

118TH CONGRESS
1ST SESSION

S. 2021

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

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2023

Mr. MENENDEZ (for himself, Mr. BROWN, Mr. WYDEN, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Fi-
5 nancing Disclosure Act of 2023”.

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

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

1 **“CHAPTER 6—SMALL BUSINESS**
 2 **FINANCING**

“191. Definitions.

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

“193. Additional disclosures.

“194. Restrictions on double-dipping.

“195. Additional provisions.

3 **“§ 191. Definitions**

4 “In this chapter:

5 “(1) **CLOSED-END COMMERCIAL CREDIT.**—The
 6 term ‘closed-end commercial credit’—

7 “(A) means a secured or unsecured closed-
 8 end extension of credit, including financing with
 9 an established principal amount such as equip-
 10 ment financing that is not a lease, as defined
 11 in section 2A–103 of the Uniform Commercial
 12 Code, the proceeds of which the recipient does
 13 not intend to use primarily for personal, family
 14 or household purposes; and

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

17 “(2) **CONSUMER FINANCIAL PRODUCT OR SERV-**
 18 **ICE.**—The term ‘consumer financial product or serv-
 19 **ice’** has the meaning given the term in section 1002
 20 of the Consumer Financial Protection Act of 2010
 21 (12 U.S.C. 5481).

22 “(3) **DIRECTOR.**—The term ‘Director’ means
 23 the Director of the Bureau.

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

8 “(5) FINANCE CHARGE.—

9 “(A) IN GENERAL.—The term ‘finance
10 charge’—

11 “(i) means the cost of financing as a
12 dollar amount; and

13 “(ii) includes any charge payable di-
14 rectly or indirectly by the recipient of the
15 financing and imposed directly or indi-
16 rectly by the provider of the financing as
17 an incident to or a condition of the exten-
18 sion of financing.

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

1 “(C) CALCULATION IN FACTORING TRANS-
2 ACTIONS.—In any factoring transaction, the fi-
3 nance charge includes the discount taken on the
4 face value of the accounts receivable.

5 “(D) CALCULATION IN LEASE FINANCING
6 TRANSACTIONS.—In any lease financing trans-
7 action, the finance charge includes the sum of
8 the lease payments and, if there is a fixed-price
9 purchase option or a purchase option with a
10 price that can be calculated at the time of dis-
11 closure, the purchase price listed in the contract
12 that the lessee may pay to acquire the leased
13 goods at the end of the lease, minus—

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

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

24 “(E) INCLUSION OF CERTAIN PREPAY-
25 MENT CHARGES.—

1 “(i) IN GENERAL.—If, as a condition
2 of obtaining the offered commercial financ-
3 ing the provider requires the recipient to
4 pay off the balance of an existing loan or
5 advance from the same provider, any pre-
6 payment charge or penalty required to be
7 paid on the existing financing shall be in-
8 cluded as a financing charge.

9 “(ii) TREATMENT WHEN REPAYMENT
10 AMOUNT IS CALCULATED AS A FIXED
11 AMOUNT.—For purposes of clause (i), for
12 financing for which the total repayment
13 amount is calculated as a fixed amount,
14 the prepayment charge is equal to the
15 original finance charge multiplied by the
16 required prepayment amount as a percent-
17 age of the total repayment amount, minus
18 any portion of the total repayment amount
19 forgiven by the provider at the time of pre-
20 payment.

21 “(6) OPEN-END COMMERCIAL CREDIT PLAN.—

22 The term ‘open-end commercial credit plan’ means
23 any small business financing provided by a person
24 under a plan that—

1 “(A) the person reasonably contemplates
2 repeat transactions;

3 “(B) prescribes the terms of the trans-
4 actions; and

5 “(C) provides for a finance charge that
6 may be computed from time to time on the out-
7 standing unpaid balance.

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

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

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

16 “(A) means a transaction for an extension
17 of financing to a recipient that is repaid by the
18 recipient, over time, as a percentage of sales or
19 revenue, in which the payment amount may in-
20 crease or decrease according to the volume of
21 sales made or revenue received by the recipient;
22 and

23 “(B) includes transactions with a true-up
24 mechanism.

1 “(10) SMALL BUSINESS.—The term ‘small busi-
2 ness’ has the meaning given the term ‘small-business
3 concern’ in section 3 of the Small Business Act (15
4 U.S.C. 632).

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

7 “(A) means any line of credit, closed-end
8 commercial credit, sales-based financing, or
9 other non-equity obligation or alleged obligation
10 of a partnership, corporation, cooperative, asso-
11 ciation, sole proprietorship, or other entity that
12 is not more than \$2,500,000; and

13 “(B) does not include any obligation or al-
14 leged obligation of an individual that is pri-
15 marily for personal, family, or household pur-
16 poses.

17 “(12) SPECIFIC OFFER.—The term ‘specific
18 offer’ means the specific terms of small business fi-
19 nancing, including price or amount, that is quoted to
20 a recipient, based on information obtained from, or
21 about the recipient, which, if accepted by a recipient,
22 shall be binding on the provider, as applicable, sub-
23 ject to any specific requirements stated in such
24 terms.

1 **“§ 192. Application of this title to small business fi-**
2 **nancing**

3 “(a) IN GENERAL.—This title shall apply to small
4 business financing made to a small business to the same
5 extent that this title applies to extensions of credit made
6 to a consumer.

7 “(b) RULEMAKING.—The Director shall prescribe
8 regulations necessary to carry out this chapter.

9 “(c) BUREAU AUTHORITY.—For purposes of carrying
10 out this chapter and other Federal laws, including the
11 Consumer Financial Protection Act of 2010 (12 U.S.C.
12 5481 et seq.), the Bureau shall have the same authority
13 with respect to small business financing as the Bureau has
14 with respect to consumer financial products and services.

15 **“§ 193. Additional disclosures**

16 “(a) IN GENERAL.—Any provider offering small busi-
17 ness financing to a small business shall disclose the fol-
18 lowing information to a recipient at the time of extending
19 a specific offer for small business financing:

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

23 “(2) ANNUAL PERCENTAGE RATE.—

24 “(A) CLOSED-END COMMERCIAL CREDIT.—

25 With respect to closed-end commercial credit,
26 the annual percentage rate, using only the

1 words ‘annual percentage rate’ or the abbrevia-
2 tion ‘APR’, expressed as a yearly rate, includ-
3 ing any fees and finance charges that cannot be
4 avoided by a recipient.

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

16 “(C) SALES-BASED FINANCING.—

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

1 “(ii) CALCULATION OF CERTAIN PAY-
2 MENT AMOUNTS.—The estimated term of
3 repayment and the projected periodic pay-
4 ment amounts shall be calculated based on
5 the projected sales volume of the recipient.

6 “(iii) CALCULATION OF PROJECTED
7 SALES VOLUMES.—For purposes of clause
8 (ii), the projected sales volume may be cal-
9 culated—

10 “(I) according to a method de-
11 fined by the Director based on the
12 historical sales volume of the recipient
13 over a defined period of time that is
14 used for all sales-based financing
15 transactions by that provider; or

16 “(II) by a method other than the
17 method described in subclause (I) that
18 is defined by the provider and ap-
19 proved by the Director, with ongoing
20 monitoring by the Director for accu-
21 racy based on a comparison of the an-
22 nual percentage rate as disclosed to
23 the recipient and as calculated retro-
24 spectively upon repayment of the fi-
25 nancing.

1 “(D) FACTORING.—

2 “(i) IN GENERAL.—With respect to
3 factoring, the estimated annual percentage
4 rate, using that term.

5 “(ii) CALCULATION.—To calculate the
6 estimated annual percentage rate under
7 clause (i)—

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

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

13 “(III) the term is established by
14 the payment due date of the receiv-
15 ables.

16 “(iii) ALTERNATE METHOD TO ESTI-
17 MATE TERM.—Notwithstanding clause
18 (ii)(III), a provider may estimate the term
19 for a factoring transaction as the average
20 payment period, its historical data over a
21 period not to exceed the previous 12
22 months, concerning payment invoices paid
23 by the party owing the accounts receivable
24 in question.

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

3 “(A) for payment amounts that are fixed—

4 “(i) the payment amounts and fre-
5 quency (e.g., daily, weekly, monthly); and

6 “(ii) if the term is longer than one
7 month and payment frequency is other
8 than monthly, the average total monthly
9 payment amount; or

10 “(B) for payment amounts that are vari-
11 able—

12 “(i) a full payment schedule or a de-
13 scription of the method used to calculate
14 the amounts and frequency of payments;
15 and

16 “(ii) if the term is longer than one
17 month, the estimated average total month-
18 ly payment amount.

19 “(4) TERM.—For financing other than fac-
20 toring, the term of the small business financing—

21 “(A) in months or in years; or

22 “(B) if the term is not fixed, the estimated
23 term, calculated using the same assumptions
24 used to calculate the estimated annual percent-
25 age rate.

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

5 “(6) PREPAYMENT COST OR SAVINGS.—If a re-
6 cipient elects to pay off or refinance the small busi-
7 ness financing prior to full repayment, the provider
8 shall disclose—

9 “(A) whether the recipient would be re-
10 quired to pay any finance charges other than
11 interest accrued since the last payment by the
12 recipient;

13 “(B) if the recipient is required to pay the
14 finance charges described in subparagraph (A),
15 the percentage of any unpaid portion of the fi-
16 nance charge and maximum dollar amount the
17 recipient could be required to pay; and

18 “(C) whether the recipient would be re-
19 quired to pay any additional fee not already in-
20 cluded in the finance charge.

21 “(7) COLLATERAL REQUIREMENTS.—Any col-
22 lateral requirement that will be imposed on the small
23 business in connection with the small business fi-
24 nancing.

25 “(b) FORM OF DISCLOSURES.—

1 “(1) IN GENERAL.—Disclosures pursuant to
2 this section shall be disclosed in writing, at the time
3 a specific offer is made, and in a manner that is
4 clear, conspicuous, complete, and allows the small
5 business to compare the range of small business fi-
6 nancing options that the small business may be con-
7 sidering.

8 “(2) PROMINENCE OF DISCLOSURES.—In mak-
9 ing any disclosure pursuant to this section, the dis-
10 losures required under paragraphs (1), (2), and (3)
11 of subsection (a) shall be displayed most promi-
12 nently.

13 **“§ 194. Restrictions on double-dipping**

14 “If a lender of small business financing refinances or
15 modifies an existing loan with a fixed fee as the primary
16 financing charge, the lender may not charge a fee on the
17 outstanding principal of the loan unless there is a tangible
18 benefit to the small business.

19 **“§ 195. Additional provisions**

20 “(a) RULE OF CONSTRUCTION.—Nothing in this
21 chapter may be construed to prevent a provider from pro-
22 viding or disclosing additional information on a small busi-
23 ness financing being offered to a recipient unless the addi-
24 tional information may not be disclosed as part of the dis-
25 closure required by this chapter.

1 “(b) USE OF TERMS.—

2 “(1) RATE.—If other metrics of financing cost
3 are disclosed or used in the application process of a
4 small business financing, the metrics shall not be
5 presented as a rate if they are not the annual inter-
6 est rate or the annual percentage rate.

7 “(2) INTEREST.—The term ‘interest’, when
8 used to describe a percentage rate to a recipient or
9 potential recipient, shall only be used to describe
10 annualized percentage rates, such as the annual in-
11 terest rate.

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

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of chapters for title I of the Consumer Credit
22 Protection Act is amended by adding at the end the fol-
23 lowing:

“6. **Small Business Financing** **191.**”.

24 (c) RULEMAKING DEADLINE.—Not later than the
25 end of the 2-year period beginning on the date of enact-

1 ment of this Act, the Director of the Bureau of Consumer
2 Financial Protection shall prescribed final regulations to
3 carry out the amendments made by this section.

4 (d) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall take effect on the date that is 36
6 months after the date of enactment of this Act.

○