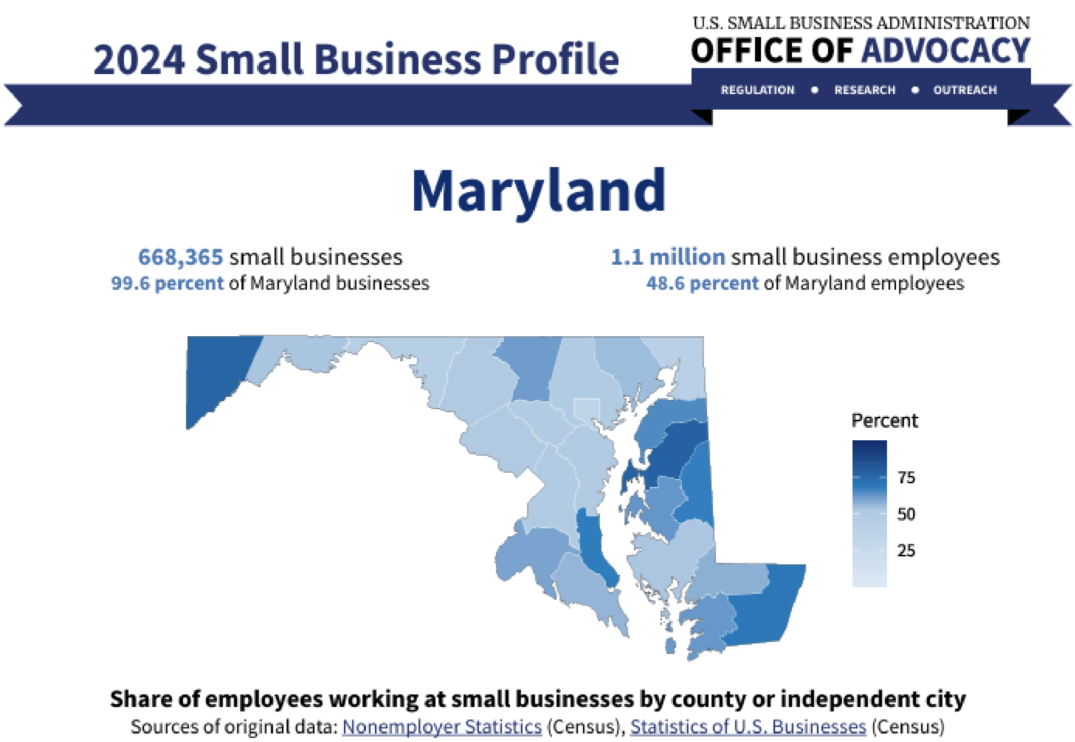


Figure 4. SBA 2024 Small Business Profile - District of Columbia

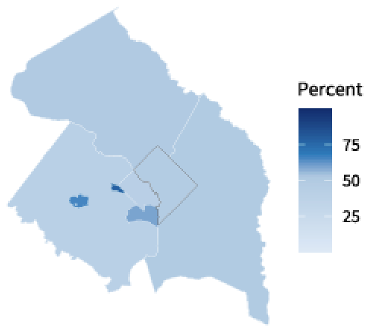
2024 Small Business Profile

U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

District of Columbia

78,026 small businesses
98.2 percent of DC businesses

233,078 small business employees
48.2 percent of DC employees



Share of employees working at small businesses by county, district, or independent city

Sources of original data: Nonemployer Statistics (Census), Statistics of U.S. Businesses (Census)

Figure 5. VA Sales Based Financing Disclosure Form

Eff. 10/2022

SALES-BASED FINANCING DISCLOSURE FORM

Total Amount of the Sales-Based Financing	$	**Disclosure Date:** **Recipient's Name:** **Recipient's Address:**
Fees Deducted or Withheld at Disbursement	$	
Disbursement Amount [Total Amount of the Sales-Based Financing minus (-) Fees Deducted or Withheld at Disbursement]	$	
Finance Charge	$	**Provider's Name:** **Provider's Address:** **Provider's Phone Number:** **Provider's E-mail Address:**
Total Repayment Amount [Disbursement Amount plus (+) Finance Charge]	$	
Estimated Number of Payments [Number of payments expected, based on the projected sales volume, to equal the Total Repayment Amount] A reasonable range may be provided ONLY for transactions with a variable payment schedule.		

Payment Schedule

☐ Amount of each fixed payment: $
☐ Frequency of fixed payments:

☐ Variable payment schedule, or ☐ Description of the method used to calculate the amount and frequency of each variable payment:

Method of payment:

☐ **SEE PAGE 2**

Description of All Other Potential Fees and Charges NOT Included in the Finance Charge	☐ **SEE PAGE 2**	
Description of Collateral Requirements or Security Interests	☐ **SEE PAGE 2**	
Broker Compensation	Is provider paying compensation directly to a broker? ☐ Yes ☐ No	If Yes, amount of compensation being paid directly to broker: $
Description of Prepayment Policies	☐ **SEE PAGE 2**	

I acknowledge that I have received a copy of this disclosure form.

____________________ Signature

____________________ Date

Eff. 10/2022

SALES-BASED FINANCING DISCLOSURE FORM - PAGE 2

Recipient's Name:	**Disclosure Date:**
Recipient's Address:	**Provider's Name:**

The information provided below relates to the following checked item(s):

- ☐ Variable payment schedule
- ☐ Description of the method used to calculate the amount and frequency of each variable payment
- ☐ Method of payment
- ☐ Description of all other potential fees and charges <u>not</u> included in the finance charge
- ☐ Description of collateral requirements or security interests
- ☐ Description of prepayment policies

I acknowledge that I have received a copy of this disclosure form.

Signature ____________________ Date ____________________

SB 0754 - Rapid Financial Services LLC Written Tes
Uploaded by: Natalie Pappas
Position: UNF

February 20, 2025

The Honorable Pamela Beidle
Chair of Finance Committee
Maryland Senate
3 East Miller Senate Office Building
Annapolis, MD 21401

RE: Opposition to S.B. 0754 – Small Business Truth In Lending Act

Chair Beidle, Vice Chair Hayes and Distinguished Members of the Committee,

My name is Natalie Pappas, and I am here today on behalf of Rapid Financial Services, LLC ("Rapid Finance"). Rapid Finance was founded in 2006 and has been headquartered in Montgomery County, Maryland since its inception. To date we have provided over $2 billion in working capital to small businesses throughout the United States. We employ nearly 200 employees at our Bethesda office. I appreciate the opportunity to share our opposition and broad concerns with S.B. 0754.

Rapid Finance supports disclosures that promote transparency and accountability for small business. However, as drafted, S.B. 0754 could be confusing for both providers of commercial financing and small businesses. We share a common goal of increasing access to fair and responsible capital; however, this legislation fails to provide small businesses a simple disclosure to compare the cost of all types of small business finance products. Because of this, Rapid Finance asks this committee to reject S.B. 0754 as currently drafted.

Rapid Finance's concerns with S.B. 0754 are as follows:

1. **Annualized Percentage Rate:** S.B. 0754, requirement to disclose an annual percentage rate or estimated annual percentage rate (collectively "APR") for commercial financing, will create significant confusion and uncertainty for Maryland small businesses trying to make informed decisions about the cost of financing products.
2. **Effective Date:** The current effective date and timeline for implementation of S.B. 0754 would place an undue regulatory compliance burden on the industry. Rapid Finance respectfully recommends allowing for a regulatory comment and approval process, and a 180-day compliance period after final regulations are published which is similar to timeframes provided by other states.
3. **Requirements to disclose certain items to the Commissioner:** S.B. 0754 requires a provider to disclose to the Commissioner (i) the method in which a provider is calculating the APR; (ii) the APR

given to a recipient at the time the disclosure is provided to the recipient; (iii) the actual APR for the financing, which means requiring a provider to retroactively calculate the actual APR; and (iv) any other information in a report that the Commissioner deems necessary. This is extremely overreaching and is not required by any other state that has implemented a disclosure law. It provides unnecessary burdens to providers. Furthermore, there is no indication that the Commissioner wants to receive this information or even has the capability at this time to process this type of information. These requirements are overreaching and should be stricken from S.B. 0754.

4. **Definitions:**
    a. Specific Offer: The definition should be amended as follows:
        i. means a written communication to a recipient, based upon information from, or about, the recipient, of a (i) periodic payment amount, irregular payment amount, or financing amount, and (ii) any rate, price, or cost of financing (including, without limitation, any total repayment amount), in connection with a commercial financing, which offer, if accepted by a recipient, shall be binding upon a provider. *Information about the recipient* includes information about the recipient that informs the provider's quote to the recipient, such as the recipient's financial or credit information, but not the recipient's name, address, or general interest in financing.
    b. Recipient: The definition of "recipient" should be limited to businesses with a principal place of business in Maryland, relying on either (1) a representation from the recipient, or (2) the business address provided by the recipient. All other state disclosures limit the definition of "recipient" to a business located within the state.
    c. Total Repayment Amount: S.B. 0754 defines "total repayment amount" as the "disbursement amount plus the finance charge". This definition needs to be refined to address situations where the two amounts are not the same.
5. **Renewal Financing:** S.B. 0754 requires disclosures for renewal financing but the bill provides only confusing guidance on calculation. It also requires providers to disclose any "double dipping" as described in the legislation. First, "double dipping" is not a formal term and is not widely used throughout the industry. Second, the term, as defined, fails to consider how renewal financing works in practice.
6. **Average Monthly Cost Disclosure (for periodic payments that are not monthly):** This required disclosure is problematic because (i) it is confusing to the small business as they may believe they have monthly payments instead of daily or weekly and (ii) it expresses a preference for products that ultimately may be more expensive.
7. **Signature Requirement:** Section 12-1211 requires the provider to obtain the recipient's signature "before a provider may allow the recipient to proceed with the commercial financing application." This is not practical and a signature should only be required "prior to consummating a commercial financing". S.B. 0754 should be amended to reflect that a signature is only required prior to consummating the financing, which reflects similar signature requirements in other states.
8. **Disclosure Requirements:**
    a. APR for Sales-Based Financing: This should be disclosed as an "Estimated APR" instead of "APR" as it is an estimate.
    b. Open-End Financing: Section 12-1207(A)(B) requires the disclosure of the credit limit along with the amount to be drawn at the time the offer is extended. There are two issues here. Firstly, it is not always known what the initial draw will be at the time the specific offer is presented to the

recipient because the recipient is only selecting a credit limit at the time and not a credit limit plus initial draw. Secondly, it appears that the entire disclosure for an open-end product is based on the assumption that the total credit limit is being drawn. Therefore, it does not make sense to include the initial draw requirement and we would request that be deleted and the entire disclosure be based on the entire credit limit. Furthermore, the majority of small businesses do not draw the entire credit limit on the initial draw so the disclosure may initially be misleading.

We appreciate you taking the time to consider our comments. If you have any questions or concerns or would like to discuss our comments further, do not hesitate to reach out to me.

Respectfully,

Natalie Pappas

Natalie Pappas
Assistant General Counsel
Rapid Financial Services, LLC
4500 East West Highway, 6th Floor
Bethesda, MD 20814
240-514-3189 (Direct)
2410-283-1080 (Fax)
nataliepappas@rapidfinance.com

SB754_Letter of Information_OFR.pdf
Uploaded by: Amy Hennen
Position: INFO

Maryland
DEPARTMENT OF LABOR

OFFICE OF FINANCIAL REGULATION
100 SOUTH CHARLES STREET; TOWER 1, SUITE 5300
BALTIMORE, MARYLAND 21201
ANTONIO P. SALAZAR, COMMISSIONER

February 20, 2025

Senate Finance Committee
Chair: Senator Pamela Beidle
Senate Bill 754 - Commercial Financing - Small Business Truth in Lending Act

Re: Letter of Information

Senate Bill 754 creates a regulatory regime for "commercial financing" transactions – as defined by the bill. This regulatory regime establishes certain requirements surrounding these transactions, such as those related to disclosures, annual percentage rate calculations, repayment terms, extensions of special offers, and other related requirements. This new regime falls under the regulatory and enforcement authority of the Office of Financial Regulation ("OFR"). Specifically, "providers" of commercial financing (also defined by the bill) will be subject to a certain review process, which must be established by the OFR, as they will be required to notify the OFR as to which method the provider intends to use when calculating the estimated annual percentage rates for each transaction.

Further, on or before January 1 of each year, providers must report to the OFR on those estimated annual percentage rates (APRs) given to each participant, and the actual APRs of each completed transaction, along with any other information the Commissioner considers necessary. It is worth noting that some states that have adopted similar laws have chosen to require providers to report APRs given to each participant and some states have chosen not to require this.

The bill provides that the OFR shall adopt regulations substantially similar to the in-depth regulations adopted in February 2023 by the New York State Department of Financial Services regarding commercial financing (see 23 NYCRR 600). The bill also provides that violations of its mandates are subject to enforcement and civil penalties. Both of these requirements will require OFR to allocate time and resources for the drafting and implementing of new regulations, the on-going collection, monitoring, and evaluation of information, responding to anticipated complaints, and increased enforcement if appropriate. OFR is not able to implement such a new program without additional financial and personnel resources.

Senate Bill 754 does not include a formal licensing and/or registration regime and therefore produces no new revenue for the OFR to compensate for the anticipated expenses in standing up and operating a new program. Therefore, unlike other entities regulated by OFR, entities providing commercial financing services will not contribute to the State's cost of supervision and oversight. The lack of licensing and/or registration regime makes it more difficult for the OFR: to monitor and track these business entities; assure submission of required data and/or reports; investigate and resolve any complaints received; and implement other requirements of the bill. The bill mandates no specific connection with the Nationwide Multistate Licensing System ("NMLS"), upon which the OFR relies to carry out its supervisory activities. This deficit adds further difficulties to operationalizing the requirements of this bill from a monitoring, investigatory and enforcement perspective. Thus, the OFR anticipates significant costs and technological expenditures to develop electronic systems for submitting, processing, and utilizing required data and/or reports. Additionally, OFR will need to devote resources to

OFFICE OF FINANCIAL REGULATION
100 SOUTH CHARLES STREET; TOWER 1, SUITE 5300
BALTIMORE, MARYLAND 21201
ANTONIO P. SALAZAR, COMMISSIONER

implementing the bill, responding to borrower complaints and engaging in enforcement activities related to this new authority.

Although the bill contains penalties for violations, according to statute, such penalties are required to be forwarded to the general fund. This bill would not add to the Non-Depository Special Fund and the need for additional staff would reduce the Fund. By consequence, this would mean that other businesses regulated by OFR would be subject to increased costs to support the regulation of the businesses at issue under this proposed legislation. Hence, OFR submitted a fiscal note outlining the costs associated with the hiring of one new examiner to handle this new program.

This bill will likely positively impact some Maryland small businesses. The product standards and lending regime established by this bill can be expected to give small businesses the ability to utilize sales-based financing products in a transparent and affordable manner.

The commercial lenders that are subject to this bill would incur additional costs associated with preparing reports on annual percentage rates to submit to OFR.