

[DISCUSSION DRAFT]

117TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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

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IN THE HOUSE OF REPRESENTATIVES

Ms. VELÁZQUEZ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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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”.

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

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

6 **“CHAPTER 6—SMALL BUSINESS**  
7 **FINANCING**

“191. Definitions.

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

“193. Additional disclosures.

“194. Restrictions on double-dipping.

“195. Additional provisions.

8 **“§ 191. Definitions**

9 “In this chapter:

10 “(1) CLOSED-END COMMERCIAL CREDIT.—The  
11 term ‘closed-end commercial credit’—

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

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

1           “(2) CONSUMER FINANCIAL PRODUCT OR SERV-  
2           ICE.—The term ‘consumer financial product or serv-  
3           ice’ has the meaning given that term under section  
4           1002 of the Consumer Financial Protection Act of  
5           2010.

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

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

15          “(5) FINANCE CHARGE.—

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

23                 “(B) CALCULATION IN OPEN-END COM-  
24                 MERCIAL CREDIT PLANS.—In any open-end  
25                 commercial credit plan, the finance charge shall

1 be computed assuming the maximum amount of  
2 credit available to the recipient, in each case, is  
3 drawn and repaid at the minimum rate.

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

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

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

22 “(ii) if the finance company does not  
23 select, manufacture, or supply the goods to  
24 be leased, the price the finance company

1 will pay to acquire the property to be  
2 leased.

3 “(E) INCLUSION OF CERTAIN PREPAY-  
4 MENT CHARGES.—

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

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

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

2           The term ‘open-end commercial credit plan’ means  
3           any small business financing provided by a person  
4           under a plan in which the person reasonably con-  
5           templates repeat transactions, which prescribes the  
6           terms of such transactions, and which provides for  
7           a finance charge which may be computed from time  
8           to time on the outstanding unpaid balance.

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

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

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

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

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

1           “(10) SMALL BUSINESS.—The term ‘small busi-  
2           ness’ has the meaning given the term ‘small-business  
3           concern’ under section 3 of the Small Business Act  
4           (15 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, or other entity that is \$2,500,000 or  
12                  less; 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 as this title applies to extensions of credit made  
6 to a consumer.

7 “(b) RULEMAKING.—The Director shall issue such  
8 rules as may be required 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, the Bureau  
12 shall have the same authority with respect to small busi-  
13 ness financing as the Bureau has with respect to consumer  
14 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 pieces of information to a recipient at the time of  
19 extending 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, inclusive  
3 of 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, inclusive of 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, inclusive of 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 projection of the recipient’s sales,  
6           called the projected sales volume.

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

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

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

25          “(D) FACTORING.—

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

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

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

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

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

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

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

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

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

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

8 “(B) for payment amounts that are vari-  
9 able—

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

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

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

23 “(5) FINANCE CHARGE.—The finance charge of  
24 the small business financing, broken down to show

1       what expenses and fees are included in the finance  
2       charge.

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

7           “(A) whether the recipient would be re-  
8       quired to pay any finance charges other than  
9       interest accrued since the recipient’s last pay-  
10      ment; and

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

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

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

23          “(b) FORM OF DISCLOSURES.—

24           “(1) IN GENERAL.—Disclosures made pursuant  
25      to this section shall be in writing, at the time a spe-

1       cific offer is made, and in a manner that is clear,  
2       conspicuous, complete, and allows the small business  
3       to compare the range of small business financing op-  
4       tions that the small business may be considering.

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

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

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

16   **“§ 195. Additional provisions**

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

23       “(b) USE OF TERMS.—

24               “(1) RATE.—If other metrics of financing cost  
25       are disclosed or used in the application process of a

1 small business financing, these metrics shall not be  
2 presented as a ‘rate’ if they are not the annual in-  
3 terest rate or the annual percentage rate.

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

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

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

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

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

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