



January 6, 2023

Dianna Seaborn
Director, Office of Financial Assistance
U.S. Small Business Administration
409 3rd St SW
Washington, DC 20416

RE: Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization (RIN 3245-AH92)

Dear Director Seaborn:

The small business financing market is in a time of transition. Innovative approaches to lending offer the potential for more inclusive, convenient, and affordable access to capital for small businesses. At the same time, irresponsible small business lending practices have become prevalent, threatening both the stability of small businesses and opportunities to develop positive financing innovations. The Responsible Business Lending Coalition (RBLC)¹ submits this letter in response to the proposed rule issued by the Small Business Administration (SBA) that would lift the moratorium on issuing new Small Business Lending Company (SBLC) licenses and would also create a new category of SBLCs - referred to as "Mission-Based SBLCs."

We applaud the SBA's focus on innovation and inclusivity. New approaches to small business lending by providers including responsible fintechs, community development financial institutions (CDFIs), and other nontraditional lenders, as well as conventional banks, are already showing results in serving entrepreneurs in communities that have been overlooked for too long. At the same time, we are concerned that it would be devastating for small businesses if the SBA were to grant 7(a) licenses to lenders who also sell irresponsible financing.

¹ Responsible Business Lending Coalition member organizations include: Accion Opportunity Fund, the Aspen Institute, Camino Financial, Community Investment Management, Funding Circle, LendingClub, National Association for Latino Community Asset Builders, Opportunity Finance Network, and Small Business Majority.

As the SBA considers this proposed rule and others, the RBLC urges the SBA to require a lender to adhere to responsible small business financing practice standards not only on SBA loans but across all of a lender's financing operations, as a prerequisite to securing a new SBA 7(a) lending license.

In support of this central recommendation, in the following letter we share three points:

- I. Irresponsible lenders should not be given the SBA's imprimatur of legitimacy.
- II. If irresponsible lenders are given the opportunity, their SBA loans could be used as "bait" to draw small businesses into an ecosystem without safeguards to prevent high-cost, irresponsible lending.
- III. By establishing responsible lending standards, such as those adopted by signatories of the Small Business Borrowers' Bill of Rights, the SBA would join the U.S. Treasury in seeking to require that a provider demonstrate responsible small business lending practices in order to engage in the State Small Business Credit Initiative (SSBCI) and/or seek certification as a CDFI.

The RBLC is a unique coalition spanning nonprofit and for-profit lenders, investors, and small business advocates that share a commitment to innovation in small business lending and serious concerns about the rise of irresponsible small business lending. The RBLC's members came together because, regardless of differences as nonprofit and for-profits, CDFIs, fintechs, and banks, we all believe that responsible innovation can improve financing for small businesses and we hope to hasten that progress. We believe that all types of financing providers, including banks, nonbanks, fintechs, CDFIs, and others, can and should offer innovative and responsible financing that helps small businesses succeed, especially businesses in historically underserved and underbanked communities.

The RBLC members also came together out of concern about the rise of irresponsible innovation in small business lending practices. Many of the new lending practices are presented as "innovations," but in fact are adaptations of long-used irresponsible practices recognizable from the payday lending and pre-crisis subprime mortgage lending industries. The RBLC works to drive financing practices that are responsible and innovative, and we work to promote a small business financing landscape that is inclusive and built on transparency, fairness, and centering the rights of borrowers in the lending process.

The RBLC created the *Small Business Borrowers' Bill of Rights*² (BBoR) in 2015 as the first cross-sector consensus on the rights that small business owners deserve and the practices that financing providers, brokers, and lead generators should employ to uphold those rights. Since the release of the BBoR, over 100 institutions have committed to upholding these responsible lending practices. Key elements of the BBoR have been enacted into law in New York State and in California, Legislators have also introduced, or plan to introduce and pass similar bills based

² Attached in full, and available at: <http://www.borrowersbillofrights.org/bill-of-rights.html>

on the Small Business Borrowers' Bill of Rights in New Jersey, Maryland, Connecticut, North Carolina, Pennsylvania. On the national stage, members of Congress introduced a federal bill in the 117th Congress. The US Treasury Department included responsible lending provisions in the SSBCI program and in the most recent CDFI certification application, following advocacy from the RBLC and hundreds of partner organizations including small businesses, local chambers of commerce, civil rights groups, advocacy nonprofits, banks, and fintechs.

We believe the SBA can advance its goals of promoting more inclusive credit access, competition, and responsible innovation by requiring **any** lender seeking an SBA lending license to **adhere** to responsible lending practices based on those outlined in the BBoR. The BBoR is organized into the following six Rights, listed below and described in more detail in Attachment A and Attachment B:

1. The Right to Transparent Pricing and Terms
2. The Right to Non-Abusive Products
3. The Right to Responsible Underwriting
4. The Right to Fair Treatment from Brokers
5. The Right to Inclusive Credit Access
6. The Right to Fair Collections Practices

I. Irresponsible lenders should not be given the SBA's imprimatur of legitimacy

We encourage the SBA to address and seek to curtail the rise of predatory practices as it considers this proposed rule. According to the Notice, the SBLC proposal is intended to help SBA further its goal of expanding capital opportunities for underserved markets and underserved businesses that “continue to struggle to obtain financing on non-predatory terms.” In this section, we highlight six categories of irresponsible practices we believe merit the SBA's attention when considering applicants seeking an SBLC license.

I. Transparency

Some nonbank lenders offer affordable, responsible products online in a manner that demonstrates how innovation can improve the status quo and increase access to financing in a responsible manner. In contrast, there are nonbank lenders offering products that routinely charge annual percentage rates (APRs) of over 40% while never disclosing these APRs to the small business customer. For example, research by Accion Opportunity Fund (AOF) and the Woodstock Institute have identified widespread use of financing with APRs reaching over 50%, and into the triple digits.³ The small businesses borrowing at these high costs may be able to access capital at much lower prices from more responsible lenders, or even their credit card, but

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/wp-content/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. Woodstock Institute, “ANALYSIS OF BUSINESS LOAN TERMS.” https://woodstockinst.org/wp-content/uploads/2016/07/Woodstock_Analysis_of_Online_SB_Loan_Terms.pdf

have not had the opportunity to make an informed decision because the APR was not disclosed in the documents they were presented by the initial provider.

The first right presented in the BBoR, The Right to Transparent Pricing and Terms, establishes standards to address these shortcomings of transparency. Lenders that adhere to the BBoR disclose the APR, loan amount, payment amount, term, upfront or scheduled charges, collateral requirements, and prepayment charges, to provide a small business owner with the information they need to comparison shop.

APR is a crucial element for any disclosure because it is the only pricing metric that enables cost comparison across products of different term lengths, amounts, and structures. APR is known to small business owners because it is already mandated for consumer financing products under the federal Truth-in-Lending Act (TILA). Unfortunately, federal TILA protections do not extend to small business owners.

In California and New York, the RBLC worked with small business, civil rights, and advocacy groups to pass and enact commercial disclosure laws that require disclosure of the APR by nonbank financing providers. These state legislative efforts were widely supported, and generally opposed only by the financing companies that charge high APRs and did not want to disclose APRs to their small business customers.

Requiring a lender to clearly disclose APR (as prescribed in the BBoR) as a prerequisite to securing an SBA license would be consistent with the SBA's goal of increasing healthy competition among small business financing providers. The absence of transparent pricing disclosure in today's small business financing market, limits the ability of businesses to make price comparisons which means competition is often based on other terms, such as speed and ease of application process. If the SBA requires new licensees to transparently disclose prices, small business owners would be able to make informed decisions and competition would be enhanced.

2. Abusive Product Structures

The second right presented in the *BBoR* is the Right to Non-Abusive Products. Too often, high costs are paired with product structures that are not in the best interests of the small business borrower. Commonly, higher-cost, shorter-term loans are sold to a borrower with the provider expecting the funds to be re-borrowed over and over again on a long-term basis, akin to payday loan debt cycle. For example, the CEO of one prominent fintech lender celebrated in a conference keynote speech that his small business customers “take 20 loans over 4 to 5 years, 4 to 5 loans a year, every year.”⁴ If a small business is borrowing short-term 6-month loans with APRs in the high double digits four to five times a year, this suggests the product is a poor fit for the borrower and a longer-term, lower-cost product would be more appropriate. No business

⁴ deBanked, “Boiler Rooms Are Not Brands, Kabbage CEO Says,” April 2018.
<https://debanked.com/2018/04/boiler-rooms-are-not-brands-kabbage-ceo-says/>

model built on encouraging repeat use of high-cost, short-term financing to meet a long-term need deserves the support of the SBA.

The BBoR includes provisions to prevent debt traps, double-charging fees in a practice called “double dipping,” hidden prepayment charges, and the mis-marketing of products against their appropriate use, such as marketing high-cost, short-term credit for long-term use.

3. Responsible Underwriting

The third right presented in the BBoR is the Right to Responsible Underwriting. Some of the newer financing practices presented as “innovations” include underwriting approaches and payment structures that fail to align the interests of lender and borrower.

Some traditional lending structures may naturally align the interests of lenders and borrowers. If a lender is only repaid on a monthly basis and if the borrower’s revenues are insufficient to make loan payments after their necessary expenses, the lender may not get paid. The lender is exposed to risk if the small business borrower does not have the ability to repay.

In contrast, some new financing products are underwritten based on a small business’s gross revenues alone, without regard to expenses and net profitability--the basis for assessing ability to repay. These revenue-based financing products, including merchant cash advances and similarly structured loans, rely on repayment mechanisms that take payment directly from the small business’s revenue stream, such as its payments processing system, often on a daily basis.

This practice insulates the lender from repercussions that could stem from making a loan that a small business does not have the ability to repay. The lender gets access to the small business’ revenue first, before the small business has the opportunity to spend that money. If the remaining revenue is insufficient for the small business to cover rent, payroll or other necessary expenses, the lender still gets paid. This creates the potential for misaligned interests between the lender and borrower, because the lender can make money by making unaffordable loans.

The BBoR does not prohibit lenders from using merchant cash advance-style products. Rather, it requires that providers of financing products that do not align the interests of lender and borrower conduct a basic ability-to-pay analysis. This requirement is simply to calculate a debt service coverage ratio. If the debt service coverage ratio is less than 1.00, indicating that the required financing payments are larger than the small business’s gross revenues, the lender is to verify, through some form of due diligence, that the borrower can repay all of its debt and remain profitable or has a credible path to profitability.

The Right to Responsible Underwriting portion of the BBoR also addresses the importance of responsible credit reporting and the right to “right sized financing.” The BBoR calls on providers to uphold a borrower’s right to responsible credit reporting in order to help a borrower build a credit profile, facilitate a business’s ability to access credit in the future, and assist a lender in effectively underwriting a business’s next round of credit. The requirement for right-sized

financing requires lenders to solicit a small business' request for financing of a specific size, rather than automatically offering the maximum amount of credit the borrower would qualify for to entice small businesses into taking on the greatest possible debt.

4. Fair Treatment from Brokers

The fourth right presented in the BBoR is the Right to Fair Treatment from Brokers and is based on the lessons learned from the pre-2008 subprime mortgage market and how to avoid repeating or allowing the practices that lead to the widespread devastation of vulnerable homeowners. Brokers may steer small businesses into financing products that pay the brokers the highest fees. These may be more expensive, less responsible products than the small business may qualify for. These concerns are addressed by upholding a borrowers' Right to Fair Treatment from Brokers.

5. Inclusive Credit Access

The Right to Inclusive Credit Access is the fifth right of the BBoR. We applaud the SBA's focus on expanding services to small businesses in underserved communities. Responsible lending standards are even more important when products have a disproportionately greater impact on vulnerable communities. Financial inclusion must consider the quality of the products being targeted to underserved populations in the name of "innovation" and increasing "access" to underserved markets. Some of the most notorious predatory subprime mortgage lenders were once celebrated as agents of financial inclusion and innovation. The Right to Inclusive Credit Access confronts this issue in a holistic, nuanced way.

6. Fair Collection Practices

The Right to Fair Collection Practices is the sixth right of the BBoR, and it prohibits abusive confessions of judgment and requires responsible collection practices. The degree of abuses of small business borrowers in collections practices became widely known to the public in a series of articles published in Bloomberg entitled, "Sign Here to Lose Everything."⁵ For many small business owners, the news had come too late.

II. SBA loans must not be used as "bait" to draw small businesses into an ecosystem without safeguards to prevent irresponsible, high-cost financing.

An SBA 7(a) loan is an inherently responsible product under the pricing and loan structure requirements of the SBA. The SBA must not overlook the reality that a new 7(a) licensee may offer other, non-SBA financing products that pose a concern. If given a 7(a) license by the SBA, a financing company offering irresponsible, high-cost products would very likely use the potential of an SBA loan to lure small businesses into an ecosystem where they are sold high-cost financing.

⁵ Bloomberg, "Sign Here to Lose Everything," Nov 20, 2018.
<https://www.bloomberg.com/confessions-of-judgment>

This risk is demonstrated by the reference to SBA loans on the websites of some high-cost financing companies today, to draw in small business applicants. Below is a screenshot from the website of a larger merchant cash advance financing company. As you can see, above the “Get a Free Quote Today” lead generation box, “SBA Loans” are promoted alongside “Revenue Based Financing,” a term used here to refer to merchant cash advances.

The screenshot shows a website interface for a financing company. At the top, there is a dark blue navigation bar with four white icons and labels: 'Line of Credit' (with a credit card icon), 'Purchase Order Financing' (with a checkmark and dollar sign icon), 'Revenue Based Financing' (with a bar chart icon), and 'SBA Loans' (with a building icon). Below this bar is a white lead generation form titled 'Get A Free Quote Today' in green text. The form contains several input fields: 'How Much Funding Do You' and 'DBA (Business Name)' in the first row; 'Industry' and 'Use of Funds' in the second row; 'First Name' and 'Last Name' in the third row; and 'Email Address' and 'Phone number () - .' in the fourth row. The form is set against a light gray background.

Of the small businesses who fill out this form, what percentage will end up in a responsible SBA loan, and what percentage will end up in a high-cost merchant cash advance? And how many more small businesses would this merchant cash advance company be able to draw into their applicant process if they had the legitimacy of being truly licensed by the SBA?

Selling high-cost, short-term financing is more lucrative than selling SBA loans. As a result, if a high-cost lender gets an SBA license, their incentive will be to continue marketing high-cost loans. To demonstrate the higher margins available from selling high-cost financing, consider that it is common practice for brokers to be paid a 15% commission to place a small business in a high-cost, short-term advance or loan, while the commission to place the same small business in an SBA loan is likely to be just 1%. Although the SBA loan is a better product, the financial incentives would remain for financing companies to put customers into the higher-margin product. These high-cost loans could be detrimental not only to small business customers, but also potentially to the SBA portfolio. High-cost financing would be sold not only to borrowers who do not qualify for SBA, but also to SBA borrowers. If a provider of high-cost loans is given an SBA license, one would expect to see those high-cost loans offered alongside SBA products, to SBA borrowers, as bridge loans or working capital loans. The financial stress of this financing may have the potential to degrade the SBA portfolio.

III. By establishing responsible lending standards, such as those adopted by signatories of the Small Business Borrowers' Bill of Rights, the SBA would join the U.S. Treasury Department in seeking to require that a provider demonstrate that responsible small business lending practices in order to engage in SSBCI and or seek certification as a CDFI.

To build responsible lending standards into licensing processes, the SBA could incorporate standards of the Small Business Borrowers' Bill of Rights into its regulatory procedures. The U.S. Treasury Department has established some precedent by referencing responsible lending practices when developing guidance for the SSBCI and seeking information on responsible lending practices from providers seeking CDFI certification.

In 2021, the U.S. Treasury Department incorporated elements of the BBoR into the SSBCI Policy Guidelines, following the RBLC's extensive advocacy. SSBCI rules require that SSBCI-supported transactions "may not include any of the following: (1) confessions of judgment or (2) prepayment or 'double-dipping' fees," and incorporated requirements for the transparent disclosure of certain terms.⁶ The SSBCI rules also incorporated a rate cap, which the RBLC supported in the context of government-guaranteed credit but is not a requirement under the BBoR and not something we are suggesting the SBA adopt at this time. Nonetheless, the SSBCI program represents the first incorporation of the BBoR into federal lending regulations.

Late in 2022, the U.S. Treasury Department released a revised draft CDFI certification application which includes a series of questions for applicants that provide small business loan products. The revised draft asks applicants to disclose, in writing, information about the financing products offered to small businesses including whether the providers discloses the APR, total loan amount, the "periodic" payment due, and total finance charges over the life of the loan. If a financing company applying for CDFI certification answers "NO" to any of the disclosure questions, the financing company is deemed ineligible for CDFI certification.

For the SBA's review and consideration, we are submitting a copy of the Small Business Borrowers' Bill of Rights (Attachment A) as well as a copy of the BBoR Attestation Form and Worksheet for Lenders (Attachment B). The worksheet includes guidance for calculating APR as well as guidance for calculating the estimated APR for financing products without a fixed term, consistent with the requirements of the California and New York small business truth in lending laws.

We appreciate the opportunity to comment on the proposed rule and encourage the SBA to consider adapting and adopting RBLC documents for use as responsible lending standards required as a pre-condition for new licenses contemplated in this proposed rule, and to consider requiring all SBA-backed lenders to adhere to these responsible practices as well. Several RBLC member organizations have submitted their own letters in response to the proposed rule and these

⁶ U.S. Department of the Treasury State Small Business Credit Initiative Capital Program Policy Guidelines, Pg. 41, Revised December 15, 2021.
<https://home.treasury.gov/system/files/136/SSBCI-Capital-Program-Policy-Guidelines.pdf>

letters reinforce our collective request that SBA establish and enforce responsible small business financing practices.

Sincerely,

The Responsible Business Lending Coalition

Members include:

Accion Opportunity Fund

The Aspen Institute

Camino Financial

Community Investment Management

Funding Circle

LendingClub

National Association for Latino Community Asset Builders

Opportunity Finance Network

Small Business Majority



SMALL BUSINESS BORROWERS' BILL OF RIGHTS

Small Business Borrowers' Bill of Rights, 2021¹

The way small businesses borrow money is being transformed. Innovation is creating faster and easier ways to borrow and increasing access to credit in communities that have historically been underserved. However, irresponsible practices have grown as well. The transformation in small business financing that we are experiencing will achieve its potential only if it is built on transparency, fairness, and putting the rights of borrowers at the center of the lending process.² This *Small Business Borrowers' Bill of Rights* identifies six fundamental financing rights that we believe all small businesses deserve. These rights are not yet protected by law, in most cases. We encourage the entire small business financing industry to join us in upholding these rights.

1. The Right to Transparent Pricing and Terms

You have a right to see the cost and terms of any financing being offered in writing, in a form that is *clear, conspicuous, complete, and easy to compare* with other options, so that you can make the best decision for your business.

In order to protect your Right to Transparent Pricing and Terms, lenders and brokers must uphold the following practices:

- **Transparent Rate** – Disclose the Annual Percentage Rate (“APR”).³

¹ The Small Business Borrowers Bill of Rights has been updated in the December of 2020 to incorporate feedback and learnings since the previous revision in 2017. The Small Business Borrowers' Bill of Rights was first launched in August 2015.

² The term “loan” and related terms used here, such as “lending,” are intended to be interpreted in the broadest sense to refer to all business financing, including loans, lines of credit, merchant cash advances, factoring, and similar products offered and provided to U.S. small businesses. Similarly, the terms “lender” and “borrower” are intended to be interpreted in the broadest sense to include, in the case of lenders, merchant cash advance providers and credit marketplaces that facilitate loans on behalf of lenders.

³ The annual percentage rate (“APR”) is the total cost of financing, including interest, fees, and other required charges, annualized and expressed as a single percentage number. APR is the only established metric that enables informed price comparisons between products of different types, amounts, and term lengths. This is why APR has become the long-standing price metric that people are familiar with, vetted over 50 years of the Truth in Lending Act. An “Estimated APR” should be used for financing such as merchant cash advances, factoring, and similar products with variable term lengths. For a more detailed description of APR calculation, please see the *Small Business Borrowers' Bill of Rights* attestation forms.

- **Clear Comparison** – Present the following seven key terms clearly and prominently, in writing, to the borrower whenever a specific loan offer is presented or summarized for the borrower, such as in a term sheet, offer summary, or equivalent. This complete disclosure should be re-presented if the loan offer changes.

1. Loan amount, and total amount provided after deducting fees or charges
2. APR, or Estimated APR in the case of products with variable term lengths
3. Payment amount and frequency, including the actual or estimated total payment amount per month if payment frequency is other than monthly.
4. Term or estimated term
5. All upfront and scheduled charges
6. Collateral requirements
7. Any financing charge potentially due at prepayment

The *Small Business Borrowers' Bill of Rights* does not mandate a standardized form for these disclosures. Where the formatting of these disclosures is not mandated by state law, lenders may use their own designs that are consistent with the *Small Business Borrowers' Bill of Rights*.

- **Plain-English Terms** – Describe all key terms in an easy-to-understand manner. Do not, at any stage of the financing process, use percentages or the term “rate” to describe pricing in metrics that are not the actual interest rate or APR but may be reasonably mistaken for an interest rate or APR. Pricing described as a “factor rate,” “simple interest rate,” or other novel forms of percentage rates may be easily misunderstood to be interest rates or APRs, but mask that the actual interest rate or APR is much higher.

2. The Right to Non-Abusive Products

You have a right to loan products that will not trap you in an expensive cycle of re-borrowing. Lenders' profitability should come from your success, not from your failure to repay the loan according to its original terms.

In order to protect your Right to Non-Abusive Products, lenders must uphold the following practices:

- **No Debt Traps** – If the borrower is unable to repay an existing loan, extend new credit only if due diligence indicates that the borrower's situation has changed, enabling them to repay the new loan.
- **No “Double Dipping”** – Do not double-charge the borrower. When offering additional financing with a fixed repayment amount to an existing borrower, if requiring their outstanding financing from this same provider to be repaid, forgive any unpaid fixed charges on the borrower's outstanding balance.

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- **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.” Disclose (a) the potential amount of these prepayment charges and penalties in any loan offer summaries, and (b) the actual prepayment charge and penalties at the time of any prepayment. 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.
- **Appropriate Product** – Match loan product design and loan product use. If presenting a loan product as designed for one use, do not encourage borrowing behavior contrary to that use. For example, short-term products may be well suited for short term use, but not for ongoing, long-term recurring use. Long-term products with prepayment penalties may be well suited for long-term use, but not for short-term needs.
- **Pressure Free** – Allow borrowers a reasonable time to consider their loan options free from pressure or artificial timelines.
- **Fair Prepayment** – If a borrower requests to prepay or refinance a loan, provide any information required for prepayment within two business days of the borrower's request. To enable small businesses to access the most appropriate financing, the final payoff amount should not vary based on the source of funds used for payoff, funds from a third-party should be considered equivalent to funds from the borrower.
- **Responsive Complaint Management** – If a complaint is submitted requesting action or a response, provide a confirmation of receipt in writing within five days. When possible, research and resolve the complaint in a timely manner.

3. The Right to Responsible Underwriting

You have a right to work with lenders who will set you up for success, not failure. High loss rates should not be accepted by lenders simply as a cost of business to be passed on to you in the form of high rates or fees.

In order to protect your Right to Responsible Underwriting, lenders must uphold the following practices:

- **Believe in the Borrower** – Offer financing only with high confidence that the borrower can repay its *entire* debt burden without defaulting or re-borrowing.
- **Alignment of Interests** – Lenders who receive repayment directly from the borrower’s gross sales must also verify, through documents, data from third parties, and/or due diligence, that the borrower can repay all debt and remain profitable, or that it has a credible path to profitability. Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid.

- **Right-sized Financing** – Size loans to meet the borrower’s need, rather than to maximize the lender’s or broker/lead generator’s revenue. Seek to offer the borrower the size of loan that they need, rather than offering the largest amount they could qualify for.
- **Responsible Credit Reporting** – Report loan repayment information to major credit bureaus and consult credit data when underwriting a loan. Such reporting enables other lenders to responsibly underwrite the borrower and helps the borrower build a credit profile that may facilitate access to more affordable loans in the future. Lenders must inform the borrower and any guarantors if they intend to report loan repayment performance to guarantors’ credit bureaus only in certain circumstances, such as after a default.

4. The Right to Fair Treatment from Brokers and Lead Generators

You have a right to transparency, honesty, and impartiality in all of your interactions with brokers and lead generators.

In order to protect your Right to Fair Treatment from Brokers, brokers and lead generators must offer:

- **Transparent Loan Options** – Disclose all loan options for which the borrower qualifies through the broker or lead generator’s services, indicating the lowest APR option.
- **Transparent Compensation** – Disclose all compensation paid to the broker or lead generator, by either the lender or borrower, in connection with each loan offer presented.
- **Disclosure of Broker Incentives** – Disclose the broker’s or lead generator’s fee structure and any other financial incentives they have, including whether they receive higher fees for brokering certain loans. Brokers or lead generators who have not legally agreed to act in the best interests of the potential borrower may not state they are acting in the best interest of the potential borrower.
- **No Fees for Failure** – No brokering or related fees can be charged to the potential borrower if the broker or lead generator is unable to find them a loan and if the borrower does not accept a loan secured through their services.
- **Responsive Complaint Management** – If a complaint is submitted requesting action or a response, provide a confirmation of receipt in writing within five days. When possible, research and resolve the complaint in a timely manner.

5. The Right to Inclusive Credit Access

You have a right to fair and equal treatment when seeking a loan.

In order to protect your Right to Inclusive Credit Access, lenders and brokers must uphold:

- **Non-Discrimination** – Uphold the letter and intent of fair lending laws, including the Equal Credit Opportunity Act. Do not discriminate against small business owners on the basis of race, color, religion, national origin, gender identity, marital status, age, or sexual orientation.

6. The Right to Fair Collection Practices

You have a right to be treated fairly and respectfully throughout a collections process. Collections on defaulted loans should not be used by lenders as a primary source of repayment.

In order to protect your Right to Fair Collections Practices, lenders must uphold the following practices:

- **Fair Treatment** – Abide by the intent of the Fair Debt Collection Practices Act and provide borrowers similar protections as described in that Act.
- **Fair Agreements** – Do not utilize confessions of judgement or equivalent legal agreements by which a borrower preemptively agrees to lose disputes with the lender.⁴
- **Responsible Oversight** – Diligently vet and oversee the collections practices of third-party collectors and debt buyers. Do not work with collectors or debt buyers who fail to treat borrowers fairly.
- **Accurate Information** – Transmit accurate, current, and complete information about the loan to third-party collectors and debt buyers.

⁴ Lenders currently utilizing confessions of judgement (COJ) are granted 180 days from the date of signing their attestation form to comply with the COJ prohibition. A limited exception to the prohibition is provided for certain Small Business Administration (SBA) loans, for which SBA requires a COJ clause (borrowers based in MD, VA, and PA). The Responsible Business Lending Coalition urges the SBA to remove all COJ requirements, both optional and mandated, from SBA loan documents moving forward.



Small Business Borrowers' Bill of Rights

Attestation Form and Attestation Worksheet for Lenders and Marketplaces, 2021¹

In order for a lender or marketplace to become a signatory of the Small Business Borrowers' Bill of Rights, its chief executive must attest that it abides by all practices described in the Small Business Borrowers' Bill of Rights by completing both the **Attestation Form** and the **Attestation Worksheet** below, and, if requested, promptly provide additional documentation evidencing compliance with any or all of the enumerated practices (the "**Supporting Documents**"). The Supporting Documents shall be in a form acceptable to the Responsible Business Lending Coalition. Once completed, the Attestation Form, Attestation Worksheet and, if applicable, any Supporting Documents should be emailed to bbor@borrowersbillofrights.org.

¹ The Small Business Borrowers Bill of Rights has been updated in December, 2020 to incorporate feedback and learning since the previous revision in 2017. The Small Business Borrowers' Bill of Rights was first launched in August 2015.

Small Business Borrowers' Bill of Rights (2021)

Attestation Form for Lenders and Credit Marketplaces

Summary of Attestation

By checking the boxes below, I affirm that my organization actively supports and adheres to the *Small Business Borrowers' Bill of Rights* and abides by all of the practices described in the attached Attestation Worksheet:

- ☐ The Right to Transparent Pricing and Terms
- ☐ The Right to Non-Abusive Products
- ☐ The Right to Responsible Underwriting
- ☐ The Right to Inclusive Credit Access
- ☐ The Right to Fair Collections Practices

Note: You must be able to truthfully check all five boxes to be deemed a Signatory of the Small Business Borrowers' Bill of Rights and thereby eligible to have your organization's logo appear on the Small Business Borrowers' Bill of Rights website, www.BorrowersBillofRights.org.

Terms of this Attestation

- a. I have read and understand the *Small Business Borrowers' Bill of Rights*.
- b. I have completed the attached Attestation Worksheet, indicating in writing that my organization abides by *all* of the enumerated practices.
- c. If requested by the Responsible Business Lending Coalition, I have provided or will promptly provide (as the case may be) all Supporting Documents (as such term is defined on the cover page of this Attestation Form) in a form acceptable to the Responsible Business Lending Coalition.
- d. By completing this Attestation Form and attesting that my organization abides by *all* of the enumerated practices in the attached Attestation Worksheet, I consent to having this Attestation Form and my organization's logo posted on the Small Business Borrowers' Bill of Rights Website.
- e. I understand that this Attestation Form and my organization's logo may be removed from the Small Business Borrowers' Bill of Rights website if (i) my organization does not complete and submit a satisfactory updated Attestation Form within one calendar year from the date of my signature below, and (ii) each successive year thereafter, or (iii) if my organization ceases to abide by this Attestation or (iv) if, after receiving a request from the Responsible Business Lending Coalition, my organization fails to promptly provide any Supporting Documents or provides inadequate Supporting Documents (as applicable).
- f. I agree, on behalf of my organization, that my organization assents to and will be bound by the Terms of Use for the Small Business Borrowers' Bill of Rights website.
- g. Anyone with questions for my organization regarding this Attestation Form completed by my organization can contact the following individual (include name, title, email address, and phone number): _____
- h. I attest that the information above is accurate and represents the standard practices for all financing products and services offered through my organization to small businesses. Furthermore, I hereby certify that I am authorized to sign this Attestation Form on behalf of my organization.

Organization Name

Chief Executive Signature

Chief Executive Name

Date

Small Business Borrowers' Bill of Rights, 2021

Attestation Worksheet for Lenders and Marketplaces

In order for an organization to become a signatory it must attest that it abides by the Small Business Borrowers' Bill of Rights by having its chief executive complete this worksheet by checking each box below indicating that his or her organization abides by each of the practices set forth below.²

Questions regarding the form can be directed to bbor@borrowersbillofrights.org.

The Right to Transparent Pricing and Terms

☐ **Transparent Rate**

Disclose the Annual Percentage Rate (APR), or Estimated APR in the case of variable-term financing.

APR is the total cost of financing, including interest, fees, and other required charges, annualized and expressed as a single percentage number. This enables apples-to-apples price comparison between financing of different amounts and term lengths.

APR disclosure for small business financing may be required under state laws including California's SB 1235 and New York's Small Business Truth in Lending Act, which are based on the federal Truth in Lending Act. Where these state laws do not apply, APR should be calculated according to the Truth in Lending Act, as implemented in Regulation Z §1026.22, including the following guidelines:

- When disclosed, APR should not be of lesser prominence than any other term in the disclosure.
- For merchant cash advances and other sales-based financing, the estimated APR, payment amounts, and term disclosed should be calculated based on the projections for repayment that are used in underwriting the financing.
- For lines of credit and similar open-ended financing, APR should be calculated to include fees by assuming that the borrower draws the full amount on the origination date, and makes the minimum payments required.
- For factoring financing, the projected timing of payment should be established by the due date of the accounts receivable factored or based on data for the historical payment behavior of the firm named on the accounts receivable factored.
- If payment amounts vary, APR should be calculated based on the projected payment amounts, rather than an average payment amount.
- If a rate is promotional or introductory, the term sheet or its equivalent should clearly state this, and how the rate could change in the future.
- For assistance in calculating APR using standard formulas in programs such as Microsoft Excel, please see Appendix: "Sample APR Calculation Formulas."

² The term "loan" and related terms used here such as "lending" are intended to be interpreted in the broadest sense possible so as to include loans, lines of credit, merchant cash advances, and similar products offered and provided to U.S. small businesses, whether or not such credit products are characterized legally or otherwise as loans. Similarly, the terms "lender" and "borrower" are intended to be interpreted in the broadest sense possible so as to include, in the case of lenders, credit marketplaces that facilitate loans on behalf of lenders, cash advance providers, factors, and all manner of persons providing financing to U.S. small businesses or evaluating the creditworthiness of such small businesses in connection with providing financing, and, in the case of borrowers, all U.S. small businesses who seek or obtain financing.

☐ **Clear Comparison**

Present the following seven key terms listed clearly and prominently, in writing, to the borrower whenever a specific loan offer is presented or summarized for the borrower, such as in a term sheet, offer summary, or equivalent:

1. Loan amount, and total amount provided after deducting fees or charges
2. APR or Estimated APR
3. Payment amount and frequency, including the actual or estimated total payment amount per month if payment frequency is other than monthly
4. Term or estimated term
5. All upfront and scheduled charges
6. Collateral requirements
7. Any financing charge potentially due at prepayment

The Small Business Borrowers' Bill of Rights does not mandate a standardized form for these disclosures. Where the formatting of these disclosures is not mandated by state law, lenders may use their own designs that include these seven key terms, as described here in the Transparent Rate and Clear Comparison sections.

☐ I have included in this Attestation, as a Supporting Document, a screenshot or other document demonstrating disclosure of these seven terms to borrowers in the manner described here in the Transparent Rate, Clear Comparison, and Plain-English Terms sections.

☐ I have included in this Attestation, as a Supporting Document, a short description of when the screenshot or other disclosure documents I have included are presented to the borrower, and when any other summaries of loan terms are disclosed.

☐ **Plain-English Terms**

Describe all key terms in an easy-to-understand manner. Do not, at any stage of the financing process, use percentages or the term "rate" to describe pricing metrics that are not the actual interest rate or APR. Pricing described as a "factor rate," "simple interest rate," or other novel forms of percentage rates may be easily misunderstood to be interest rates or APRs, but mask that the actual interest rate or APR is much higher.

The Right to Non-Abusive Products

☐ **No Debt Traps**

If a borrower is unable to repay an existing loan, extend new credit only if due diligence indicates that the borrower's situation has changed, enabling them to repay a new loan.³

☐ **No "Double Dipping"**

Do not double-charge the borrower. When offering additional financing with a fixed-fee as the

³ Government loan programs, such as the PPP, with defined underwriting approaches are also compliant.

primary financing charge to an existing borrower, if requiring their outstanding financing to be repaid forgive any unpaid fixed charges on the borrower's outstanding balance.

☐ **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." Disclose any additional charges of fees added in the case of prepayment as "prepayment penalties."
- Disclose (a) the potential amount of these prepayment charges and penalties in any loan offer summaries, and (b) the actual prepayment charges and penalties at the time of any prepayment.
- 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.

☐ **Appropriate Product**

Match loan product design and loan product use. If presenting a loan product as designed for one use, do not encourage borrowing behavior contrary to that use. Short-term products may be well suited for short term use, but not for long-term recurring use. Long-term products with prepayment penalties may be well suited for long-term use, but not for short-term needs.

☐ **Pressure Free**

Allow potential borrowers to consider their credit options free from pressure or artificial timelines.

☐ **Fair Prepayment**

- If a borrower requests to prepay or refinance a loan, provide any information required for the prepayment within two business days of the borrower's request.
- Final payoff amount should not vary based on the source of funds used for payoff, funds from a third-party should be considered equivalent to funds from the borrower.

☐ **Responsive Complaint Management**

If a borrower complaint is submitted requesting action or a response, provide a confirmation of receipt in writing within five days when possible, and research and resolve the issue in a timely manner.

The Right to Responsible Underwriting

☐ **Believe in the Borrower**

Offer financing only with high confidence that the borrower can repay its *entire* debt burden without defaulting or re-borrowing.

☐ **Alignment of Interests**

Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid. If the lender receives repayment directly the borrower's gross sales (i.e. credit card or payments processing or daily payments) before the borrower has the opportunity to pay for their required operating expenses, the lender must also verify, through documents, data from third parties,

and/or due diligence, that the borrower can repay all debt and remain profitable (i.e. a debt service coverage ratio of greater than 1.00), or that it has a credible path to profitability.

☐ **Right-sized Financing**

Size loans to meet the borrower's need, rather than to maximize the lender's or broker/lead generator's revenue. Seek to offer the borrower the size of loan that they need, rather than automatically offering the maximum amount they qualify for.

☐ **Responsible Credit Reporting**

Report loan repayment information to major credit bureaus and consult credit data when underwriting a loan. Such reporting enables other lenders to responsibly underwrite the borrower and helps the borrower build a credit profile that may facilitate access to more affordable loans in the future. Lenders must inform the borrower and any guarantors if they intend to report loan repayment performance to guarantors' credit bureaus only in certain circumstances, such as after a default.

The Right to Inclusive Credit Access

☐ **Non-Discrimination**

Uphold the letter and intent of fair lending laws, including the Equal Credit Opportunity Act. Do not discriminate against small business owners on the basis of race, color, religion, national origin, gender identity, marital status, age, sexual orientation.

The Right to Fair Collection Practices

☐ **Fair Treatment**

Abide by the letter and intent of the Fair Debt Collection Practices Act and provide borrowers similar protections as described in that Act.

☐ **Fair Agreements**

Do not utilize confessions of judgement or equivalent legal agreements by which a borrower preemptively agrees to lose disputes with the lender.⁴

☐ **Responsible Oversight**

- Diligently vet and oversee the collections practices of third-party collectors and debt buyers.
- Do not work with collectors or debt buyers who fail to treat borrowers fairly.

☐ **Accurate Information**

Transmit accurate, current, and complete information about the loan to third-party collectors and debt buyers.

⁴ Lenders currently utilizing confessions of judgement (COJ) are granted 180 days from the date of signing this attestation form to comply with the COJ prohibition. A limited exception to the prohibition is provided for certain Small Business Administration (SBA) loans, for which SBA requires a COJ clause (borrowers based in MD, VA, and PA). The Responsible Business Lending Coalition urges the SBA to remove all COJ requirements, both optional and mandated, from SBA loan documents moving forward.

Appendix: Sample APR Calculation Formulas

APR calculation can be made simple by using standard formulas in common spreadsheet software programs. If used correctly, the following formulas in Microsoft Excel or Google Sheets can calculate APR for loans, merchant cash advances, lines of credit, factoring, and other types of financing, consistent with the Truth in Lending Act formulas in Regulation Z. Other formulas and calculators not shown here also calculate APR accurately; the formulas below are provided as one resource. To confirm that any specific application of these formulas complies with legal requirements, please consult with legal counsel.

1. For financing products with payments of equal amounts paid at equal intervals

This may be appropriate for most loans, lines of credit, and merchant cash advances with flat sales projections and payments made daily, weekly, bi-weekly, or monthly.

*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 payments of differing amounts paid at equal intervals

This may be appropriate for loans with scheduled payments of different amounts, or for merchant cash advances considering sales projections that rise or fall over the payment period and with payments made daily, weekly, bi-weekly, monthly. It can also be used to include periods when charges are compounded but no payment is made.

This formula may be used for standard factoring financing by including the amount disbursed to the small business in the first cell, followed by cells with values of zero for each period in which charges are compounded but no payment is made, and a final payment cell when the invoice is paid representing the value of the invoice minus any amount not refunded to the small business.

*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 payments in each subsequent payment period as negative numbers) * Number of payment periods in one year to annualize*

3. For financing products paid at irregular intervals

This may be appropriate for financing paid on weekdays only, skipping weekends, for example.

*APR = ((XIRR (select a series of cells in two columns with the first column indicating the flow of payments, with the disbursed amount in the first cell as a positive number and payments back to the financing provider in subsequent cells as negative numbers, and the second column indicating the corresponding dates of each disbursement or payment) +1)^(1/365)-1)*365*