

117TH CONGRESS  
1ST SESSION

# H. R. 6054

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

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## 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

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## 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.



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

12          “(C) SALES-BASED FINANCING.—

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

21               “(ii) CALCULATION OF CERTAIN PAY-  
22               MENT AMOUNTS.—The estimated term of  
23               repayment and the projected periodic pay-  
24               ment 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.

