



January 6, 2022

Consumer Financial Protection Bureau
1700 G St NW
Washington, DC 20552

Via email: 2021-NPRM-1071@cfpb.gov

RE: Docket No. CFPB-2021-0015, Section 1071 Small Business Lending Data Collection

To Whom It May Concern:

The Responsible Business Lending Coalition (RBLC) appreciates this opportunity to comment on the proposed rule of the Consumer Financial Protection Bureau (CFPB or “the Bureau”) amending Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

The Responsible Business Lending Coalition (RBLC) is the leading cross-sector voice on small business financial protection. The coalition includes nonprofit and for-profit fintechs, 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.

The coalition created the Small Business Borrowers' Bill of Rights, the first cross-sector consensus on rights that small business owners deserve and standards of practice that financing providers should abide by to uphold those rights. Over 110 small business lenders, brokers, lead generators, and advocacy organizations have endorsed these standards.¹

We view section 1071 as pro-innovation regulation. We believe section 1071 can encourage the development of more inclusive and higher-quality small business financing offerings simply by creating transparency into how the market is working today. Regulation that creates transparency to help the market improve its own behavior is a market-based, pro-competition alternative to strict rules or costly subsidies.

¹ Members of the RBLC include Accion Opportunity Fund, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Small Business Majority, and the Aspen Institute. For more information, including the responsible lending standards found in the Small Business Borrowers Bill of Rights, and the full list of Signatories and Endorsers, please visit www.borrowersbillofrights.org.

We believe the transparency created by section 1071 will also spur innovation by encouraging adoption of the products and practices that the data reveal are effective in serving underserved market segments. This long-needed data collection will also increase equity in the commercial financing marketplace by enabling regulators to identify ECOA violations and by illuminating unmet credit needs that financing providers can help fill. These reasons for the RBLC's support of section 1071 are discussed further in our September 2017 comments to the Bureau.²

We appreciate the Bureau's consideration of the RBLC's input through the SBREFA process and "Outline of Proposals." We commend the Bureau for its work in publishing this notably thoughtful and well-considered Notice of Proposed Rulemaking (NPRM). In particular, we highlight our support for the proposed scope of applications subject to the data collection; the broad definition of covered financial institutions; the collection of pricing data; the inclusion of merchant cash advances (MCA) under covered credit transactions; and the Bureau's ultimate goal of establishing the first national repository of small business credit application and nondepository provider data.

In the following comment we discuss several elements we support and offer four central recommendations:

- 1) Include factoring financing
- 2) Collect APR
- 3) Collect the actual or estimated term length for MCAs based on actual repayment data
- 4) Include "hidden prepayment charges" in the prepayment data collected

² Responsible Business Lending Coalition, "Section 1071 and the Small Business Lending Market (Docket No. CFPB-2017-0011)" Sept 2017. http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/final_rbhc_letter_to_cfpb_on_1071.pdf

Contents

Support for the Scope of the Rulemaking and Financial Institution and Lender Coverage	4
Support for the Collection of Pricing Data	4
Support for the Inclusion of MCAs and Other Sales-Based Financing	5
Support and Recommendation for the Proposed Approach to MCA Pricing Collection	7
Total Origination Charges	7
Initial Annual Charges	8
Support for Establishing the First Comprehensive, National Repository of Small Business Credit Application and Nondepository Provider Data	11
Recommendation 1: Include Factoring	12
Fair Lending Concerns Related to Factoring	12
Risk of Regulatory Arbitrage	12
Factoring Often Involves Deferred Payments and Thus Should Be Treated as Credit	13
Statutory Authority and Consistency with Related Laws	13
How Factoring Term and Cost Can Easily Be Determined for Data Collection	14
Recommendation 2: Collect Annual Percentage Rate (APR)	14
APR is Used in Small Business Financing and Especially Relevant for MCAs	15
Dollar Cost Is an Inadequate Measure of Price	17
APR Remains Valuable In Addition to Separate Components of Cost to be Collected	19
How to APR Should be Calculated for Section 1071	20
Recommendation 3: Collect Term Length for MCAs Based on Actual Repayment Data	22
How to Establish Estimated Term for MCAs Not Fully Repaid Within the Reporting Period	27
Recommendation 4: Include Hidden Prepayment Charges in Prepayment Data Collected	28
Additional Recommendations	30
Provide Public Opportunity for Feedback on the Balance Test	30
Collect Data on Some Lease Financing	30
Consider the Timing of Data Collection to Ease Regulatory Burden	31

Support for the Scope of the Rulemaking and Financial Institution and Lender Coverage

We concur that it is critical to require financial institutions to collect and report applicant data for as many small businesses, minority-owned businesses, and women-owned businesses as possible, to uphold Congressional intent and establish a comprehensive database. We believe the Bureau has taken a reasonable and adequately comprehensive approach in proposing to include only minority- and women-owned businesses that are “small,” as this requirement would include 99.9% of all minority- and women-owned businesses. We also encourage the Bureau to monitor the U.S. Census Bureau’s Annual Business Survey and adjust this requirement if minority- or women-owned businesses that are not considered “small” exceed 1%.

With regard to the proposed scope of financial institution and lender coverage, the RBLC supports the Bureau’s efforts to define financial institutions broadly as all financial institutions that would be required to comply with section 1071’s data collection and reporting requirements. This approach is simple and comprehensive, and enables regulators to assess the business and community development needs and opportunities for women-owned, minority-owned, and small businesses and facilitate enforcement of fair lending laws across all institutions. The RBLC supports the proposed activity-based exemption of 25 loans, which the Bureau estimates would cover nearly 98% of small business originations from depository institutions.

Support for the Collection of Pricing Data

The RBLC commends the Bureau for proposing collection and reporting of pricing data points including interest rate, origination charges, initial annual charges, additional charges for sales-based financing, broker fees, non-interest charges, and prepayment penalties.

We see the inclusion of pricing data in section 1071 as critical for two reasons. First, without pricing data, section 1071 may have the perverse effect of increasing discrimination in lending, rather than reducing it. If blind to pricing, section 1071 would create the incentive for reporting financial institutions to boost the appearance of service to minority-owned and small businesses in the easiest way possible—simply by charging high rates or using other potentially extractive practices.

The practices that led to the subprime mortgage crisis illustrate the folly of considering financial inclusion based on access to capital alone, without regard for the price and terms of the capital being accessed. Pre-crisis subprime mortgage lenders like Countrywide advertised great success in financial inclusion because of high volumes of lending to lower income Americans and communities of color. The problem was the cost and quality of the products that Countrywide’s borrowers were being “included” in. To lead to improved credit options instead of encouraging irresponsible lending, the 1071 rules must continue to include pricing data.

Second, the collection of pricing data is a necessary response to the evolution of the small business financing market since section 1071 was written over a decade ago. In the 2000s, before the crisis that generated the Dodd-Frank Act, small business financing pricing was fairly homogenous. Community banks were the largest provider of small business credit, and most small business capital took the form of fairly modestly priced loans and lines of credit with APRs generally in the teens or lower.

Since then, prices in the small business financing market have become widely varying, in part resulting from a proliferation of newer high-cost, short-term, often less-transparent products. For example, research by Accion Opportunity Fund and the Woodstock Institute identified widespread use of financing with APRs reaching over 350%.³ These products are generally provided by nonbank alternative finance companies, occasionally by technology companies, and increasingly by banks. While variations in pricing data may have been less significant in the 2000s, it is critical today--both for providing the Bureau with adequate tools to efficiently enforce fair lending laws and for encouraging the growth of lower-cost financing options in the market.

Support for the Inclusion of MCAs and Other Sales-Based Financing

We strongly commend the Bureau for including merchant cash advances and similar sales-based financing in the proposed rules, including the collection of pricing data. Simply put, sales-based financing has become a central part of the small business financing system. Loans, lines of credit, and cash advances are described together as “the most popular business financing products” according to a 2018 joint SBA and Federal Reserve Bank of New York report on *Veteran Entrepreneurs and Capital Access*.⁴ This is remarkable growth into the mainstream for a product that was little known until the 2010s. Cash advance products continue to grow in importance as large nonbank technology companies and even banks begin to offer them.

³ St. Louis, Weaver, Donaker Brown, and McShane, Opportunity Fund, “Unaffordable and Unsustainable: The New Business Lending on Main Street,” May 2016. https://www.opportunityfund.org/wpcontent/uploads/2019/09/Unaffordable-and-Unsustainable-The-New-Business-Lending-on-Main-Street_Opportunity-Fund-Research-Report_May-2016.pdf, and Woodstock Institute, “Analysis of Small Business Loan Terms,” July 2016. https://woodstockinst.org/wp-content/uploads/2016/07/Woodstock_Analysis_of_Online_SB_Loan_Terms.pdf

⁴ Battisto and Sankaran, Federal Reserve Bank of New York and U.S. Small Business Administration, “FINANCING THEIR FUTURE: Veteran Entrepreneurs and Capital Access,” Nov 2018. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2017/Report-on-Veteran-Entrepreneurs-and-Capital-Access.pdf>

The Bureau’s inclusion of MCAs, and their pricing, is especially crucial to meet the statutory purposes of 1071 because the higher costs of these products has a disproportionate impact on smaller and minority-owned businesses. A 2018 report by the Federal Reserve Bank of New York and the Stanford Graduate School of Business found that, “Latino business owners are more likely than non-Latino white business owners to use merchant cash advances---products that require less collateral and are associated with higher average interest rates.”⁵



Similarly, a 2019 Federal Reserve Bank of Atlanta *Small Business Credit Survey Report on Minority-Owned Firms* concluded that, “minority-owned firms more frequently applied for potentially higher-cost and less-transparent credit products.”⁶ The research describes merchant cash advance and factoring specifically as these “higher-cost and less transparent credit products.” As currently written, the proposed 1071 rule can bring some of that missing transparency. The rule can provide additional needed transparency if factoring is added to the scope of covered transactions.

⁵ Battisto, Lee, Lieberman, Mills, Orozco, and Perez, Federal Reserve Bank of New York, Stanford Latino Entrepreneurship Initiative, and Interise, “LATINO-OWNED BUSINESSES Shining a Light on National Trends,” Nov 2018. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2017/Report-on-Latino-Owned-Small-Businesses.pdf>

⁶ 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>. For additional evidence this study also cites B.J. Lipman and A.M. Wiersch, “Alternative Lending through the Eyes of ‘Mom and Pop’ Small Business Owners: Findings From Online Focus Groups,” Federal Reserve Bank of Cleveland, August 2015; G. Brown and E. Weaver, “Notes From the Frontlines in the Small Business Finance Revolution: A Microlender’s View,” Federal Reserve Bank of San Francisco’s Community Investments, Winter 2014/2015, volume 26, number 3; and D.J. Borgia, D.O. Burgess, and T. Shank, “Factoring Accounts Receivable for Small Business Customers,” *Commercial Lending Review*, no. 38 (2003).

Support and Recommendation for the Proposed Approach to MCA Pricing Collection

We thank the Bureau for seeking “comment on proposed § 1002.107(a)(12)(v) and proposed comment 107(a)(12)(v)-1, including whether to require additional pricing information for MCAs, and whether MCAs could be structured in ways that evade the proposed reporting requirement, such as by omitting or making variable the amount to be repaid.”⁷ We believe that MCA pricing is effectively considered by the “difference between the amount advanced and the amount to be repaid” in § 1002.107(a)(12)(v), alongside “Total Origination Charges” in § 1002.107(a)(12)(ii) and “Initial Annual Charges” § 1002.107(a)(12)(iv). Below we illustrate how “Total Origination Charges” and “Initial Annual Charges” will also be crucial for understanding the pricing of MCA products, and offer recommendations for the improvement of “Initial Annual Charges.”

Total Origination Charges

It is common for MCA transactions to include a wide range of fees charged at origination, sometimes of a surprising nature and in apparently arbitrary amounts. Thus the Total Origination Charges reported under § 1002.107(a)(12)(ii) will be quite important for understanding the costs and fair lending implications of this form of financing. These fees might in some cases be interpreted to fall outside the charges captured in § 1002.107(a)(12)(v), the difference between the “amount advanced” and the “amount to be repaid,” such as if the fees were not deducted from the amount advanced and were not considered an amount to be “repaid.” Following are several examples of fees charged at origination.

Excerpts from two MCA contracts below include an “ACH Program Fee” of \$1,000 for an advance of \$20,000, and \$1,995 for an advance of \$70,000. (In the latter case, this “ACH Program Fee” is larger than the origination fee of \$1,770.) ACH fees observed in Merchant Cash Advance contracts vary widely, and appear to have little resemblance to the cost of processing payments through ACH.

APPENDIX A: FEE BREAKDOWN AND SUMMARY

- A. Origination Fee - \$ 1,500.00 to cover Underwriting and related expenses.
- B. ACH Program Fee - \$ 1,000.00 (or _____% of the funded amount, depending on size of advance)
ACH's are labor intensive and are not an automated process, requiring us to charge this fee to cover costs.
- C. NSF Fee (Standard) - \$50.00 (each) Up to FOUR TIMES ONLY before a default is declared.

APPENDIX A: THE FEE STRUCTURE:

- A. **Origination Fee** - \$ 1,770.00 to cover Underwriting and related expenses.
- B. **ACH Program Fee** - \$ 1,995.00 (or _____% of the funded amount, depending on size of advance) ACH's are labor intensive and are not an automated process, requiring us to charge this fee to cover costs.

Another common fee is assessed for the filing of UCC liens. The amount of this fee varies significantly and may have little resemblance to the cost of filing that lien. In the MCA contract excerpt below, the

⁷ Bureau of Consumer Financial Protection, Page 387 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B),” Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

merchant cash advance provider charges the “UCC Fee” of \$195 twice--once upon filing and a second time upon termination of the UCC lien. (See “c” below. Presumably the second UCC fee for terminating the lien would be included within the Initial Annual Charges). The cost of filing or terminating a UCC lien in Illinois, where the small business borrower was located, was \$20.⁸

3. Applicable Fees. The parties agree that the Applicable Fees which Seller shall pay to MCF, pursuant to Section 17 of the Agreement shall be as follows:

- a. **Due Diligence Fee:** Up to ten percent (10%) of the Purchase Price (the cost of the due diligence of Seller' business performed by MCF. As a general rule, the Due Diligence Fee varies and depends on the complexity of underwriting required on a business including without limitation, sophistication of Seller's principals, difficulty in ascertaining Seller's receivables and account debtors, sources of Seller's revenue flow, etc.).
- b. **ACH Program Fee:** \$395.00 (to cover expense of ACH processing program).
- c. **UCC Fee:** \$195.00 (part of filing UCC financing statements and their terminations).
- d. **Wire Fee:** \$35.00 (to cover cost of remitting the Purchase Price).

Perhaps even more surprising, this contract above also includes a “Due Diligence Fee” of “Up to ten percent (10%) of the purchase price.” It seems the borrower must sign the contract before the amount of this fee is determined at the MCA provider’s discretion.

The following MCA contract includes something called a “Platform Fee” in the amount of \$395, in addition to the 2% origination fee (representing \$430 in this case).

- A. **Origination Fee -** 2% of the Purchase Price
- B. **Platform Fee:** \$395.00
- C. **NSF Fee (Standard) -** \$40.00 (each)
- D. **Bank Account Change Fee -** \$250.00 – When seller requires a change of Bank Account to be debited, requiring us to adjust our system.
- E. **Blocked Account-** \$2,500.00 - When seller blocks QC from their daily ACH
- F. **Default Fee -** \$2,500.00 - When seller changes bank account or intentionally interferes with QC obtaining the Purchased Amount
- G. **UCC Fee-** \$200.00 charge for each UCC financing statement filed.
- H. **Requests for statements, balances and pay-off letters** \$49.00

Initial Annual Charges

MCA products commonly include fees that are charged periodically after origination, but are nonetheless required as a condition of financing. Preventing evasion of these costs may require the Bureau to revise the language of “Initial Annual Charges” in § 1002.107(a)(12)(iv) in order to include unscheduled fees and fees assessed after the first year.

For example, the fee schedule below establishes an ACH fee of \$12.50, apparently per ACH (see “d” below).

⁸ See: UCC filing fee schedule published by the Illinois Secretary of State, available here: https://www.ilsos.gov/publications/business_services/ucc.html

APPENDIX A: THE FEE STRUCTURE:

- a. **Underwriting Fee - \$ 210.00**
- b. **NSF Fee - \$ 35.00 each**
Up to FOUR TIMES ONLY before a default is declared
- c. **Payment Stopped Fee - \$ 135.00**
- d. **ACH Processing Fee - \$ 12.50**
- e. **UCC Filing Fee- \$150.00**
- f. **Default Fee - \$5,000.00**
- g. **Financing Fee:**
 - \$5,000 – \$9,999 + = \$149
 - \$10,000 – \$19,999 = \$299
 - \$20,000 – \$49,999 + = \$699
 - \$50,000 – \$100,000 + = \$1,299
 - \$250,000 + = \$2,995

That \$12.50 fee may not sound large until we recall that ACH payments will occur every weekday, resulting in a total anticipated cost to the borrower of \$1,562.50 for 125 daily payments. We are able to determine that the MCA provider expects ACH payments to occur 125 times based on the contract excerpt below.⁹ 125 equals the total repayment amount of \$15,120.00 divided by the payment amount of \$120.96, which is called the “specified daily amount” below.

AGREEMENT TERMS AND CONDITIONS or the occurrence of an Event of Default under Section 3 of the MERCHANT AGREEMENT TERMS AND CONDITIONS, the Specified Percentage shall equal 100%. A list of all fees applicable under this Agreement is contained in Appendix A.

Purchase Price: \$ 10,500.00 Specified Percentage: 22 % Specific Daily Amount: \$ 120.96 Receipts Purchased Amount: \$ 15,120.00

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE FOLLOWING GUARANTY ARE HEREBY INCORPORATED IN

This \$1,562.50 ACH processing fee represents 15% of the financing amount (the “purchase price” of \$10,500 above), and is a significantly larger charge than the \$210 “Underwriting Fee” and the \$299 “Financing Fee” also listed in the fee schedule above. We are unsure what service is provided for the “Financing Fee” that differs from those rendered for the “Underwriting Fee.”

We are unclear if this significant fee would be considered “scheduled” and thus captured by 1002.107(a)(12)(iv), or would evade reporting. Similarly, some MCA contracts include fees that can be charged at the MCA provider’s discretion on an unscheduled basis, such as a “collateral monitoring fees.” Thus we recommend that 1002.107(a)(12)(iv) not be limited to “scheduled” fees, but should include any fees assessed during the reporting period. This number can easily be determined by the provider based on their records of fees assessed.

⁹ The contract “Electronic Fund Transfer” section describes that the merchant cash advance company is permitted to “withdraw the specified percentages by AFC debiting of the account.”

The Bureau has also asked about the likelihood of reporting institutions evading “Initial Annual Charges” by structuring charges to occur after the first year.¹⁰ We concur with the comments of the Center for Responsible Lending, NALCAB, and National CAPACD that this represents a risk, including for other types of financing products beyond MCAs and sales-based financing. For example, an issuer of business credit cards or other open-end products may elect to waive a first-year annual fee as part of its acquisition strategy; indeed that would be possible even if it meant that the first year would not be profitable as loss-leader pricing is a well-known strategy.

Understanding the true cost of these types of loans is important without regard to whether the reason for charging lower first-year cost is to evade reporting or to acquire more customers. In the MCA context, the UCC termination fee discussed above represents another example of a significant charge structured to occur at the end of the financing and thus in many cases after one year has passed.

By creating transparency into the high and sometimes arbitrary costs charged by some MCA transactions, the Bureau will be able to identify potential fair lending concerns as well as encourage more affordable and competitive pricing in the market.

¹⁰ 86 Fed. Reg. at 56460.

Support for Establishing the First Comprehensive, National Repository of Small Business Credit Application and Nondepository Provider Data

The RBLC strongly supports the Bureau’s intent to “create the first comprehensive database of small business credit applications in the United States” in order to “help regulators and the public identify and address fair lending concerns” as well as to identify “business and community development needs and opportunities for small businesses.”¹¹ Comprehensive data on small business financing applications will foster fairness and opportunity for all small businesses by illuminating the types of financing sought, approval rates, and pricing. Pricing transparency will increase competition in the market, driving down the cost of credit for small businesses and incentivizing providers to offer attractive terms. It will also provide vital information on fair lending concerns that will enable regulators to identify and address violations. We also agree with the Bureau that this data will allow financing providers and community development organizations to determine unmet credit needs and increase the supply of capital where needed.

The RBLC supports the Bureau’s sentiment that “Data on small business lending are fragmented, incomplete, and not standardized, making it difficult to conduct meaningful comparisons across products and over time.”¹² Moreover, we agree that the lack of comprehensive data on small business lending by nondepositories is especially problematic. As the NPRM acknowledges, nondepository providers are diverse and serve an increasingly critical role in the small business financing ecosystem. CDFIs and responsible financing companies have helped to increase the flow of capital to small businesses as banks and branches have closed, and remaining banks have retreated from commercial lending. In particular, nondepository alternative financing providers are filling unmet needs for small-dollar credit.

While nondepository lenders play a critical role in expanding access to capital for small businesses, concerns have emerged with the terms, pricing, and lack of transparency provided by some financing providers. The small businesses that RBLC member organizations serve have encountered particular issues with some MCA and factoring transactions. As the NPRM notes, the design of both MCAs and factoring enables these products to avoid a formal designation as “credit” and resulting regulation, despite the fact that small businesses use both products as a means of obtaining credit and frequently choose between taking out these products or pursuing term loans, lines of credit, credit cards, or other available financing options.

In order for the Bureau to achieve its commendable goal of establishing the nation’s first comprehensive small business lending database, the final section 1071 rule must include comprehensive transaction coverage. The lack of available data on nondepository credit applications, and particularly on commonly-used alternative products such as factoring and MCAs, makes it even more critical for the Bureau to capture all of these products under the scope of covered transactions. If any commonly-used products are excluded under the final rule, researchers and policymakers will continue operating without a complete

¹¹ Bureau of Consumer Financial Protection, Page 4 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)”, Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

¹² Bureau of Consumer Financial Protection, Page 23 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)”, Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

picture of the commercial financing market, and regulators will lack the data needed to enforce borrower protections on excluded industries. For these reasons and other justifications provided below, we strongly recommend that the Bureau include factoring as a covered product.

Recommendation 1: Include Factoring

We concur with the Bureau’s assessment that the definition of “credit” under ECOA and Regulation B may not explicitly include factoring, but do not believe that other sections of Regulation B should preclude the inclusion of factoring as a covered transaction. Based on Federal Reserve data and our experiences serving small businesses, we also agree with the Bureau that many entrepreneurs are leveraging factoring products as a means to obtain financing for business purposes, with a cost to the borrower that may not be entirely clear or easily comparable to other financing products. As the Bureau has noted, comprehensive information on factoring volume and practices is limited. The Bureau must collect and report data on factoring applications under 1071 to better understand how the industry is financing minority-owned, women-owned, and small businesses and determine whether fair lending infractions are occurring. Given that available data on factoring reflect fair lending concerns, that small businesses use factoring to meet their credit needs, and that the Bureau has the authority to include factoring in section 1071, we urge the Bureau to reconsider its proposed exemption of factoring transactions.

Fair Lending Concerns Related to Factoring

The NPRM shares that 1071 SBREFA outline comments did not raise fair lending concerns related to factoring (p. 192, 194). However, fair lending is a concern for factoring. Factoring is identified in Federal Reserve research as a “potentially higher-cost and less transparent credit product” that has a disproportionate impact on minority-owned businesses, and Black-owned businesses in particular.¹³ “Black-owned business applicants applied for factoring more frequently compared to White-owned firm applicants (7% and 3%, respectively).”¹⁴

Risk of Regulatory Arbitrage

The NPRM suggests that the factoring industry’s slightly smaller market share, in comparison to the MCA industry, is a reason to exclude factoring from the data collection (p. 191). If MCAs are covered and factoring is not, we may expect some MCA providers to modify their product structure to evade regulation - including by seeking to reclassify their products as factoring, perhaps by associating the advance amount with specific receivables while maintaining other aspects of an MCA structure. Without comprehensive 1071 data on factoring, we will not know if any reduction in the number of MCA providers or originations was a true reduction and not a transfer to the factoring industry. Moreover, the NPRM states that the MCA industry is growing. To prevent regulatory evasion and collect comprehensive data, the Bureau should include factoring under covered products.

¹³ 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>

¹⁴ *Id.*

Factoring Often Involves Deferred Payments and Thus Should Be Treated as Credit

The NPRM claims that traditional factoring agreements do not “grant the recipient the right to defer payment” and that “the transaction between the recipient and the provider of funds is complete at the time of sale.”¹⁵ However, under the great majority of small business factoring agreements today, recipients are held liable for deferred payments conditional on the third party’s ability to repay.

As the Bureau understands, there are two primary types of factoring agreements: recourse and non-recourse. Recourse agreements enable the factor to pursue payment from the recipient if the third party fails to repay. Non-recourse agreements stipulate that the factor may only pursue payment from the recipient under certain default conditions, but those conditions are typically broad. Given that International Factoring Association survey data indicate that 88% of the industry utilizes recourse agreements, and that non-recourse agreements still enable factors to seek payments from recipients under a variety of circumstances, small businesses are indeed often subjected to deferred payments.¹⁶

Small businesses cannot predict with certainty whether their customers will repay the factor as expected or fail to pay and trigger recourse repayment obligations. The strong likelihood that small businesses will be subject to deferred payments and the inability to predict with absolute certainty whether “the transaction between the recipient and the provider of funds is complete at the time of sale” justify the inclusion of factoring as a covered product under section 1071.

Statutory Authority and Consistency with Related Laws

We recognize that other ECOA provisions exempt factoring and that the Bureau is considering adopting this exemption in section 1071 provisions. The Bureau is not obligated to exempt factoring under section 1071’s covered products, however - especially if doing so would conflict with Congressional intent of shedding light on the distribution of financing to minority-owned, women-owned, and small businesses. Dodd-Frank section 1071 statute grants the Bureau broad discretion to make exceptions “as the Bureau deems necessary or appropriate to carry out the purposes of this section.”¹⁷ This authority enables the Bureau to define credit broadly, regardless of comment 9(a)(3)-3 in Regulation B or other ECOA provisions.

Additionally, the inclusion of factoring would be consistent with the recent precedent set in New York and California small business financing laws, where legislators recognized, in overwhelming bipartisan votes, that factoring is a form of small business financing alongside loans, lines of credit, MCAs, and others. Final 1071 regulations should adopt both the definition of factoring and the treatment of factoring as a form of small business credit subject to section 1071 data reporting. The inclusion of factoring as a covered transaction under 1071 would not create compliance concerns for other provisions of Regulation B, as the NPRM suggests, because section 1071 is not broadly applicable to the entirety of Regulation B.

¹⁵ Bureau of Consumer Financial Protection, Page 194 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)”, Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

¹⁶ Porter Capital, “What’s the Difference Between Recourse and Non-Recourse Factoring?,” Dec 2019. <https://portercap.com/whats-the-difference-between-recourse-and-non-recourse-factoring/>

¹⁷ Pub. L. 111-203

How Factoring Term and Cost Can Easily Be Determined for Data Collection

Because factoring products are generally very short term (often 30, 60, 90, or 120 days) the term and costs of these products will often be fully known within a single reporting period, and so can be reported. For factoring accounts not fully repaid within a single reporting period, the expected term can be established by the date on the invoice factored, and the price established in the factoring agreement based on that expected date of repayment.

Recommendation 2: Collect Annual Percentage Rate (APR)

The RBLC urges the Bureau to include APR or estimated APR as a mandatory pricing datapoint for all covered products. We appreciate that the proposed rule acknowledges the strong support for APR collection. Below, we describe why APR is a critical metric that can be calculated in a straightforward way, including for variable-term products such as merchant cash advances.

APR is an essential pricing metric to collect and report because it is the only metric that allows for apples-to-apples price comparisons between financing of different term lengths, amounts, and product types. For this reason, in discussing short-term consumer loans, the Bureau's website states 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."¹⁸ This value is not limited to traditional term loans. The CFPB website continues to state that APR is especially helpful when comparing the costs of differently structured products, including those that are not term loans: "Tip: Focus on APRs. If you want to compare the cost of a payday loan to an installment loan or a credit card, focus on the APRs."¹⁹

APR may be of even greater value in small business financing, where small businesses often choose between MCAs, term loans, lines of credit, SBA loans, factoring, and other products to accomplish the same purpose. The diversity of products in the commercial lending space is one reason why a single pricing metric is so valuable. Indeed, without a single metric like APR, which is at its core simply an algebraic formula for the all-in cost of credit over time, it is very difficult to compare the costs of different financing products.

Disaggregated metrics of dollar cost, such as total origination charges, initial annual charges, and interest rate do not enable this comparison, especially as different products may allocate their pricing differently between these different forms of charges. While data points on the composition of cost are valuable, an effective comparison requires costs to be combined into a single metric.

APR is Used in Small Business Financing and Especially Relevant for MCAs

The growing importance of considering APRs in small business lending was raised by Federal Reserve Governor Lael Brainard in a 2015 speech, highlighting that, "some have raised concerns about the high APRs associated with some online alternative lending products. Others have raised concerns about the risk that some small business borrowers may have difficulty fully understanding the terms of the various

¹⁸ Consumer Financial Protection Bureau, "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?" Aug 28 2020. <https://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/>

¹⁹ Consumer Financial Protection Bureau, "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 the APR on a payday loan and how should I use it?" Aug 2020. <https://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/>

loan products or the risk of becoming trapped in layered debt that poses risks to the survival of their businesses.”²⁰

The clearest indication that APR can be calculated for small business financing products is that it is calculated and disclosed today by many small business financing providers, including some providers of merchant cash advances. APR is already used by the signatories of the Small Business Borrowers’ Bill of Rights, users of the SMART Box, and others. Soon, all nonbank small business financing providers operating in New York and California will begin including APR in all small business credit contracts. These state laws establish APR as the de facto standard for small business price comparison nationwide. Legislation introduced in Congress with support from Committee leaders also requires APR calculation and disclosure for all small business financing products, including factoring, MCAs, and sales-based financing products that function similarly to MCAs.²¹

APR is especially valuable for merchant cash advances and other sales-based financing. This is because costs can be quite high and widely varying for these products. A series of subsequent Federal Reserve research studies has indicated that “higher-cost and less-transparent credit products”²² are exploiting small businesses owners, in part because of challenges effectively comparing costs between financing products without APR.²³ In particular, Federal Reserve researchers found that small business owners viewed APR, in sample disclosures with and without annualized metrics, to be among the disclosures’ “most helpful details.”²⁴

²⁰ Brainard, Lael, “Community Banks, Small Business Credit, and Online Lending,” “Community Banking in the 21st Century” The Third Annual Community Banking Research and Policy Conference, Federal Reserve Bank of St. Louis, Sept 30 2015, St. Louis, Missouri. Remarks. <https://www.federalreserve.gov/newsevents/speech/brainard20150930a.pdf>

²¹ Small Business Lending Disclosure Act of 2021, H.R. 6054, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/house-bill/6054/text>

²² 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.”

²³ 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>

²⁴ 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>

Dollar Cost Is an Inadequate Measure of Price

Under the current proposal, section 1071 data users will have dollar only cost as a metric of price for MCAs. This is not adequate, especially if actual or estimated term length is not collected. The shortcomings of relying on dollar cost have been well described by MFTransparency, which established transparency standards in the international microfinance industry:

“When you take out a loan you are essentially ‘renting’ money. You are given money that is owned by someone else and you agree to pay them ‘rent’ (interest) for this privilege. This is just like renting anything else, an apartment for example. If you rent an apartment, a room that costs \$1,000 dollars per day is very different than a room that costs \$1,000 dollars per month. Using Total Cost of Credit is like looking at the price of an apartment, but not taking into account how long you will be able to stay!

But APR is like looking at a standardized cost per year for that same apartment:

- \$1,000 per day = \$365,000 per year
- \$1,000 per month = \$12,000 per year”²⁵

Furthermore, measures of dollar cost consider only a single loan. However, the reality is that the business model of many small business financing providers encourages borrowers to renew their short-term financing over and over. For example, the securitization document of the financing company below shows that 78% of the MCAs in the transaction pool, and 57% of the loans, are to repeat borrowers (see “Renewal” line at the bottom of the table).

²⁵ MicroFinance Transparency, “Total Cost of Credit vs. APR,” 2010. www.mftransparency.org/total-cost-of-credit-vs-apr/

Collateral Description

The 2014-1 transaction pool characteristics are as of the August 31, 2014, statistical cut-off date. The receivables securitized in this transaction will be a pool of small business loans and MCAs. Summary statistics of the current portfolio data are presented below.

	Loans	MCAs	Total Portfolio
Number of Assets	4,270	2,801	7,071
Aggregate Unamortized Funded Amount	\$ 131,963,318.32	\$ 68,055,438.49	\$ 200,018,756.81
Average Unamortized Funded Amount	\$ 30,904.76	\$ 24,296.84	\$ 28,287.20
Average Funding Size	\$ 45,793.43	\$ 40,462.16	\$ 43,681.58
Weighted Average Term or Estimated Underwritten Turn	13.88	13.53	13.76
Weighted Average Remaining Term or Turn	9.65	9.35	9.55
Average Number of Contracts in Lifecycle	2.80	3.10	2.90
Average Number of Months in Lifecycle	31.16	32.90	31.75
Weighted Average Repayment Amount or Specified Amount to Funded Amount Ratio	1.33	1.31	1.32
Weighted Average CAN Capital Risk Score	8.53	9.90	9.00
Average Years in Business	12.12	12.80	12.39
Average Gross Annual Sales	\$ 1,065,096.87	\$ 769,261.40	\$ 947,909.04
Average % Gross Sales Taken	5.73%	8.11%	6.67%
Average Specified Percentage	N/A	20.39%	N/A
New Customer	43.12%	21.62%	35.81%
Renewal	56.88%	78.38%	64.19%
Underwritten Loan Term or MCA Estimated Term			

Moreover, although the average “Estimated Underwritten Turn” of a single MCA is 13.53 months, the average small business customer takes 3.10 MCAs in a “Lifecycle.” Thus small business owners appear to be using this product for up to 32.90 months, paying 3.10 times that dollar cost established in §1002.107(a)(12)(v).

The business model of many small business financing companies intentionally encourages borrowers to renew their short-term financing over and over, year after year, similar to a payday loan. Some celebrate this on their websites! To quote one alternative financing company:

“Approximately 90% of our Merchant Cash Advance clients participate in the program more than once. In fact, the average customer renews about ten times!”²⁶

Thus, the company is celebrating selling a short term financing product, which might appear to have a lower dollar cost, when a longer term financing product may be more appropriate for the customer and have a lower dollar cost over the period of time that the financing is actually used.

²⁶ RapidAdvance, “RapidAdvance Merchant Cash Advance Program,” <http://web.archive.org/web/20161110041235/http://www.rapidadvance.com:80/merchant-cash-advance>

Another financing company website explains:

“[Company name] has designed an excellent Renewal Program for our customers. Once your Merchant Cash Advance or Business Loan payback is 50% complete, you’ll be eligible to renew with us for additional funding.

Over 70% of our merchants take advantage of this option, many of them renewing for a third or fourth time. Our cash advance and business loan terms are less than a full year, which means just a few months after funding, you’ll have a chance to get funded again...

Our goal is to make a lasting connection with every merchant, and be there for them whenever they need a financing boost. That’s what our Renewal Process is all about.”²⁷

If a financing company’s business model encourages borrowers to renew their short-term financing every time the financing is 50% repaid as part of “a lasting connection,” it would be misleading to compare only the dollar costs of single transactions while missing the cost of the “lasting connection.” APR, or collection of the estimated term length discussed below, would enable researchers and small business owners to make an accurate comparison over time by making a standardized comparison of the cost over one year.

APR Remains Valuable In Addition to Separate Components of Cost to be Collected

The proposed rule appears to suggest that APR may not be necessary for 1071 data collection, given that “information about which components of a transaction’s price may be relatively more expensive would allow users to better identify business and community development initiatives because they would be able to target their initiative at the particular component, such as the interest rate, that appears to be most responsible for the relatively high price of the transaction.”

We agree that transparency around particular costs associated with financing is helpful. However, the value of separate components of pricing does not negate the value of a combined pricing metric like APR, which enables comparison between product types. APR is especially useful for making comparisons between products with different combinations of interest rates and fees, or between products that have no interest rate at all and charge only fees.

Collecting and reporting APR in addition to other pricing metrics proposed in the NPRM aligns with the Bureau’s mission to “arm people with the information, steps, and tools that they need to make smart financial decisions...” and is in line with the Bureau’s vision statement that “in a market that works, the prices, risks, and terms of the deal are clear upfront so that consumers can understand their options and comparison shop. Companies all play by the same rules and compete fairly on providing quality service.”²⁸

²⁷ Capify. <https://www.capify.com/renewal-process-70-merchants-renew/>

²⁸ Consumer Financial Protection Bureau, “The Bureau,” <https://www.consumerfinance.gov/about-us/the-bureau/>

How to APR Should be Calculated for Section 1071

Calculation of APR for section 1071 can be made straightforward. Indeed, the entire consumer finance industry and many small business financing providers²⁹ calculate APR thousands of times a day without difficulty. Today these APR calculations are largely automated, and when they are not, APR can be computed quickly in common spreadsheet programs such as Microsoft Excel or Google Sheets, using well-known formulas such as RATE, IRR, and XIRR. We have included as Appendix A a demonstration of how use of these excel formulas produces an APR consistent with the algebraic APR formula in Regulation Z.

As discussed above and in the proposed rule, many small business financing providers are already accustomed to computing APRs, and soon many more will be by law.³⁰ In 2022, APR disclosure will be required of all nonbank small business financing providers in New York, and likely California as well, including for merchant cash advance and factoring products.

APR, as the Bureau knows well, is at its core simply an algebraic formula for the all-in cost of the financing over time. To compute an APR using this algebraic formula, one needs to plug in the (a) *amounts* and (b) *dates* of movements of money between a borrower and financing provider.

Entering these amounts and dates into the APR algebraic formula can be simple to do once two questions are addressed: 1) Which amounts should be included as finance charges, and 2) what dates should be used when they are not fixed in the contract, such as for MCAs or factoring?

First, the Bureau must establish which charges should be considered “finance charges” that are to be included in the APR calculation. For purposes of section 1071, we propose that this “finance charge” include most of the costs already defined and collected for the purposes of section 1071, including:

1. Interest charges resulting from the interest rate collected under § 1002.107(a)(12)(i),
2. Total origination charges as collected under § 1002.107(a)(12)(ii),
3. Additional costs for MCAs and other sales-based financing as collected under § 1002.107(a)(12)(v), and
4. Annual charges as collected under initial annual charges § 1002.107(a)(12)(iv). This should not be limited to the first year, however, as currently proposed by the Bureau.

This finance charge would not include prepayment charges as described in § 1002.107(a)(12)(vi). Nor would it additionally include broker fees as described in § 1002.107(a)(12)(iii), which are already included in the total origination charges. The Bureau has put significant thought into what charges are important for section 1071 data users. The same rationale can be leveraged for establishing the “finance charge” for APR under 1071, to enable data users to effectively compare the costs of different financing products.

²⁹ In the small business lending context, APR is already calculated and disclosed by many financial institutions including signatories of the Small Business Borrowers’ Bill of Rights, the users of the SMART Box designed by the Innovative Lending Platform Association, some SBA lenders.

³⁰ Bureau of Consumer Financial Protection, Page 44 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)”, Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

The second question that must be defined is what payment dates should be used for MCA and factoring products, where the payment dates are not fixed in the contract. For MCAs, we suggest the Bureau use the approach we suggest below in Recommendation 3, which discusses collecting the actual or estimated term of MCAs. In short, many MCAs will be fully repaid within the reporting term, and so the actual payment dates and amounts will be fully known. Thus, an APR can be calculated with complete accuracy.

For MCAs that are not fully repaid within the reporting term, the average rate of repayment that occurs within the reporting period can be projected forward. For example, if the MCA borrower has been making weekday payments averaging \$300.00 until the end of the reporting period, the MCA provider would project that this rate of repayment will continue until the MCA is fully paid off.

For factoring financing, again, because factoring products are generally very short term, often 30, 60, 90, or 120 days, the actual charges and their dates will often be fully known within a single reporting period, and so can be used for calculating a completely accurate APR. For factoring accounts not fully repaid within a single reporting period, the expected dates of payment can be established by the date on the invoice factored. The amounts charged follow, based on that expected date of repayment.

The RBLC is joined by many other small business advocacy organizations in urging the importance of APR as a mandatory pricing datapoint under 1071.

Recommendation 3: Collect Term Length for MCAs Based on Actual Repayment Data

We strongly urge the Bureau to collect actual or estimated term length for MCAs alongside the term length data collected for other forms of financing. We are concerned that proposed comment 107(a)(5)-5 appears to suggest that MCAs would report the term length as “not applicable.” The proposed MCA pricing data is of limited meaning without this data. Further, there is a risk of this rule incentivizing providers to shift from offering term-reportable products to term-excluded (under the proposed rule), high-cost sales-based financing products if those products are effectively shielded from pricing comparisons, because no term length is accounted for. We provide below a recommendation for how the actual or estimated term length of MCAs can be collected in a straightforward way.

The proposed rule establishes the importance of term length data: “...without awareness of the term of the loan, data users will have less of an understanding of the types of credit being made available to applicants. Credit with a one-month term may differ not just in degree but in kind from credit with a 60-month term.”³¹ This is equally true of sales-based financing. How is a data user to compare the costs and use of one \$50,000 merchant cash advance with a \$50,000 loan if they do not know that one was actually repaid within one month, and the other is expected to be repaid over 60 months?

Where merchant cash advances differ from loans, as the proposed rule notes, is that these products do not stipulate a fixed term upfront. The proposed rule notes that, “Many MCAs, for example, lack either a defined term or a periodic payment amount. Thus, financial institutions would have to estimate these terms to calculate an APR.”³²

It is true that a term length for these products will need to be estimated, though only if the advance were not fully repaid within the reporting term. We believe these estimations are necessary, valuable, and are readily available for collection.

It is important to note that MCA financing companies establish an estimated term when they underwrite an advance. These companies do not disburse funds with no expectation of when those funds will be repaid. While the actual repayment term is variable, the specificity of the expected term established by MCA providers may be surprising.

As a first illustration of the availability of estimated term length for MCAs, the table below comes from a bond filing by a merchant cash advance provider. As you can see, the MCA financing company is confident in citing to security investors in an SEC-regulated transaction that its MCAs have an average expected term of 13.35 months -- specified to two decimal places.³³ (See the highlighted row titled “Weighted Average Term or Estimated Underwritten Turn.”)

³¹ Bureau of Consumer Financial Protection, Page 323 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)”, Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

³² Bureau of Consumer Financial Protection, Page 369 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)”, Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

³³ The similarity in data between the Loans and MCAs in this bond collateral table also illustrates that the Bureau’s decision to consider MCAs credit is correct. The differences between these loans and advances is perhaps as much legal conceit as it is a

Collateral Description

The 2014-1 transaction pool characteristics are as of the August 31, 2014, statistical cut-off date. The receivables securitized in this transaction will be a pool of small business loans and MCAs. Summary statistics of the current portfolio data are presented below.

	Loans	MCAs	Total Portfolio
Number of Assets	4,270	2,801	7,071
Aggregate Unamortized Funded Amount	\$ 131,963,318.32	\$ 68,055,438.49	\$ 200,018,756.81
Average Unamortized Funded Amount	\$ 30,904.76	\$ 24,296.84	\$ 28,287.20
Average Funding Size	\$ 45,793.43	\$ 40,462.16	\$ 43,681.58
Weighted Average Term or Estimated Underwritten Turn	13.88	13.53	13.76
Weighted Average Remaining Term or Turn	9.65	9.35	9.55
Average Number of Contracts in Lifecycle	2.80	3.10	2.90
Average Number of Months in Lifecycle	31.16	32.90	31.75
Weighted Average Repayment Amount or Specified Amount to Funded Amount Ratio	1.33	1.31	1.32
Weighted Average CAN Capital Risk Score	8.53	9.90	9.00
Average Years in Business	12.12	12.80	12.39
Average Gross Annual Sales	\$ 1,065,096.87	\$ 769,261.40	\$ 947,909.04
Average % Gross Sales Taken	5.73%	8.11%	6.67%
Average Specified Percentage	N/A	20.39%	N/A
New Customer	43.12%	21.62%	35.81%
Renewal	56.88%	78.38%	64.19%
Underwritten Loan Term or MCA Estimated Term			

Second, most MCA contracts we have observed include an expected payment amount set by the financing company. This establishes an expected repayment term. The repayment term or number of expected payments is simply the total repayment amount divided by the expected amount of a single payment. For example, in the MCA contract below, the “Alternative Daily Amount” to be paid each day is set at \$146.00. (See highlighted row.)

practical consideration. The loans and MCAs are securitized together in the same bond, have similar term lengths (13.88 months vs 13.53 months), dollar costs (repayment amount to funded amount ratio of 1.33 vs 1.31), funded amounts (\$30.9k vs \$24.3k), and they are used by businesses with similar average years in business (12.12 vs 12.80) and average gross annual sales (\$1.07 million vs \$0.77 million).

FUTURE RECEIVABLES SALE AGREEMENT

This **FUTURE RECEIVABLES SALE AGREEMENT** ("**Agreement**") dated January 19, 2015 ("**Effective Date**"), is made by and between Swift Financial Corporation, a Delaware Corporation ("**Purchaser**"), and

(“Business”)

This Agreement shall be deemed binding and effective on each of the Purchaser and the Business as of the dates under their respective signatures.

Purchase Price: (The dollar amount Purchaser is paying for the Amount Sold.)	\$ 26500.00
Amount Sold: (The dollar value of the Future Receivables being sold.)	\$ 34953.50
Purchased Percentage: (The percentage of Future Receivables Business agrees to remit to Purchaser each day.)	13.00%
Alternative Daily Amount: (The dollar amount to be collected, in certain circumstances as described below, from Business's Direct Debit Account each business day.)	\$ 146.00
Origination Fee: (The fee to process Business's application, collected from Business's Direct Debit Account the first business day after Business receives the Purchase Price - calculated at .000% of the Purchase Price.)	\$.00

From this projected daily payment, a projected term length of 335 days can be quickly derived. The total amount owed is \$34,953.50, which divided by a payment of \$146.00 per day indicates full repayment in 239.4 payments. The contract establishes the payments are made on business days only, so presuming payments occur Monday-Friday, this contract commencing January 19th, 2015 was expected to be fully repaid on December 21, 2015. The financing company had full knowledge establishing an expected term of 335 days, or 11.17 months. (It is similarly straightforward with this information to calculate that the estimated APR is 63%, using the XIRR formula in Microsoft Excel and considering only the charges discussed in this example.)

Following are several additional examples of merchant cash advance contracts. In each, we find that a specific expected payment amount is defined, establishing that an expected term is readily available. (See highlights below.)

FUTURE RECEIVABLES SALE AND PURCHASE AGREEMENT

This agreement (this "Agreement"), dated 3/18/2019, between WORLD GLOBAL CAPITAL, LLC d/b/a MASS CAPITAL FUNDING ("MCF") and the seller(s) listed herein (collectively, the "Seller") (all capitalized terms shall have the meanings ascribed to them below):

Business Legal Name:

D/B/A:

Form of Business Entity:

EIN #:

Physical Address:

Mailing Address:

PURCHASE PRICE:
\$ 14,000.00

PURCHASED AMOUNT:
\$ 20,860.00

SPECIFIED PERCENTAGE:
25 %

INITIAL DAILY INSTALLMENT:
\$ 232.00

Purchase Price: \$ 70,000.00 **Receivables Purchased Amount:** \$ 110,880.00
Specified Percentage: 15 % and / or **Specified Weekly Amount:** \$ 2,310.00
Bank / or Processor name: [REDACTED] **ABA Routing:** [REDACTED] **Account No.:** [REDACTED]

AGREEMENT TERMS AND CONDITIONS of the occurrence of an Event of Default under Section 3 of the MERCHANT AGREEMENT TERMS AND CONDITIONS, the Specified Percentage shall equal 100%. A list of all fees applicable under this Agreement is contained in Appendix A.

Purchase Price: \$ 10,500.00 **Specified Percentage:** 22 % **Specific Daily Amount:** \$ 120.96 **Receipts Purchased Amount:** \$ 15,120.00

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE FOLLOWING GUARANTY ARE HEREBY INCORPORATED IN

1. PURCHASE AND SALE OF FUTURE RECEIPTS

Purchase Price: \$21,500
Purchased Percentage: 15%
Purchased Amount: \$31,175

Specified Daily Amount (Estimated Average Monthly Sales x Purchased Percentage / Average Business Days in a Calendar Month): \$174

PURCHASE PRICE:
\$ 35,000.00

PURCHASED AMOUNT:
\$ 51,065.00

SPECIFIED PERCENTAGE:
25 %

INITIAL DAILY INSTALLMENT:
\$ 511.00

out of business or bankrupt is, in and of itself, not an Event of Default under this Agreement. These are risks assumed by MCF. Seller, MCF, MCF's affiliates, the Merchant nor any affiliate of the Merchant, directly or indirectly, shall assert or attempt to assert at any time and in any forum that this Agreement is a loan agreement or that the transactions contemplated hereby are or should be characterized as loans.

Purchase Price \$ 20,000.00	Specified Percentage 25 %	Estimated Daily Amount \$ 497.00	Receipts Purchased Amount \$ 29,800.00
---------------------------------------	-------------------------------------	--	--

THE TERMS AND CONDITIONS, THE "SECURITY AGREEMENT AND GUARANTY" AND THE "AUTHORIZATION AGREEMENT" ATTACHED

Additionally, many sales-based financing contracts, such as the below example, specify a minimum repayment amount, which establishes a maximum term length.

C. Minimum Payment Requirement



Business agrees to pay to Lender the Minimum Payment every 90 days beginning at the end of the Cancellation Period and ending when the Total Payment Amount has been delivered to Lender. The Minimum Payment is due in each 90-day period that the Account is open, irrespective of the amount paid in any previous 90-day period. The Minimum Payment is 5% of the Total Payment Amount for loans expected to be repaid in 12 months or more and 10% of the Total Payment Amount for loans expected to be repaid in less than 12 months (based on Your PayPal account history).

D. Catch-up Payments



E. Limits on Catch-up Payments



Other contracts impose penalties after a certain period of time has passed, also establishing a maximum term length.

A third fact establishing that an estimated term length for MCA products is available, is that financing providers are required to disclose the Estimated Term under state law in California and New York. California Financial Code Division 9.5 § 22802(b)(3) requires providers of commercial financing products, including MCAs and sales-based financing, to disclose “The term or estimated term.”³⁴ This is described in greater detail in California Code of Regulations Title 10, Chapter 3 § 914.(a)(8), and similar law and regulation following from New York’s Small Business Truth in Lending Act, S 5470-B.³⁵

As the regulations for these laws go into effect, nearly every sales-based financing provider active in these two states (which encompasses nearly all sales-based financing providers nationwide) will have legally established an estimated term for all financing in those states. They will also readily have systems and methodology for identifying and reporting these estimated terms that could be used in the other 48 states.

Fourth and last, MCAs are generally short-term products, often repaid within a year. Thus many MCAs will be fully repaid within a single reporting period. For these products, the actual term could be reported. For those not yet fully repaid, a rate of repayment has been established from which a term could be easily calculated.

³⁴ California Division 9.5, Section 22802. <https://casetext.com/statute/california-codes/california-financial-code/division-95-commercial-financing-disclosures/section-22802-required-disclosures/1>

³⁵ The New York State Senate, “NY State Senate Bill S5470B,” March 2020. <https://www.nysenate.gov/legislation/bills/2019/s5470>

How to Establish Estimated Term for MCAs Not Fully Repaid Within the Reporting Period

Use actual repayment data - We believe the best way to establish the term is based on the actual repayment behavior within the reporting period. Many MCAs will be fully repaid within one year, and so the actual observed repayment term can be provided. For all others, an estimated term can be projected based on the rate of repayment observed. If an MCA is 25% repaid over the 2 months that fall within the reporting period, it would project an estimated term of 8 months in total.

We suggest this method for several reasons. Terms calculated based on actual repayment data will be completely accurate in the case of financing that was fully repaid. Estimated terms will be reasonably accurate, and should be labeled as estimations, in the case of financing that was partially repaid during the reporting period. This approach to estimated term length is most accurate because it cannot be manipulated by a financing provider. Lastly, this approach is simple to describe and administer, so it would create a relatively low regulatory burden for both financing providers and the Bureau.

In some cases, these estimated term lengths will differ from the term lengths estimated according to state law, before origination. We would find it entirely appropriate that data collected after origination for the market monitoring context of section 1071 may differ from data produced before origination for the context of truth-in-lending disclosure. After origination, more data is available. In fact, the usefulness of considering both pre- and post-origination data for MCAs is reflected in the truth-in-lending laws and regulations of California and New York, which require monitoring of the actual repayment data for comparison with pre-origination estimates.³⁶

Should the Bureau seek an alternative method to establish the estimated term for sales-based financing accounts not fully repaid within the reporting period, below we describe two alternative frameworks to our recommendation above.

Based on State Law - The Bureau could offer sales-based financing providers the option of reporting estimated term length as reported to the states of California and New York, for any transactions in those states. Both states use the same method for estimating term length, and this data will be readily available. Additionally, the Bureau could consider applying the same methodology in other states, using the “historical method” described in New York law and California proposed regulation. The New York Small Business Truth in Lending Act, now Article 8 of the Financial Services Law (FIS) CHAPTER 18-A, establishes a method for determining the estimated term based on small business’ average sales volumes for several months before origination, with several constraints to prevent MCA providers from “gaming” the estimation.³⁷

³⁶ The New York State Senate, “NY State Senate Bill S5470B,” March 2020.

<https://www.nysenate.gov/legislation/bills/2019/s5470>

(cont.) California Senate, “Senate Bill No. 1235,” Oct. 2018.

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1235

³⁷ §803.(C) describes: “The estimated term of repayment and the projected periodic payment amounts shall be calculated based on the projection of the recipient’s sales, called the projected sales volume. The projected sales volume may be calculated using the historical method... the provider shall fix the historical time period used to calculate the average historical volume and use such period for all disclosure purposes for all sales-based financing products offered. The fixed historical time period shall either be the preceding time period from the specific offer or, alternatively, the provider may use average sales for the same number of months with the highest sales volume within the past twelve months. The fixed historical time period shall be no less than one

Report actual term in later reporting period upon full repayment - Financing providers could report the observed term in whatever subsequent reporting period the financing is fully repaid. In this case, the financing provider would report the MCA term length as “incomplete” if it were not fully repaid, then include the account again in the later reporting period in which the account is paid off, providing the actual term and indicating that this is a second instance of reporting.

In no case should an estimated term be permitted to be less than any minimum established in the financing contract, in the form of a minimum payment amount, penalty period, etc.

month and not exceed twelve months.” Consolidated Laws of New York, Financial Services Law (FIS) CHAPTER 18-A, ARTICLE 8, Section 803.
<https://www.nysenate.gov/legislation/laws/FIS/803>

Recommendation 4: Include Hidden Prepayment Charges in Prepayment Data Collected

We commend the Bureau for including a consideration of prepayment penalties in the proposed rule. We suggest that an additional reporting option be included in 107(a)(12)(vi) to capture an increasingly common form of prepayment charge that is currently omitted. It has become common for some small business closed-end term loans, as well as nearly all merchant cash advances, to collect a balloon finance charge at prepayment that is not considered a “penalty.” Instead, the borrower is required to repay the finance charge associated with the full term of the transaction, including if the financing is paid off early, resulting in a balloon finance charge.

Federal Reserve research studied this practice and found, as our coalition members sometimes do, that small businesses owners often do not expect this balloon finance charge and mistakenly believe they will obtain cost savings if they repay early, just as they would in a traditional loan:³⁸

- **Participants tended to make (sometimes mistaken) assumptions about the products based on past experiences with traditional bank loans.** For example, some participants assumed their borrowing costs would decline if the loan were paid off quickly even when, as was the case in Products A and C, that repayment was presented as a total amount owed rather than an interest rate. Asked about the impact of faster sales growth on total repayment and interest costs on these two products, a number of participants assumed that, as with conventional loan products, they would incur some savings by repaying early. Others were uncertain, especially about the impact on the interest rate they would be paying. (In fact, total repayment amounts on these two products would be unchanged, there would be no savings on interest, and effective interest rates would rise because of the shortened repayment period.)

Because of the surprise nature of these balloon prepayment finance charges, this practice is described as a “hidden prepayment charge” in the Small Business Borrowers’ Bill of Rights.³⁹ The New York State small business truth in lending law addresses these prepayment charges, alongside any traditional prepayment penalty, by requiring disclosure of:

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

³⁸Lipman, Barbara and Ann Marie Wiersch, Board of Governors of the Federal Reserve System, “Browsing to Borrow: ‘Mom & Pop’ Small Business Owners’ Perspectives on Online Lenders and Products,” June 2018.
<https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf>

³⁹ The Small Business Borrowers’ Bill of Rights includes the following term: “No Hidden Prepayment Charges – If, in the event of prepayment, the borrower will be required to pay financing charges other than interest accrued since the last payment, disclose these charges as “prepayment charges.” Also disclose any additional charges or fees added in the case of prepayment as “prepayment penalties.” ... In the case of financing with payments that vary as a percentage of the borrower’s sales, a payoff event is considered prepayment if the borrower states the intent to pay off the financing, or in any event of refinancing.”
<http://www.borrowersbillofrights.org/bill-of-rights.html>

(ii) Whether the recipient would be required to pay any additional fees not already included in the finance charge.”⁴⁰

We suggest the Bureau include the definition “i” above among the forms of repayment charges reported in 107(a)(12)(vi). This charge is becoming a meaningful part of how the economics of some financing products are structured, and so merits consideration by data users interested in how newer products are structured in order to profitably serve small businesses.

Additional Recommendations

Provide Public Opportunity for Feedback on the Balance Test

We understand that the Bureau is proposing a “balancing test” that will assess the risks and benefits of public disclosure and that the specifics of the test will be issued via policy statement after at least one full year of 1071 data reporting following the compliance date of the final rule, but before any data is published by the Bureau. We are concerned that the process of developing such a test will happen outside of the formal rule-making process, thereby limiting or closing off the public’s ability to comment on such an important aspect of the rule. To the extent possible, we ask that the Bureau ensure that the public has ample opportunity and time to provide feedback on all aspects of 1071, including the “balancing test.”

Collect Data on Some Lease Financing

We appreciate the Bureau’s request for comment on whether there are types of leases, or leases with certain characteristics, that should be excluded from proposed comment 104(b)-2 and thus treated as reportable under 1071.⁴¹ In our experience, many occasions of lease financing are loans, structured as leases in order to avoid lending law.

There is some record of fair lending concerns in the leasing market. A particularly stark example was the abuse of 193 black churches in fifteen states by two lease financing companies. The practices of these lease financing companies is described in a lawsuit filed by then-California Attorney General Kamala Harris,⁴² and well-summarized in an article by BET.⁴³ The same lease financing company was pursuing

⁴⁰ The New York State Senate, “NY State Senate Bill S5470B,” March 2020. <https://www.nysenate.gov/legislation/bills/2019/s5470>

⁴¹ Bureau of Consumer Financial Protection, Page 199 “Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)”, Sept 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf

⁴² Harris, Verdugo Jr., Sierra, and Bass, Supreme Court of the State of California, County of Los Angeles, “COMPLAINT FOR RESTITUTION, CIVIL PENALTIES, INJUNCTION AND OTHER RELIEF FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200 AND 17500 (UNFAIR COMPETITION AND FALSE ADVERTISING LAWS),” Feb 2011. https://oag.ca.gov/system/files/attachments/press_releases/n2042_complaint.pdf

⁴³ Jefferson, BET, “California Goes After Church Scammers,” March 2011. <https://www.bet.com/article/bhzs1a/california-goes-after-church-scammers>

legal action to collect against an African American church as recently as last year.⁴⁴ This market merits further attention to ensure that such fair lending concerns are properly addressed.

We believe any data collection on this market would be valuable, even if limited to credit sale leases, including leases described as “\$1 leases” which we view as a form of credit sale lease.

Consider the Timing of Data Collection to Ease Regulatory Burden

For many institutions, the same individuals will work on the reporting and analysis of 1071 and HMDA data. (This may be true of both data reporters and the Bureau itself.) One community banker shared with us that, out of a staff of 100, one and a half FTE are dedicated to HMDA. To ease regulatory burden, the Bureau could consider staggering the reporting periods of HMDA and 1071 so that these individuals could perform HDMA work in the winter, and turn to 1071 in the summer. For example, 1071 data could be collected on a May 1st to April 30th year and reported in July.

We are greatly encouraged by the Bureau’s rulemaking and believe that section 1071 will result in a more innovative, inclusive, and fair financial system. If we can be of any further assistance, please don’t hesitate to contact us at info@borrowersbillofrights.org.

Sincerely,

The Responsible Business Lending Coalition.

Members of the cross-sector coalition include:

- Accion Opportunity Fund
- Funding Circle
- LendingClub
- Opportunity Finance Network
- Community Investment Management
- Small Business Majority
- The Aspen Institute

⁴⁴ Southern California Record, “Case activity for Balboa Capital Corp. vs Pure Word Missionary Baptist Church on Aug. 19,” August 21, 2020. <https://socalrecord.com/stories/549240185-case-activity-for-balboacapital-corp-vs-pure-word-missionary-baptist-church-on-aug-19>

Appendix A - How the Relevant APR Formula from TILA Regulation Z Can Be Calculated Simply Using Basic Functions in Common Spreadsheet Software

The federal Truth in Lending Act (TILA) is implemented in Regulation Z, which details the mathematical formulas for calculating the annual percentage rate (APR) in Appendix J. **The relevant Regulation Z APR formula can be calculated easily using standard industry software programs such as Microsoft Excel or Google Sheets.**

For purposes of illustration, the TILA APR equation can be reduced to the following equation via several simplifying assumptions.¹ This TILA APR equation is explicitly designed to be used for products repaid daily, weekly, semi-monthly, monthly, and so on.

$$0 = -A + \frac{P_1}{(1+i)^{t_1}} + \frac{P_2}{(1+i)^{t_2}} + \dots + \frac{P_n}{(1+i)^{t_n}} \quad APR = i * m$$

Where: A = initial advance i = unit period interest rate (e.g. daily interest rate)

P_j = amount of the payment

T_j = number of full unit periods to the final payment

n = number of payments m = number of periods per year

These Reg Z Formulas Can Be Calculated Using The RATE, IRR and XIRR Functions in Excel

The following functions in Microsoft Excel or Google Sheets can be used to calculate APR consistent with the Regulation Z formula:

1. **For financing products with equal payment amounts and equal payment periods** (e.g., for loans, sales-based financing with flat sales projections or using Historical Method, etc.):

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

2. **For financing products with unequal payment amounts, and equal payment periods** (e.g., sales-based financing with projected or retrospective sales volumes that vary over the payment period, with payments every day of the week):

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

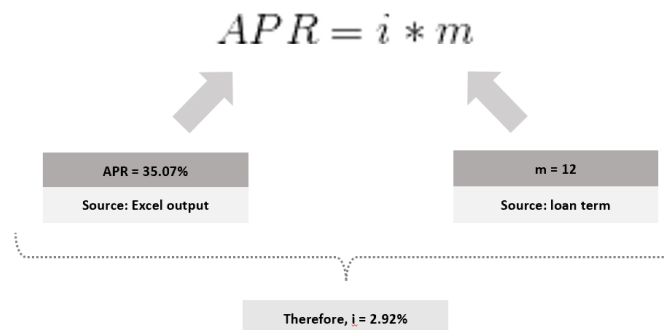
¹Assumed here that loans have a single disbursement, and all payments occur at full unit-periods. Please see Appendix I for the full Regulation Z APR formula found in Appendix J to Part 1026(b).5.iv.

3. **For financing products with unequal payment amounts, and/or unequal payment periods** (e.g., sales-based financing with projected or retrospective sales volumes that vary over the payment period, with payments on weekdays only):

*APR = ((XIRR (select a series of cells indicating the flow of money, starting with the disbursed amount in the first cell, and a second series of cells indicating the corresponding dates of those payments) + 1)^(1/365)-1)*365*

We will use an example to show how the APR calculated from the RATE function is consistent with the TILA APR formula. To illustrate, consider a one year loan with an advance of \$1,000, origination fee of \$200, and 12 monthly payments of \$100. To show that the APR calculated in Excel is consistent with the TILA APR formula, we will plug the APR obtained from the Excel formula described above into the TILA APR equation to show the mathematical conditions are met. The TILA APR equation will resolve to zero, proving that the Excel-derived APR correctly represents the mathematical conditions in Regulation Z.

Step 1: Using the RATE formula in Excel, we derive an APR of 35.07%. By plugging this APR and the number of periods in a year into Regulation Z equation (2), we derive a period interest rate “i” = 2.92%.



Step 2: By plugging A, P1, P2... P12 and i into equation (1), we see that equation (1) simplifies to 0 as required. This means that the Excel APR meets all the mathematical conditions dictated by the TILA APR.

$$\begin{array}{c}
 -A + \frac{P_1}{(1+i)^{t_1}} + \frac{P_2}{(1+i)^{t_2}} + \dots + \frac{P_n}{(1+i)^{t_n}} \\
 \begin{array}{ccc}
 \nearrow & \nearrow & \nwarrow \\
 \begin{array}{c} A = 1000 \\ \text{Source: loan terms} \end{array} & \begin{array}{c} P_j = 100 \\ \text{Source: loan terms} \end{array} & \begin{array}{c} i = 2.92\% \\ \text{Source: prior calculation} \end{array}
 \end{array}
 \end{array}$$

$$\begin{aligned}
 & -1000 + \frac{\$100}{(1 + 2.92\%)} + \frac{\$100}{(1 + 2.92\%)^2} + \dots + \frac{\$100}{(1 + 2.92\%)^{12}} \\
 & = -1000 + 97.16 + 94.40 + \dots + 70.77 \\
 & = 0
 \end{aligned}$$

Expanding beyond this example, when used correctly the RATE, IRR and XIRR functions in Excel all return an interest rate that's calculated in a manner that is mathematically consistent with that of the TILA APR.

Following are demonstrations from Microsoft Excel using each of these formulas.

RATE Formula

Comparison to Reg Z

The following spreadsheet shows how the RATE function in Excel produces an APR that's consistent with the TILA APR methodology.

Use case: for loans with equal payments that occur at equal intervals

User Input	
Calculated / Linked	

Section 1. Input loan terms			
In Section 1, we enter the loan terms.	Initial advance	-\$1,000.00	Payment Frequencies
	Payment per period	\$25.00	Periods per Year
	Payment frequency	Daily	Monthly 12
	No. of total payments	48	Semi-Monthly 24
	Periods per year	365	Bi-Weekly 26
			Weekly 52
			Daily 365
			<i>*For weekday payments, see tab 'Weekday RATE'</i>

Section 2. Calculate interest using RATE()		
In Section 2, we use the RATE function in Excel to calculate both the interest per unit period, as well as the annual APR.	Interest rate, unit period	0.77%
	APR	281.10%

Section 3. Setting up the Reg Z Equation			
In Sections 3 and 4, we verify that the APR calculated from the RATE function is in fact consistent with the TILA APR formula.	$0 = -A + \frac{P_1}{(1+i)^{t_1}} + \frac{P_2}{(1+i)^{t_2}} + \dots + \frac{P_n}{(1+i)^{t_n}}$		
	$APR = i * m$		
In order to do so, we will first map (in Section 3) the user inputted values about the loan to the various variables in the TILA APR formula.	Name of variable	Variables	Value
	Initial advance	A	-\$1,000.00
	Payment per period	P1....Pn	\$25.00
	Interest per period	i	0.77%
	Periods per year	m	365
			Source
			User input (Section 1)
			User input (Section 1)
			Calculated (Section 2)
			Calculated (Section 1)

Section 4. Confirm Reg Z is Satisfied				
In Section 4, we will plug the APR obtained from the Excel formula into the TILA APR formula to show the mathematical conditions are met. This is shown by taking the sum off all the values and showing it equals zero. Since cell \$H\$44 is zero, we have shown that the APR calculated by Excel is consistent with the TILA APR.	Period	Amount	Reg Z Calculation	
	0	-\$1,000.00	-\$1,000.00	Sum 0.00
	1	\$25.00	\$24.81	Is sum zero (nearest cent) Yes
	2	\$25.00	\$24.62	Satisfies Reg Z Yes
	3	\$25.00	\$24.43	
	4	\$25.00	\$24.24	
	5	\$25.00	\$24.06	
	6	\$25.00	\$23.88	
	7	\$25.00	\$23.69	
	8	\$25.00	\$23.51	
	9	\$25.00	\$23.33	
	10	\$25.00	\$23.15	
	11	\$25.00	\$22.98	
	12	\$25.00	\$22.80	
	13	\$25.00	\$22.63	
	14	\$25.00	\$22.45	
	15	\$25.00	\$22.28	
	16	\$25.00	\$22.11	
	17	\$25.00	\$21.94	
	18	\$25.00	\$21.78	
	19	\$25.00	\$21.61	
	20	\$25.00	\$21.44	
	21	\$25.00	\$21.28	
	22	\$25.00	\$21.12	
	23	\$25.00	\$20.96	
	24	\$25.00	\$20.80	
	25	\$25.00	\$20.64	
	26	\$25.00	\$20.48	
	27	\$25.00	\$20.32	
	28	\$25.00	\$20.17	
	29	\$25.00	\$20.01	
	30	\$25.00	\$19.86	
	31	\$25.00	\$19.71	
	32	\$25.00	\$19.56	
				<i>NOTE: because this table ends at 50 rows, it will not calculate in full for examples with more than 49 payments. To calculate a protect with more payments, simply extend te number of rows in this section.</i>

	33	\$25.00	\$19.41
	34	\$25.00	\$19.26
	35	\$25.00	\$19.11
	36	\$25.00	\$18.97
	37	\$25.00	\$18.82
	38	\$25.00	\$18.68
	39	\$25.00	\$18.54
	40	\$25.00	\$18.39
	41	\$25.00	\$18.25
	42	\$25.00	\$18.11
	43	\$25.00	\$17.97
	44	\$25.00	\$17.84
	45	\$25.00	\$17.70
	46	\$25.00	\$17.57
	47	\$25.00	\$17.43
	48	\$25.00	\$17.30
	49	\$0.00	\$0.00
	50	\$0.00	\$0.00

The following spreadsheet shows how the IRR function in Excel produces an APR that's consistent with the TILA APR methodology.
For ease of illustration, we have limited the Excel template for loans with no more than 52 periods. In production, Excel can handle loans with more than 52 periods.
Use case: for loans with non-equal payments that occur at equal intervals.

User Input

Calculated / Linked

Section 1. Input loan terms			
In Section 1, we enter the terms of the loan.			
	Loan Terms		Payment Frequencies Periods per Year
	Initial advance	-\$1,000.00 <i>(Entered as a negative number)</i>	Monthly 12
	Period 1 payment	\$90.00	Semi-Monthly 24
	Period 2 payment	\$90.00	Bi-Weekly 26
	Period 3 payment	\$150.00	Weekly 52
	Period 4 payment	\$0.00	Daily 365
	Period 5 payment	\$0.00	<i>*For equal weekday payments, please see tab "Weekday RATE"</i>
	Period 6 payment	\$80.00	
	Period 7 payment	\$50.00	
	Period 8 payment	\$60.00	
	Period 9 payment	\$140.00	
	Period 10 payment	\$100.00	
	Period 11 payment	\$150.00	
	Period 12 payment	\$110.00	
	Period 13 payment	\$0.00	
	Period 14 payment	\$0.00	
	Period 15 payment	\$0.00	
	Period 16 payment	\$0.00	
	Period 17 payment	\$0.00	
	Period 18 payment	\$0.00	
	Period 19 payment	\$0.00	
	Period 20 payment	\$0.00	
	Period 21 payment	\$0.00	
	Period 22 payment	\$0.00	
	Period 23 payment	\$0.00	
	Period 24 payment	\$0.00	
	Period 25 payment	\$0.00	
	Period 26 payment	\$0.00	
	Period 27 payment	\$0.00	
	Period 28 payment	\$0.00	
	Period 29 payment	\$0.00	
	Period 30 payment	\$0.00	
	Period 31 payment	\$0.00	
	Period 32 payment	\$0.00	
	Period 33 payment	\$0.00	
	Period 34 payment	\$0.00	
	Period 35 payment	\$0.00	
	Period 36 payment	\$0.00	
	Period 37 payment	\$0.00	
	Period 38 payment	\$0.00	
	Period 39 payment	\$0.00	
	Period 40 payment	\$0.00	
	Period 41 payment	\$0.00	
	Period 42 payment	\$0.00	
	Period 43 payment	\$0.00	
	Period 44 payment	\$0.00	
	Period 45 payment	\$0.00	
	Period 46 payment	\$0.00	
	Period 47 payment	\$0.00	
	Period 48 payment	\$0.00	
	Period 49 payment	\$0.00	
	Period 50 payment	\$0.00	
	Period 51 payment	\$0.00	
	Period 52 payment	\$0.00	
	Payment frequency	Daily	
	No. of total payments	10	
	Periods per year	365	

Section 2. Calculate interest using IRR()			
In Section 2, we use the IRR function in Excel to calculate both the interest per unit period, as well as the annual APR.			
	Interest rate, unit period	0.28%	
	APR	101.98%	

Section 3. Setting up the Reg Z Equation				
In Sections 3 and 4, we want to verify that the APR calculated from the IRR function is in fact consistent with the TILA APR formula.				
$0 = -A + \frac{P_1}{(1+i)^{t_1}} + \frac{P_2}{(1+i)^{t_2}} + \dots + \frac{P_n}{(1+i)^{t_n}}$				
$APR = i * m$				
In order to do so, we will first map (in Section 3) the user inputted values about the loan to the various variables in the TILA APR formula.				
Name of variable	Variables	Value	Source	
Initial advance	A	-\$1,000.00	User input (Section 1)	
Period 1 payment	P1	\$90.00	User input (Section 1)	
Period 2 payment	P2	\$90.00	User input (Section 1)	
Period 3 payment	P3	\$150.00	User input (Section 1)	
Period 4 payment	P4	\$0.00	User input (Section 1)	
Period 5 payment	P5	\$0.00	User input (Section 1)	
Period 6 payment	P6	\$80.00	User input (Section 1)	
Period 7 payment	P7	\$50.00	User input (Section 1)	
Period 8 payment	P8	\$60.00	User input (Section 1)	
Period 9 payment	P9	\$140.00	User input (Section 1)	
Period 10 payment	P10	\$100.00	User input (Section 1)	
Period 11 payment	P11	\$150.00	User input (Section 1)	
Period 12 payment	P12	\$110.00	User input (Section 1)	

	Period 13 payment	P13	\$0.00	User input (Section 1)
	Period 14 payment	P14	\$0.00	User input (Section 1)
	Period 15 payment	P15	\$0.00	User input (Section 1)
	Period 16 payment	P16	\$0.00	User input (Section 1)
	Period 17 payment	P17	\$0.00	User input (Section 1)
	Period 18 payment	P18	\$0.00	User input (Section 1)
	Period 19 payment	P19	\$0.00	User input (Section 1)
	Period 20 payment	P20	\$0.00	User input (Section 1)
	Period 21 payment	P21	\$0.00	User input (Section 1)
	Period 22 payment	P22	\$0.00	User input (Section 1)
	Period 23 payment	P23	\$0.00	User input (Section 1)
	Period 24 payment	P24	\$0.00	User input (Section 1)
	Period 25 payment	P25	\$0.00	User input (Section 1)
	Period 26 payment	P26	\$0.00	User input (Section 1)
	Period 27 payment	P27	\$0.00	User input (Section 1)
	Period 28 payment	P28	\$0.00	User input (Section 1)
	Period 29 payment	P29	\$0.00	User input (Section 1)
	Period 30 payment	P30	\$0.00	User input (Section 1)
	Period 31 payment	P31	\$0.00	User input (Section 1)
	Period 32 payment	P32	\$0.00	User input (Section 1)
	Period 33 payment	P33	\$0.00	User input (Section 1)
	Period 34 payment	P34	\$0.00	User input (Section 1)
	Period 35 payment	P35	\$0.00	User input (Section 1)
	Period 36 payment	P36	\$0.00	User input (Section 1)
	Period 37 payment	P37	\$0.00	User input (Section 1)
	Period 38 payment	P38	\$0.00	User input (Section 1)
	Period 39 payment	P39	\$0.00	User input (Section 1)
	Period 40 payment	P40	\$0.00	User input (Section 1)
	Period 41 payment	P41	\$0.00	User input (Section 1)
	Period 42 payment	P42	\$0.00	User input (Section 1)
	Period 43 payment	P43	\$0.00	User input (Section 1)
	Period 44 payment	P44	\$0.00	User input (Section 1)
	Period 45 payment	P45	\$0.00	User input (Section 1)
	Period 46 payment	P46	\$0.00	User input (Section 1)
	Period 47 payment	P47	\$0.00	User input (Section 1)
	Period 48 payment	P48	\$0.00	User input (Section 1)
	Period 49 payment	P49	\$0.00	User input (Section 1)
	Period 50 payment	P50	\$0.00	User input (Section 1)
	Period 51 payment	P51	\$0.00	User input (Section 1)
	Period 52 payment	P52	\$0.00	User input (Section 1)
	Interest per period	i	0.28%	Calculated (Section 2)
	Periods per year	m	365	Calculated (Section 1)

Section 4. Confirm Reg Z is Satisfied

In Section 4, we will plug the APR obtained from the Excel formula into the TILA APR formula to show the mathematical conditions are met. This is shown by taking the sum off all the values and showing it equals zero. Since cell \$H\$148 is zero, we have shown that the APR calculated by Excel is consistent with the TILA APR.

Period	Amount	Reg Z Calculation	Sum	
0	-\$1,000.00	-\$1,000.00		0.00
1	\$90.00	\$89.75		Yes
2	\$90.00	\$89.50		
3	\$150.00	\$148.75		
4	\$0.00	\$0.00		
5	\$0.00	\$0.00		
6	\$80.00	\$78.67		
7	\$50.00	\$49.03		
8	\$60.00	\$58.68		
9	\$140.00	\$136.53		
10	\$100.00	\$97.25		
11	\$150.00	\$145.47		
12	\$110.00	\$106.38		
13	\$0.00	\$0.00		
14	\$0.00	\$0.00		
15	\$0.00	\$0.00		
16	\$0.00	\$0.00		
17	\$0.00	\$0.00		
18	\$0.00	\$0.00		
19	\$0.00	\$0.00		
20	\$0.00	\$0.00		
21	\$0.00	\$0.00		
22	\$0.00	\$0.00		
23	\$0.00	\$0.00		
24	\$0.00	\$0.00		
25	\$0.00	\$0.00		
26	\$0.00	\$0.00		
27	\$0.00	\$0.00		
28	\$0.00	\$0.00		
29	\$0.00	\$0.00		
30	\$0.00	\$0.00		
31	\$0.00	\$0.00		
32	\$0.00	\$0.00		
33	\$0.00	\$0.00		
34	\$0.00	\$0.00		
35	\$0.00	\$0.00		
36	\$0.00	\$0.00		
37	\$0.00	\$0.00		
38	\$0.00	\$0.00		
39	\$0.00	\$0.00		
40	\$0.00	\$0.00		
41	\$0.00	\$0.00		
42	\$0.00	\$0.00		
43	\$0.00	\$0.00		
44	\$0.00	\$0.00		
45	\$0.00	\$0.00		
46	\$0.00	\$0.00		
47	\$0.00	\$0.00		
48	\$0.00	\$0.00		
49	\$0.00	\$0.00		
50	\$0.00	\$0.00		
51	\$0.00	\$0.00		
52	\$0.00	\$0.00		

Sum
Is sum zero (nearest cent)
Satisfies Reg Z

0.00
Yes
Yes

The following spreadsheet shows how the XIRR function in Excel produces an APR that's consistent with the TILA APR methodology.
For ease of illustration, we have limited the Excel template for loans with no more than 52 periods. In production, Excel can handle loans with more than 52 periods.
Use case: for loans with (equal or non-equal) payments that occur at non-equal intervals. In this case, payments occur on weekdays but not weekend days.

User Input

Calculated / Linked

Section 1. Input loan terms		
In Section 1, we enter the terms of the loan.		
	Payment Number	Amount
	Initial advance	-1,000
	Payment 1	70
	Payment 2	107
	Payment 3	1
	Payment 4	200
	Payment 5	70
	Payment 6	112
	Payment 7	4
	Payment 8	136
	Payment 9	67
	Payment 10	109
	Payment 11	109
	Payment 12	92
	Payment 13	0
	Payment 14	0
	Payment 15	0
	Payment 16	0
	Payment 17	0
	Payment 18	0
	Payment 19	0
	Payment 20	0
	Payment 21	0
	Payment 22	0
	Payment 23	0
	Payment 24	0
	Payment 25	0
	Payment 26	0
	Payment 27	0
	Payment 28	0
	Payment 29	0
	Payment 30	0
	Payment 31	0
	Payment 32	0
	Payment 33	0
	Payment 34	0
	Payment 35	0
	Payment 36	0
	Payment 37	0
	Payment 38	0
	Payment 39	0
	Payment 40	0
	Payment 41	0
	Payment 42	0
	Payment 43	0
	Payment 44	0
	Payment 45	0
	Payment 46	0
	Payment 47	0
	Payment 48	0
	Payment 49	0
	Payment 50	0
	Payment 51	0
	Payment 52	0
	No. of total payments	12
	Periods per year	365

Section 2. Calculate interest using XIRR()		
In Section 2, we use the XIRR function in Excel to calculate both the interest per unit period, as well as the annual APR.		
Interest rate, per day		0.81%
APR		294.39%

Section 3. Setting up the Reg Z Equation					
In Sections 3 and 4, we want to verify that the APR calculated from the XIRR function is in fact consistent with the TILA APR formula.					
$0 = -A + \frac{P_1}{(1+i)^{t_1}} + \frac{P_2}{(1+i)^{t_2}} + \dots + \frac{P_n}{(1+i)^{t_n}}$					
$APR = i * m$					
In order to do so, we will first map (in Section 3) the user inputted values about the loan to the various variables in the TILA APR formula.					
	Payment Variables	Value	Date Variable	Value	Source
Initial advance	A	-1,000.00	N/A	N/A	User input (Section 1)
Payment 1	P1	70.00	t1		User input (Section 1)
Payment 2	P2	107.00	t2		User input (Section 1)
Payment 3	P3	1.00	t3		User input (Section 1)
Payment 4	P4	200.00	t4		User input (Section 1)
Payment 5	P5	70.00	t5		User input (Section 1)
Payment 6	P6	112.00	t6		User input (Section 1)
Payment 7	P7	4.00	t7		User input (Section 1)
Payment 8	P8	136.00	t8		User input (Section 1)
Payment 9	P9	67.00	t9		User input (Section 1)
Payment 10	P10	109.00	t10		User input (Section 1)
Payment 11	P11	109.00	t11		User input (Section 1)
Payment 12	P12	92.00	t12		User input (Section 1)
Payment 13	P13	0.00	t13		User input (Section 1)

	Payment 14	P14	\$0.00	t14	0	User input (Section 1)
	Payment 15	P15	\$0.00	t15	0	User input (Section 1)
	Payment 16	P16	\$0.00	t16	0	User input (Section 1)
	Payment 17	P17	\$0.00	t17	0	User input (Section 1)
	Payment 18	P18	\$0.00	t18	0	User input (Section 1)
	Payment 19	P19	\$0.00	t19	0	User input (Section 1)
	Payment 20	P20	\$0.00	t20	0	User input (Section 1)
	Payment 21	P21	\$0.00	t21	0	User input (Section 1)
	Payment 22	P22	\$0.00	t22	0	User input (Section 1)
	Payment 23	P23	\$0.00	t23	0	User input (Section 1)
	Payment 24	P24	\$0.00	t24	0	User input (Section 1)
	Payment 25	P25	\$0.00	t25	0	User input (Section 1)
	Payment 26	P26	\$0.00	t26	0	User input (Section 1)
	Payment 27	P27	\$0.00	t27	0	User input (Section 1)
	Payment 28	P28	\$0.00	t28	0	User input (Section 1)
	Payment 29	P29	\$0.00	t29	0	User input (Section 1)
	Payment 30	P30	\$0.00	t30	0	User input (Section 1)
	Payment 31	P31	\$0.00	t31	0	User input (Section 1)
	Payment 32	P32	\$0.00	t32	0	User input (Section 1)
	Payment 33	P33	\$0.00	t33	0	User input (Section 1)
	Payment 34	P34	\$0.00	t34	0	User input (Section 1)
	Payment 35	P35	\$0.00	t35	0	User input (Section 1)
	Payment 36	P36	\$0.00	t36	0	User input (Section 1)
	Payment 37	P37	\$0.00	t37	0	User input (Section 1)
	Payment 38	P38	\$0.00	t38	0	User input (Section 1)
	Payment 39	P39	\$0.00	t39	0	User input (Section 1)
	Payment 40	P40	\$0.00	t40	0	User input (Section 1)
	Payment 41	P41	\$0.00	t41	0	User input (Section 1)
	Payment 42	P42	\$0.00	t42	0	User input (Section 1)
	Payment 43	P43	\$0.00	t43	0	User input (Section 1)
	Payment 44	P44	\$0.00	t44	0	User input (Section 1)
	Payment 45	P45	\$0.00	t45	0	User input (Section 1)
	Payment 46	P46	\$0.00	t46	0	User input (Section 1)
	Payment 47	P47	\$0.00	t47	0	User input (Section 1)
	Payment 48	P48	\$0.00	t48	0	User input (Section 1)
	Payment 49	P49	\$0.00	t49	0	User input (Section 1)
	Payment 50	P50	\$0.00	t50	0	User input (Section 1)
	Payment 51	P51	\$0.00	t51	0	User input (Section 1)
	Payment 52	P52	\$0.00	t52	0	User input (Section 1)
	Interest per period	i	0.81%			Calculated (Section 2)
	Periods per year	m	365			Calculated (Section 1)

[illegible]