To apply the Truth in Lending Act to small business financing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November 18, 2021

Ms. Velázquez (for herself, Mr. Perlmutter, and Ms. Waters) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To apply the Truth in Lending Act to small business financing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Lending Disclosure Act of 2021”.

SEC. 2. APPLICATION OF THE TRUTH IN LENDING TO SMALL BUSINESS FINANCING.

(a) IN GENERAL.—The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:


"CHAPTER 6—SMALL BUSINESS
FINANCING

§ 191. Definitions

In this chapter:

(1) Closed-end commercial credit.—The term ‘closed-end commercial credit’—

(A) means a closed-end extension of credit, secured or unsecured, including financing
with an established principal amount and including equipment financing that does not meet the definition of a lease under the Uniform Commercial Code (U.C.C.—§ 2A–103(j)) the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes; and

(B) includes financing with an established principal amount and duration.

(2) Consumer financial product or service.—The term ‘consumer financial product or service’ has the meaning given that term under section 1002 of the Consumer Financial Protection Act of 2010.
“(3) DIRECTOR.—The term ‘Director’ means the Director of the Bureau.

“(4) FACTORING.—The term ‘factoring’ means a transaction that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment held by a recipient for goods the recipient has supplied or services the recipient has rendered that have been ordered but for which payment has not yet been made.

“(5) FINANCE CHARGE.—

“(A) IN GENERAL.—The term ‘finance charge’ means the cost of financing as a dollar amount, and includes any charge payable directly or indirectly by the recipient of the financing and imposed directly or indirectly by the provider of the financing as an incident to or a condition of the extension of financing.

“(B) CALCULATION IN OPEN-END COMMERCIAL CREDIT PLANS.—In any open-end commercial credit plan, the finance charge shall be computed assuming the maximum amount of credit available to the recipient, in each case, is drawn and repaid at the minimum rate.

“(C) CALCULATION IN FACTORING TRANSACTIONS.—In any factoring transaction, the fi-
nance charge shall include the discount taken on the face value of the accounts receivable.

“(D) Calculation in Lease Financing Transactions.—In any lease financing transaction, the finance charge shall include the sum of the lease payments and, if there is a fixed-price purchase option or a purchase option with a price that can be calculated at the time of disclosure, the purchase price listed in the contract that the lessee may pay to acquire the leased goods at the end of the lease, minus—

“(i) if the finance company selects, manufactures, or supplies the goods to be leased, the price that the finance company would sell the goods in a cash transaction; or

“(ii) if the finance company does not select, manufacture, or supply the goods to be leased, the price the finance company will pay to acquire the property to be leased.

“(E) Inclusion of Certain Prepayment Charges.—

“(i) In General.—If, as a condition of obtaining the offered commercial finance-
ing the provider requires the recipient to pay off the balance of an existing loan or advance from the same provider, any pre-payment charge or penalty required to be paid on the existing financing shall be included as a financing charge.

“(ii) Treatment when repayment amount is calculated as a fixed amount.—For purposes of clause (i), for financing for which the total repayment amount is calculated as a fixed amount, the prepayment charge is equal to the original finance charge multiplied by the required prepayment amount as a percentage of the total repayment amount, minus any portion of the total repayment amount forgiven by the provider at the time of prepayment.

“(6) Open-end commercial credit plan.—The term ‘open-end commercial credit plan’ means any small business financing provided by a person under a plan in which the person reasonably contemplates repeat transactions, which prescribes the terms of such transactions, and which provides for
a finance charge which may be computed from time
to time on the outstanding unpaid balance.

“(7) PROVIDER.—The term ‘provider’ mean a
person who offers or provides small business financ-
ing.

“(8) RECIPIENT.—The term ‘recipient’ means a
person who is presented an offer of small business
financing.

“(9) SALES-BASED FINANCING.—The term
‘sales-based financing’—

“(A) means a transaction where there is
an extension of financing to a recipient that is
repaid by the recipient, over time, as a percent-
age of sales or revenue, in which the payment
amount may increase or decrease according to
the volume of sales made or revenue received by
the recipient; and

“(B) includes transactions with a ‘true-up
mechanism’.

“(10) SMALL BUSINESS.—The term ‘small busi-
ness’ has the meaning given the term ‘small-business
concern’ under section 3 of the Small Business Act

“(11) SMALL BUSINESS FINANCING.—The term
‘small business financing’—

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“(A) means any line of credit, closed-end commercial credit, sales-based financing, or other non-equity obligation or alleged obligation of a partnership, corporation, cooperative, association, sole proprietorship, or other entity that is $2,500,000 or less; and

“(B) does not include any obligation or alleged obligation of an individual that is primarily for personal, family, or household purposes.

“(12) SPECIFIC OFFER.—The term ‘specific offer’ means the specific terms of small business financing, including price or amount, that is quoted to a recipient, based on information obtained from, or about the recipient, which, if accepted by a recipient, shall be binding on the provider, as applicable, subject to any specific requirements stated in such terms.

“§192. Application of this title to small business financing

“(a) IN GENERAL.—This title shall apply to small business financing made to a small business to the same extent as this title applies to extensions of credit made to a consumer.
“(b) RULEMAKING.—The Director shall issue such rules as may be required to carry out this chapter.

“(c) BUREAU AUTHORITY.—For purposes of carrying out this chapter and other Federal laws, including the Consumer Financial Protection Act of 2010, the Bureau shall have the same authority with respect to small business financing as the Bureau has with respect to consumer financial products and services.

“§ 193. Additional disclosures

“(a) IN GENERAL.—Any provider offering small business financing to a small business shall disclose the following pieces of information to a recipient at the time of extending a specific offer for small business financing:

“(1) FINANCING AMOUNT.—The total amount to be paid to the small business, taking into account all fees and charges to be withheld at disbursement.

“(2) ANNUAL PERCENTAGE RATE.—

“(A) CLOSED-END COMMERCIAL CREDIT.—With respect to closed-end commercial credit, the annual percentage rate, using only the words ‘annual percentage rate’ or the abbreviation ‘APR’, expressed as a yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient.
“(B) OPEN-END COMMERCIAL CREDIT
PLANS.—With respect to open-end commercial
credit plans, the annual percentage rate, using
only the words ‘annual percentage rate’ or the
abbreviation ‘APR’, expressed as a nominal
yearly rate, inclusive of any fees and finance
charges that cannot be avoided by a recipient,
based on the maximum amount of credit avail-
able to the recipient and the term resulting
from making the minimum required payments
term as disclosed.

“(C) SALES-BASED FINANCING.—

“(i) IN GENERAL.—With respect to
sales-based financing, the estimated annual
percentage rate, using the words ‘annual
percentage rate’ or the abbreviation ‘APR’,
expressed as a yearly rate, inclusive of any
fees and finance charges, based on the esti-
mated term of repayment and the pro-
jected periodic payment amounts.

“(ii) CALCULATION OF CERTAIN PAY-
MENT AMOUNTS.—The estimated term of
repayment and the projected periodic pay-
ment amounts shall be calculated based on
the projection of the recipient’s sales, called the projected sales volume.

“(iii) Calculation of projected sales volumes.—For purposes of clause (ii), the projected sales volume may be calculated—

“(I) according to a method defined by the Director based on the recipient’s historical sales volume over a defined period of time that is used for all sales-based financing transactions by that provider; or

“(II) by another method defined by the provider and approved by the Director, with ongoing monitoring by the Director for accuracy based on a comparison of the annual percentage rate as disclosed to the recipient and as calculated retrospectively upon repayment of the financing.

“(D) Factoring.—

“(i) In general.—With respect to factoring, the estimated annual percentage rate, using that term.
“(ii) CALCULATION.—To calculate the estimated annual percentage rate under clause (i)—

“(I) the purchase amount shall be considered the financing amount;

“(II) the purchase amount minus the total cost of financing shall be considered the payment amount; and

“(III) the term is established by the payment due date of the receivables.

“(iii) ALTERNATE METHOD TO ESTIMATE TERM.—Notwithstanding clause (ii)(III), a provider may estimate the term for a factoring transaction as the average payment period, its historical data over a period not to exceed the previous twelve months, concerning payment invoices paid by the party owing the accounts receivable in question.

“(3) PAYMENT AMOUNT.—With respect to small business financing other than factoring—

“(A) for payment amounts that are fixed—

“(i) the payment amounts and frequency (e.g., daily, weekly, monthly); and
“(ii) if the term is longer than one month and payment frequency is other than monthly, the average total monthly payment amount; or

“(B) for payment amounts that are variable—

“(i) a full payment schedule or a description of the method used to calculate the amounts and frequency of payments; and

“(ii) if the term is longer than one month, the estimated average total monthly payment amount.

“(4) TERM.—For financing other than factoring, the term of the small business financing, either in months or in years, or, if the term is not fixed, the estimated term, calculated using the same assumptions used to calculate the estimated annual percentage rate.

“(5) FINANCE CHARGE.—The finance charge of the small business financing, broken down to show what expenses and fees are included in the finance charge.

“(6) PREPAYMENT COST OR SAVINGS.—In the event that a recipient elects to pay off or refinance
the small business financing prior to full repayment, the provider must disclose—

“(A) whether the recipient would be required to pay any finance charges other than interest accrued since the recipient’s last payment;

“(B) if the recipient is required to pay the finance charges described under subparagraph (A), the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

“(C) whether the recipient would be required to pay any additional fees not already included in the finance charge.

“(7) COLLATERAL REQUIREMENTS.—Any collateral requirement that will be imposed on the small business in connection with the small business financing.

“(b) FORM OF DISCLOSURES.—

“(1) IN GENERAL.—Disclosures made pursuant to this section shall be in writing, at the time a specific offer is made, and in a manner that is clear, conspicuous, complete, and allows the small business to compare the range of small business financing options that the small business may be considering.
“(2) Prominence of Disclosures.—In making any disclosure pursuant to this section, the disclosures required under paragraphs (1), (2), and (3) of subsection (a) shall be displayed most prominently.

“§ 194. Restrictions on double-dipping

“When a lender of small business financing refines or modifies an existing loan with a fixed fee as the primary financing charge, the lender may not charge a fee on the small business’s outstanding principal unless there is a tangible benefit to the small business.

“§ 195. Additional provisions

“(a) Rule of Construction.—Nothing in this chapter may be construed to prevent a provider from providing or disclosing additional information on a small business financing being offered to a recipient, provided however, that such additional information may not be disclosed as part of the disclosure required by this chapter.

“(b) Use of Terms.—

“(1) Rate.—If other metrics of financing cost are disclosed or used in the application process of a small business financing, these metrics shall not be presented as a ‘rate’ if they are not the annual interest rate or the annual percentage rate.
“(2) INTEREST.—The term ‘interest’, when used to describe a percentage rate to a recipient or potential recipient, shall only be used to describe annualized percentage rates, such as the annual interest rate.

“(c) REQUIREMENT TO STATE APR.—When a provider states in writing a rate of finance charge or a financing amount to a recipient during an application process for small business financing, the provider shall also state the annual percentage rate or, in the case of sales-based financing or factoring, the estimated annual percentage rate, with equal or greater prominence, using the term ‘annual percentage rate’ or the abbreviation ‘APR’.”.

(b) CLERICAL AMENDMENT.—The table of chapters for the Truth in Lending Act is amended by adding at the end the following:

“6. SMALL BUSINESS FINANCING ... 191”.

(e) RULEMAKING DEADLINE.—Not later than the end of the 24-month period beginning on the date of enactment of this Act, the Director of the Bureau of Consumer Financial Protection shall issue final rules to carry out the amendments made by this section.

(d) EFFECTIVE DATE.—Chapter 6 of the Truth in Lending Act, as added by subsection (a), shall take effect
after the end of the 36-month period beginning on the date of enactment of this Act.