

117TH CONGRESS
1ST SESSION

S. 3235

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2021

Mr. MENENDEZ (for himself, Mr. BROWN, 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 apply the Truth in Lending 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 Lend-
5 ing Disclosure Act of 2021”.

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 closed-end extension of cred-
 8 it, secured or unsecured, including financing
 9 with an established principal amount and in-
 10 cluding equipment financing that does not meet
 11 the definition of a lease under the Uniform
 12 Commercial Code (U.C.C.—§ 2A-103(j)) the
 13 proceeds of which the recipient does not intend
 14 to use primarily for personal, family or house-
 15 hold purposes; and

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

18 “(2) CONSUMER FINANCIAL PRODUCT OR SERV-
 19 ICE.—The term ‘consumer financial product or serv-
 20 ice’ has the meaning given that term under section
 21 1002 of the Consumer Financial Protection Act of
 22 2010.

1 “(3) DIRECTOR.—The term ‘Director’ means
2 the Director of the Bureau.

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

10 “(5) FINANCE CHARGE.—

11 “(A) IN GENERAL.—The term ‘finance
12 charge’ means the cost of financing as a dollar
13 amount, and includes any charge payable di-
14 rectly or indirectly by the recipient of the fi-
15 nancing and imposed directly or indirectly by
16 the provider of the financing as an incident to
17 or a condition of the extension of financing.

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

24 “(C) CALCULATION IN FACTORING TRANS-
25 ACTIONS.—In any factoring transaction, the fi-

1 nance charge shall include the discount taken
2 on the face value of the accounts receivable.

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

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

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

22 “(E) INCLUSION OF CERTAIN PREPAY-
23 MENT CHARGES.—

24 “(i) IN GENERAL.—If, as a condition
25 of obtaining the offered commercial financ-

1 ing the provider requires the recipient to
2 pay off the balance of an existing loan or
3 advance from the same provider, any pre-
4 payment charge or penalty required to be
5 paid on the existing financing shall be in-
6 cluded as a financing charge.

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

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

20 The term ‘open-end commercial credit plan’ means
21 any small business financing provided by a person
22 under a plan in which the person reasonably con-
23 templates repeat transactions, which prescribes the
24 terms of such transactions, and which provides for

1 a finance charge which may be computed from time
2 to time on the outstanding unpaid balance.

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

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

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

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

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

20 “(10) SMALL BUSINESS.—The term ‘small busi-
21 ness’ has the meaning given the term ‘small-business
22 concern’ under section 3 of the Small Business Act
23 (15 U.S.C. 632).

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

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

7 “(B) does not include any obligation or al-
 8 leged obligation of an individual that is pri-
 9 marily for personal, family, or household pur-
 10 poses.

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

19 **“§ 192. Application of this title to small business fi-**
 20 **nancing**

21 “(a) IN GENERAL.—This title shall apply to small
 22 business financing made to a small business to the same
 23 extent as this title applies to extensions of credit made
 24 to a consumer.

1 “(b) RULEMAKING.—The Director shall issue such
2 rules as may be required to carry out this chapter.

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

9 **“§ 193. Additional disclosures**

10 “(a) IN GENERAL.—Any provider offering small busi-
11 ness financing to a small business shall disclose the fol-
12 lowing pieces of information to a recipient at the time of
13 extending a specific offer for small business financing:

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

17 “(2) ANNUAL PERCENTAGE RATE.—

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

19 With respect to closed-end commercial credit,
20 the annual percentage rate, using only the
21 words ‘annual percentage rate’ or the abbrevia-
22 tion ‘APR’, expressed as a yearly rate, inclusive
23 of any fees and finance charges that cannot be
24 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 available 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 estimated term of repayment and the projected periodic payment amounts.

“(ii) CALCULATION OF CERTAIN PAYMENT AMOUNTS.—The estimated term of repayment and the projected periodic payment amounts shall be calculated based on

1 the projection of the recipient's sales,
2 called the projected sales volume.

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

7 “(I) according to a method de-
8 fined by the Director based on the re-
9 cipient's historical sales volume over a
10 defined period of time that is used for
11 all sales-based financing transactions
12 by that provider; or

13 “(II) by another method defined
14 by the provider and approved by the
15 Director, with ongoing monitoring by
16 the Director for accuracy based on a
17 comparison of the annual percentage
18 rate as disclosed to the recipient and
19 as calculated retrospectively upon re-
20 payment of the financing.

21 “(D) FACTORING.—

22 “(i) IN GENERAL.—With respect to
23 factoring, the estimated annual percentage
24 rate, using that term.

1 “(ii) CALCULATION.—To calculate the
2 estimated annual percentage rate under
3 clause (i)—

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

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

9 “(III) the term is established by
10 the payment due date of the receiv-
11 ables.

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

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

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

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

1 “(ii) if the term is longer than one
2 month and payment frequency is other
3 than monthly, the average total monthly
4 payment amount; or

5 “(B) for payment amounts that are vari-
6 able—

7 “(i) a full payment schedule or a de-
8 scription of the method used to calculate
9 the amounts and frequency of payments;
10 and

11 “(ii) if the term is longer than one
12 month, the estimated average total month-
13 ly payment amount.

14 “(4) TERM.—For financing other than fac-
15 toring, the term of the small business financing, ei-
16 ther in months or in years, or, if the term is not
17 fixed, the estimated term, calculated using the same
18 assumptions used to calculate the estimated annual
19 percentage rate.

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

24 “(6) PREPAYMENT COST OR SAVINGS.—In the
25 event that a recipient elects to pay off or refinance

1 the small business financing prior to full repayment,
2 the provider must disclose—

3 “(A) whether the recipient would be re-
4 quired to pay any finance charges other than
5 interest accrued since the recipient’s last pay-
6 ment;

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

12 “(C) whether the recipient would be re-
13 quired to pay any additional fees not already in-
14 cluded in the finance charge.

15 “(7) COLLATERAL REQUIREMENTS.—Any col-
16 lateral requirement that will be imposed on the small
17 business in connection with the small business fi-
18 nancing.

19 “(b) FORM OF DISCLOSURES.—

20 “(1) IN GENERAL.—Disclosures made pursuant
21 to this section shall be in writing, at the time a spe-
22 cific offer is made, and in a manner that is clear,
23 conspicuous, complete, and allows the small business
24 to compare the range of small business financing op-
25 tions that the small business may be considering.

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

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

7 “When a lender of small business financing refi-
 8 nances or modifies an existing loan with a fixed fee as
 9 the primary financing charge, the lender may not charge
 10 a fee on the small business’s outstanding principal unless
 11 there is a tangible benefit to the small business.

12 **“§ 195. Additional provisions**

13 “(a) RULE OF CONSTRUCTION.—Nothing in this
 14 chapter may be construed to prevent a provider from pro-
 15 viding or disclosing additional information on a small busi-
 16 ness financing being offered to a recipient, provided how-
 17 ever, that such additional information may not be dis-
 18 closed as part of the disclosure required by this chapter.

19 “(b) USE OF TERMS.—

20 “(1) RATE.—If other metrics of financing cost
 21 are disclosed or used in the application process of a
 22 small business financing, these metrics shall not be
 23 presented as a ‘rate’ if they are not the annual in-
 24 terest rate or the annual percentage rate.

1 “(2) INTEREST.—The term ‘interest’, when
 2 used to describe a percentage rate to a recipient or
 3 potential recipient, shall only be used to describe
 4 annualized percentage rates, such as the annual in-
 5 terest rate.

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

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

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

17 (c) RULEMAKING DEADLINE.—Not later than the
 18 end of the 24-month period beginning on the date of en-
 19 actment of this Act, the Director of the Bureau of Con-
 20 sumer Financial Protection shall issue final rules to carry
 21 out the amendments made by this section.

22 (d) EFFECTIVE DATE.—Chapter 6 of the Truth in
 23 Lending Act, as added by subsection (a), shall take effect

- 1 after the end of the 36-month period beginning on the date
- 2 of enactment of this Act.

