SMALL BUSINESS BORROWERS' BILL OF RIGHTS

# Small Business Borrowers' Bill of Rights: Attestation Form & Worksheet

for Lenders and Marketplaces

RESPONSIBLE BUSINESS LENDING COALITION

Responsible Business Lending Coalition · borrowersbillofrights.org · bbor@borrowersbillofrights.org

SMALL BUSINESS BORROWERS' BILL OF RIGHTS

# How to Become a Signatory of the Small Business Borrowers' Bill of Rights

The *Small Business Borrowers' Bill of Rights* is a set of industry standards for responsible small business financing. It was developed as a consensus between the small business groups, for-profit and nonprofit lenders, and advocacy groups that make up the Responsible Business Lending Coalition. Over 100 organizations have signed on to the *Small Business Borrowers' Bill of Rights*, and are posted publicly here: https://www.borrowersbillofrights.org/who-we-are.

Lenders and credit marketplaces can become Signatories of the S*mall Business Borrowers' Bill of Rights* by attesting that they abide by the practice standards it describes, using the two forms on the following pages:

1. On the **Attestation Form**, an organization attests that it upholds the *Small Business Borrowers' Bill of Rights* and gives permission to be identified as a Signatory. This form is signed by the organization's chief executive.

2. On the **Attestation Worksheet**, an organization confirms that it upholds each specific responsible practice of the *Small Business Borrowers' Bill of Rights* by checking off each one. Additionally, it requires inclusion of two supporting documents:

    i) A screenshot or copy of the way the organization discloses the price and terms of a financing offer, demonstrating that it includes all of the elements described in the "Right to Transparent Pricing and Terms" section of the *Small Business Borrowers' Bill of Rights*.

    ii) A short description of when this disclosure is provided to applicants, and when any other summaries of loan terms are disclosed.

Once completed, the Attestation Form and Attestation Worksheet, including these supporting documents, should be emailed to info@borrowersbillofrights.org. The Responsible Business Lending Coalition is glad to answer any questions you may have on a confidential basis, and looks forward to welcoming you as a Signatory of the *Small Business Borrowers' Bill of Rights!*

SMALL BUSINESS BORROWERS' BILL OF RIGHTS

# Small Business Borrowers' Bill of Rights: Attestation Form

**for Lenders and Credit Marketplaces**[1]

## SUMMARY OF ATTESTATION

I affirm that my organization upholds each of the practices of the *Small Business Business Borrowers' Bill of Rights* described in the attached Attestation Worksheet by checking the boxes below:

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

By truthfully checking all five boxes, an organization is eligible to be deemed a Signatory of the *Small Business Borrowers' Bill of Rights* and have its logo displayed on the Responsible Business Lending Coalition website, borrowersbillofrights.org.

## TERMS OF THIS ATTESTATION

a. I have read and understand the *Small Business Borrowers' Bill of Rights*, described in the Attestation Worksheet attached.

b. I have attached a completed Attestation Worksheet, and attest that my organization abides by each of the enumerated practices of the *Small Business Borrowers' Bill of Rights* for all financing products and services we offer to small businesses, as our standard practice.

c. I consent to having this Attestation Form and my organization's logo posted on the *Small Business Borrowers' Bill of Rights* Website.

d. I understand that my organization's status as a Signatory of the *Small Business Borrowers' Bill of Rights* can be revoked 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.

e. 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).

_____

f. I am authorized to sign this Attestation Form of behalf of my organization.

_____ _____

**Organization Name** **Date**

_____ _____

**Chief Executive Name** **Chief Executive Signature**

(Click to e-sign in Adobe. Other signature methods also accepted.)

[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

# Small Business Borrowers' Bill of Rights: Attestation Worksheet

**for Lenders and Credit Marketplaces**

To complete this Attestation Worksheet, check each box that accurately describes the standard of practice for all financing products and services your organization provides to small businesses. Organizations that attest to abiding by each of the practices below[2], and submit a completed Attestation Form and Attestation Worksheet, are eligible to be recognized as Signatories of the *Small Business Borrowers' Bill of Rights* by the Responsible Business Lending Coalition. Questions can be directed to info@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.[3]

☐ **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.

[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.

[3] APR disclosure for small business financing are 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."

- ☐ 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 use pricing metrics that may be easily misinterpreted to be an annual interest rate or APR. Such metrics can have the effect of masking potentially higher prices and misguiding small businesses into unnecessarily expensive financing.

Examples of potentially misleading pricing metrics include interest rates that are not annualized (such as a daily "interest rate," or using 'simple interest' to describe a metric that isn't an annualized interest rate), and metrics quoted as a percentage and describes as a "rate" that are not an annual interest rate or APR (such as a "factor rate" or "fee rate").

## THE RIGHT TO SAFE 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.[4]

☐ **No "Double Dipping"**
Do not double-charge the borrower. When offering additional financing with a fixed-fee as the 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.[5]

☐ **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.

[4] Government loan programs, such as the PPP, with defined underwriting approaches are also compliant.
[5] For a description of 'double dipping," see video here.

SMALL BUSINESS BORROWERS'
# BILL OF RIGHTS

- [ ] **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.[6]

## 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.

[6] Certain exemptions to the credit reporting requirement are granted on a case-by-case basis. Exemptions would be temporary and reviewed on a case-by-case basis. If you wish to request an exemption, please include a description of the reasons your organization is unable to report loan repayment information to credit bureaus when submitting your attestation form.

SMALL BUSINESS BORROWERS'
BILL OF RIGHTS

## 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.[7]

☐ **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.

[7] 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.

SMALL BUSINESS BORROWERS' BILL OF RIGHTS

## 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 may 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*