



March 29, 2022

Maryland House Economic Matters Committee
House Office Building
6 Bladen St.
Annapolis, Maryland

RE: Support for SB 0825 (Commercial Financing Transactions - Requirements)

Dear Members of the Maryland House Economic Matters Committee:

The Responsible Business Lending Coalition (RBLC) writes in support of SB 0825, as introduced by Senator Kramer. We were pleased to see that this bill passed through the Maryland Senate on a unanimous, bipartisan vote. The bill aims to bring transparency to the small business lending marketplace through standardized disclosures, particularly disclosure of the annual percentage rate (APR.) When small business owners are empowered with clear information about their financing options, they have the agency to choose the best product for their needs.

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

As introduced, SB 0825 would bring sunshine to the commercial financing marketplace by requiring all providers to disclose APR for all small business loan products. APR is the only established metric that enables informed comparisons of the cost of capital over time and between products of different dollar amounts and term lengths. APR is the time tested rate that people know and expect because it is the legally required standard for mortgages, auto loans, credit cards, student loans and personal loans, including short-term loans.

When small businesses currently shop for financing, they are not able to make an apples-to-apples comparison across financing providers. Without standardization of disclosure requirements across lenders, small businesses are more likely to choose higher-cost products. For instance, a [research study](#) found that when asked to compare a sample short-term loan product



with a 9% “simple interest” rate to a credit card with a 21.9% interest rate, most participants in the study incorrectly guessed the short-term loan to be less expensive. [Research](#) indicates that small businesses can pay APRs of 94%, and as high as 350%, without these high rates being properly disclosed. This is why including both APR and other financing products in the legislation will better protect small businesses. What’s more, a [Federal Reserve study](#) demonstrated that Black and Hispanic-owned businesses are more likely to use “high-cost” and “non-transparent” financing, referring specifically to merchant cash advances as well as factoring products.

This bill will not limit access to capital because it does not explicitly prohibit products or providers in the marketplace. It simply requires financing companies to tell their small business customers the APR, or estimated APR, they will be charged. Private-sector and nonprofit lenders in the RBLC, as well as in the consumer financing marketplace, already disclose their rates and terms without the practice impeding their operations. If high-cost lenders lose business once they begin to transparently disclose their pricing, it will be because small businesses are saving money by identifying lower-cost financing options.

In the below appendices, we have included a document that dispels some of the common myths regarding transparent disclosure requirements along with several informational slides on the need for standardized disclosures and APR.

We ask you to support SB 0825 and urge you to do what is necessary to get this critical small business protection legislation through the Maryland House Economic Matters Committee and signed into law as soon as possible. We are happy to serve as a resource as you move forward.

Sincerely,

The Responsible Business Lending Coalition





Claims and Facts in support of Small business Truth in Lending

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

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

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

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

1. Multiple research studies published by the Federal Reserveⁱ
2. National Consumer Law Centerⁱⁱ
3. Bloomberg News editorial board (“Protect Small Businesses from Predatory Lending... The best solution would be for Congress to pass a [truth-in-lending](#) law for small business, along the lines of the rules that already exist for consumer loans.”)ⁱⁱⁱ
4. Federal Reserve Governor Lael Brainard^{iv}
5. Federal Reserve Board of Governors Community Advisory Council^v
6. The Conference of State Bank Supervisors’ Fintech Industry Advisory Panel
7. 110+ industry and nonprofit signatories and endorsers of the Responsible Business Lending Coalition’s *Small Business Borrowers Bill of Rights*^{vi}
8. A dozen member companies of the Innovative Lending Platform Association^{vii}
9. Bipartisan Policy Center^{viii}
10. Former Democratic and Republican SBA Administrators Karen Mills^{ix} and Chris Pilkerton
11. US Treasury officials^x
12. Numerous news articles (e.g. McClatchy, “Even Finance Whizzes Say It’s Impossible to Compare Online Small Business Loan Options.” June 2018)^{xi}

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

Appendix A: Claims and Facts in support of Small business Truth in Lending

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

Fact: Some MCA companies already disclose APR. Others advertise their high annualized yields to their investors, but don’t disclose these annualized percentage rates to their small business customers. Soon all revenue-based financing companies will disclose APR in California and New York. Our small businesses deserve the same transparency.

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

Fact: Several months ago, the regulations were finalized by California’s Department of Financial Protection and Innovation and submitted to the California Office of Administrative Law for review, which is scheduled to occur in several months. The New York Department of Financial services has stated that they expect their regulations to be finalized in the next few months.

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

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

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

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

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

Fact: Double dipping is described as an irresponsible practice, even among small business financing providers. See, for example, “Beware: Double Dipping!” by financing company Next.^{xvi}

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

Fact: Private-sector and nonprofit providers in the RBLC are already disclosing APR and other metrics required by the legislation, voluntarily, and it is not impeding their ability to continue operating. Consumer financing providers have had to comply with Truth-in-Lending regulations for decades and the marketplace remains vibrant and diverse. From these examples, we know that the costs of compliance are

Appendix A: Claims and Facts in support of Small business Truth in Lending

not overly burdensome for providers. The only reason that a provider would stop operating is as a natural consequence of market competition; some high-cost providers could lose customers after transparently disclosing their pricing and terms.

ⁱ Federal Reserve Board of Governors, “Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites,” Dec 2019. <https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf>

Federal Reserve Bank of Cleveland, “Alternative Lending through the eyes of ‘Mom & Pop’ Small-Business Owners,” August 2015. <https://www.clevelandfed.org/newsroom-and-events/publications/special-reports/sr-20150825-alternative-lending-through-the-eyes-of-mom-and-pop-small-business-owners.aspx>

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

Federal Reserve Bank of Atlanta, “Small Business Credit Survey: Report on Minority-Owned Firms,” Dec 2019. <https://www.fedsmba.org/medialibrary/fedsmba/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.”

ⁱⁱ See letter in Appendix B:
http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/sb_1235_support_coalition_and_rblc_comment_-_small_business_disclosures_file_no_pro_01-18.pdf

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

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

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

^{vi} <http://www.borrowersbillofrights.org/signatories.html>

^{vii} <https://innovativelending.org/>

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

^{ix} http://www.hbs.edu/faculty/Publication%20Files/17-042_30393d52-3c61-41cb-a78a-ebb3e040e55.pdf

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

^{xi} <https://www.mcclatchydc.com/news/nation-world/national/article212491199.html>

^{xii} www.consumerfinance.gov/consumer-tools/credit-cards/answers/key-terms/

^{xiii} 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/

^{xiv} See note i

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

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

Appendix B

Small Business Truth-in-Lending

The Solution to Small Businesses' Calls for
Transparent APR Disclosure Across All Types of Financing



RESPONSIBLE BUSINESS
LENDING COALITION

We are a broad coalition

Nonprofit CDFIs, for-profit lenders, fintech, racial justice, small business groups

We all agree: Small businesses deserve transparent APRs.





Federal Reserve Bank of Philadelphia President Patrick Harker

September 29, 2017

“
I hear these stories constantly, about a small business in particular getting into a situation where they **didn't quite know what they signed up for**, and then they walk into their community bank and say, 'I've gotta get out of this deal, **it's killing me.**' And so, there are good actors and bad actors...”



COVID-19 Has Made Small Business Protection More Crucial Than Ever

- Predatory lenders are taking advantage of small businesses' desperate circumstances with offers of fast cash—without disclosing APRs that can be 350% or higher.¹
- The federal Truth in Lending Act (1968) requires APR disclosure for all types of consumer financing. But it does not apply to the growing small business financing market.
- To rebuild from COVID-19, business owners must be able to access capital that is transparent in order to avoid debt traps.



¹Opportunity Fund, "Unaffordable and Unsustainable: The New Business Lending on Main Street," May 2016.

What is APR?

“ 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. ”

CFPB says

Tip: Focus on APRs. If you want to compare the cost of a payday loan to the cost of an installment loan or a credit card, focus on the APRs.

This is a typical small business financing disclosure today:

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

Should a business owner take this offer, or a 20% APR loan?

This is a common small business financing disclosure today:

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

**Not disclosed:
127% APR**

Should a business owner take this offer, or a 20% APR loan?



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Research study: “Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites,” Dec. 2019

What some financing providers (e.g. MCAs) disclose today

What they don't disclose

Table 3. Estimated APRs for select online products		
Rate advertised on website	Product details	Estimated APR equivalent
1.15 factor rate	• Total repayment amount \$59,000 • Fees: 2.5% set-up fee; \$50/month administrative fee • Term: none (assume repaid in six months) • Daily payments (assume steady payments five days/week)	Approximately 70% APR



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Research study: “Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites,” Dec. 2019

The Fed found that disclosure of “9% simple interest” (another term for “factor rate”) misled small business owners to believe a 46% APR option was less expensive than a 21.9% APR option:

The non-standard terminology also proved challenging for focus group participants trying to compare online offerings with traditional credit products. For example, when asked to compare a sample short-term loan product with a 9 percent “simple interest” rate to a credit card with a 21.9 percent interest rate, most participants incorrectly guessed the short-term loan to be less expensive.

9% simple interest
(disclosed)

- Total repayment amount \$54,500
- Fees: 3% origination fee
- Weekly payments
- Term: six-month term

Approximately 46% APR
(not disclosed)



BIPARTISAN POLICY CENTER

Main Street Matters

*Ideas for Improving Small
Business Financing*

AUGUST 2018



Republican Senator Olympia Snowe



Democratic SBA chief Karen Mills

There is bipartisan agreement:

“ There can also be confusion around some forms of small business credit, called **merchant cash advances**. These products are not classified as loans and, as such, **are not expressed in terms of an APR, making it challenging to compare with other types of credit products.** ”

Bloomberg **Opinion**

Protect Small Businesses From Predatory Lending

By Editorial Board

November 28, 2018, 6:30 AM EST

“ The **best solution** would be for Congress to pass a **truth-in-lending** law for small business, along the lines of the rules that already exist for consumer loans. ”

→ [Links to Responsible Business Lending Coalition proposal that informed this bill](#)





FEDERAL
RESERVE
BANK
of ATLANTA

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

DECEMBER
2019

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

- Hispanic-owned businesses are about 2x as likely to apply for MCAs, and
- Black-owned businesses are about 2x as likely to apply for factoring financing, compared to White-owned businesses.
- For Black and Hispanic business owners, online lenders are the second most popular source of financing, after banks.



Fed Governor Lael Brainard Speech Sept 30th, 2015

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





New York Fed President William Dudley Speech May 8th, 2015

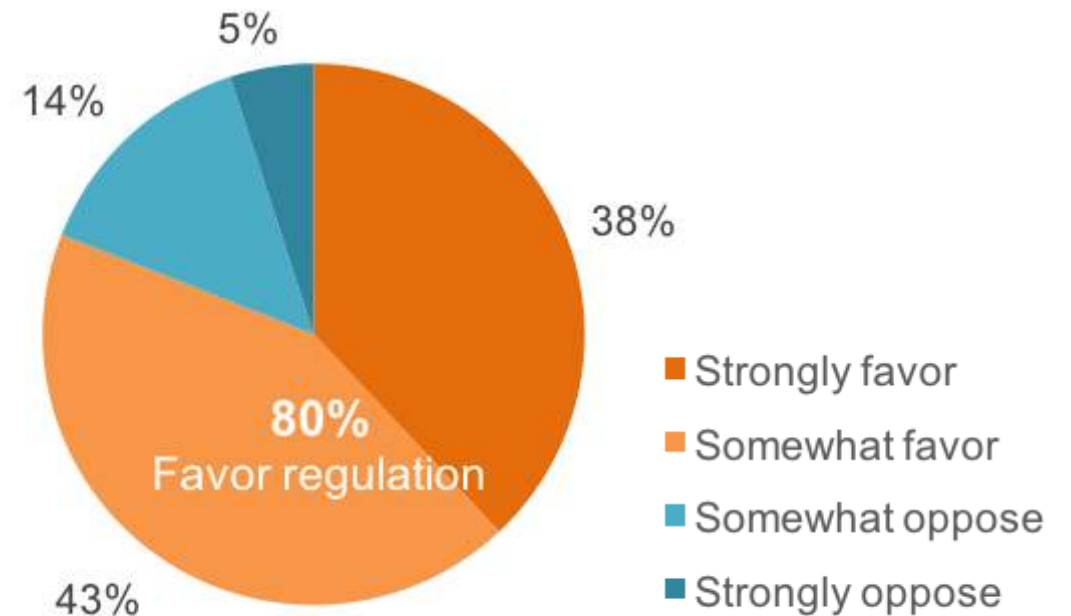
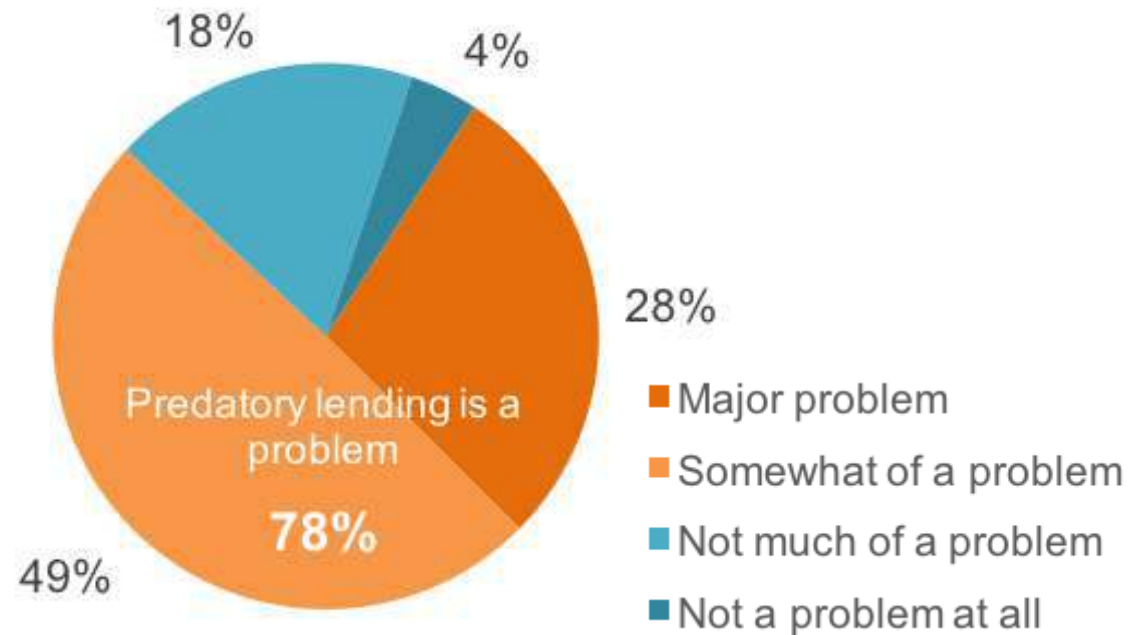


“ There are individuals who try to **take advantage of owners of new businesses** by providing them with poor advice or overcharging them for credit... It would be helpful to have **consistent standards and transparency requirements** for organizations that lend to small businesses. Such standards and requirements exist for lending to households, and I believe the same justification exists to extend these requirements to small businesses. ”



Small Business Owners Want Transparency

Poll: “An overwhelming majority of **8 in 10** small business owners reported that they are in favor of regulating online lenders to ensure interest rates and fees are clearly disclosed to borrowers.”





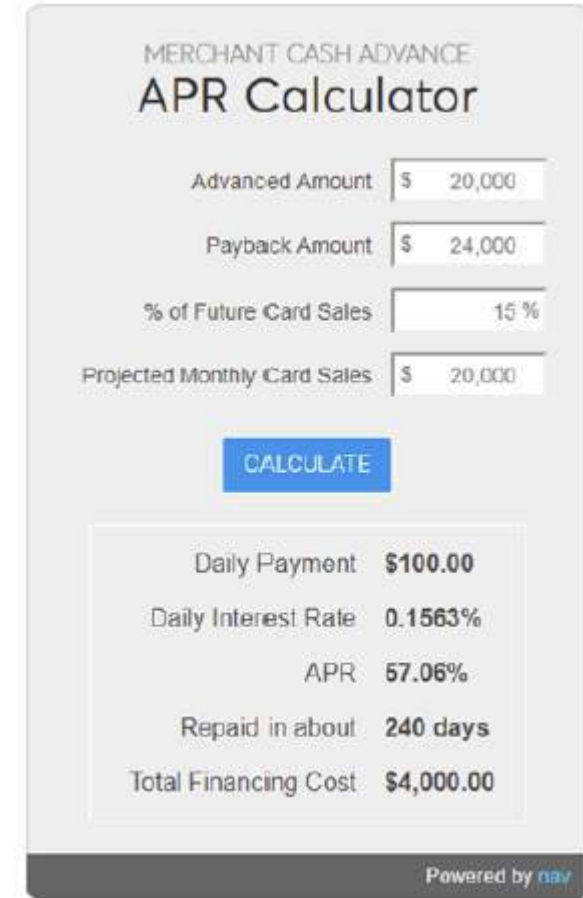
Small Business Owners Want Transparency

Poll: “65% of small businesses support extending Truth in Lending Act disclosure requirements to small business credit products.”



Can merchant cash advances (MCAs) disclose APR?

1. Yes. Some already do disclose APR.
2. Other MCAs advertise their high annualized yields to their investors, but don't disclose these annualized percentage rates to their small business customers.
3. Numerous online calculators show that it can be simple to compute APRs for MCAs.



The image shows a screenshot of a "MERCHANT CASH ADVANCE APR Calculator" interface. It features input fields for "Advanced Amount" (\$20,000), "Payback Amount" (\$24,000), "% of Future Card Sales" (15%), and "Projected Monthly Card Sales" (\$20,000). A blue "CALCULATE" button is positioned below these inputs. The results section displays: "Daily Payment \$100.00", "Daily Interest Rate 0.1563%", "APR 57.06%", "Repaid in about 240 days", and "Total Financing Cost \$4,000.00". The footer indicates it is "Powered by nav".

MERCHANT CASH ADVANCE APR Calculator	
Advanced Amount	\$ 20,000
Payback Amount	\$ 24,000
% of Future Card Sales	15 %
Projected Monthly Card Sales	\$ 20,000
CALCULATE	
Daily Payment	\$100.00
Daily Interest Rate	0.1563%
APR	57.06%
Repaid in about	240 days
Total Financing Cost	\$4,000.00
Powered by nav	

If MCAs don't want to disclose their APRs,
why isn't "factor rate" sufficient?

1. "Factor rates" are already being disclosed today. That is the status quo that needs fixing.
2. Federal Reserve research has demonstrated that "factor rates" too often misguide small businesses towards higher-rate financing.
3. "Factor rate" does not enable cost comparison between products of different term lengths, and does not include fees. APR does.

If MCAs don't want to disclose their APRs, why isn't the total cost, in dollars, sufficient?

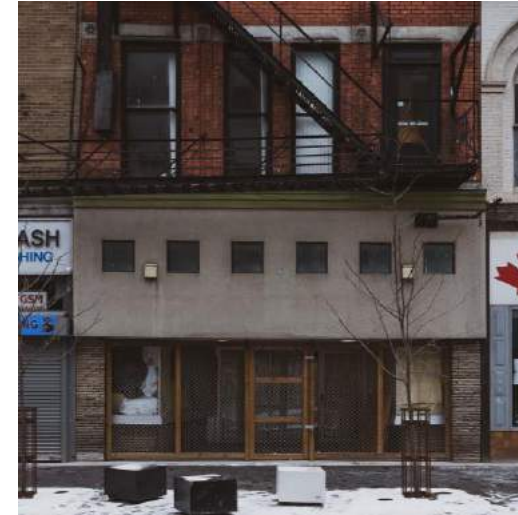
Disclosure of total cost in dollars is required in the bill. (It's labeled "finance charge," matching federal law.) But without APR, it's not sufficient because:

1. Dollar cost is already being disclosed today. It has not prevented the borrower confusion described in preceding slides.
2. Dollar cost alone does not enable comparison of the cost of financing options with different term lengths, or of different amounts. As a result, it can mislead applicants towards shorter-term, higher-rate financing.

Dollar cost is insufficient:
Is \$15,000 a lower price than \$25,000?



\$15,000
6-month lease
2,000 square feet



\$25,000
5-year lease
1,000 square feet

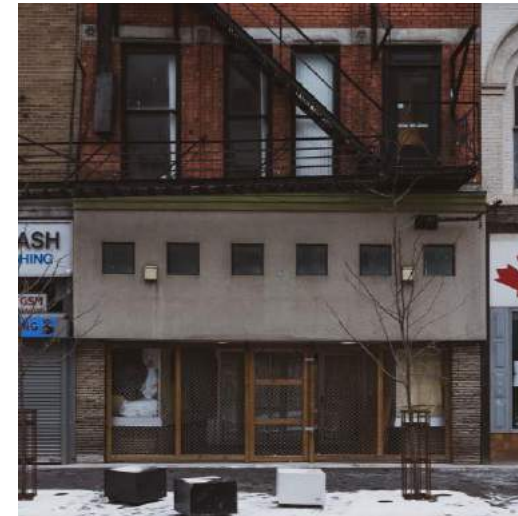
Dollar cost is insufficient:
Is \$15,000 a lower price than \$25,000?



\$15,000

6-month lease
2,000 square feet

\$15 per square foot per year



\$25,000

5-year lease
1,000 square feet

\$5 per square foot per year

If MCAs don't want to disclose their APRs, why isn't the total cost, in dollars, sufficient?

3. The dollar cost of a single transaction alone does not enable accurate comparison, because MCA customers often renew their short-term financing over and over again, in payday-like cycles of reborrowing.

According to the website of a leading MCA provider:

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

The actual decision small business owners are often making is between borrowing a 6-month MCA on an ongoing basis, or using a 3-year loan on an ongoing basis. APR enables small business owners to compare these costs on an apples-to-apples basis.

APR Calculation Formula – TILA Reg Z

$$(1) \quad 0 = -A + \frac{P_1}{(1+i)^{t_1}} + \frac{P_2}{(1+i)^{t_2}} + \dots + \frac{P_n}{(1+i)^{t_n}} \quad \text{and} \quad (2) \quad APR = i * m$$

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

APR Calculation Formulas – Spreadsheet Software

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*

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*