



April 14, 2017

Mr. Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Re: Comptroller's Licensing Manual Draft Supplement

Dear Comptroller Curry,

The Responsible Business Lending Coalition (RBLC) appreciates the opportunity to comment on the Comptroller's Licensing Manual Draft Supplement (the Supplement) issued last month describing how the OCC will approach key aspects of the chartering process for financial technology (fintech) companies.

The RBLC, a network of for-profit and non-profit lenders, brokers and small business advocates, came together to promote responsible innovation in small business lending and combat the rise of predatory and irresponsible lending practices and products we saw in the market. We created the Small Business Borrowers' Bill of Rights as a cross-sector consensus that identifies the fundamental rights that all small business owners deserve and all lenders have a responsibility to protect and support. More than 80 institutions joined us as signatories or endorsers of the original Small Business Borrowers' Bill of Rights and earlier this year we released a strengthened version of the Rights and invited new and original signatories and endorsers to affirm their support for responsible small business lending practices.

In January, we submitted a letter commenting on the OCC's proposed special purpose national bank (SPNB) charter for fintech companies. In our letter (attached) we encouraged the OCC to exercise its chartering authority to address several problems facing small business owners. We called on the OCC to establish a uniform set of borrower protection standards, referencing elements of the Rights, that fintech applicants would be required to comply with to be considered for a SPNB charter.

We were pleased that the materials released with the OCC's draft Supplement last month referenced the Small Business Borrowers' Bill of Rights and specifically a borrower's right to transparent pricing and terms. We are particularly encouraged that the OCC, in comments released with the Supplement, indicated that it "would expect an SPNB involved in lending to provide sufficient disclosures and clear information to ensure that all borrowers, including consumers and small businesses, can make informed credit decisions." We would support the OCC pro-actively establishing a set of principles that encourage responsible innovation and promote the development of financing products that generate value for business borrowers and profitability for the lender.

The following recommendations build directly on the recommendations we offered in January and refer to key portions of the Small Business Borrowers' Bill of Rights. We encourage the OCC to require that fintech applicants seeking a SPNB charter address the following principles:

1. **Align Borrower and Lender Incentives:** Just as the OCC would not charter a bank with a business model built on excessive late-fees, the OCC should not charter business models similarly misaligned with the success of the customer. The OCC should require that products which take payment from the borrower's top-line revenues also underwrite the borrower's bottom-line ability to repay. (see Right to Non-Abusive Products and Right to Responsible Underwriting)
2. **Prevent Double Dipping:** The OCC should prohibit double charging a borrower. A lender should not charge fees on a borrower's outstanding principal when refinancing a loan with a fixed fee as the primary finance charge unless there is a tangible cost benefit to the borrower. While it may be appropriate to charge a reasonable service fee for loan modifications that clearly helps the borrower, it is not acceptable to effectively double-charge the borrower while refinancing or renewing by assessing the predominant financing charge. (see Right to Non-Abusive Products)
3. **Match Loan Product Design and Loan Product Use:** The OCC should prohibit chartered banks from marketing financial products contrary to their appropriate use. If presenting a loan product as designed for one use a lender should not encourage borrowing behavior contrary to that use. For example, short-term products may be well suited for short term use, but not for long-term recurring use. Long-term products with prepayment penalties may be well suited for long-term use, but not for short-term needs. (see Right to Non-Abusive Products)
4. **Certify Full Disclosure of Prepayment Charges** - The OCC should require that prepayment charges be clearly described and disclosed. The OCC may also consider whether non-disclosure or insufficient disclosure of prepayment charges represents an unfair, deceptive, or abusive act or practice. (see Right to Non-Abusive Products)

We believe the OCC could play a leading role in promoting responsible innovation in the small business lending market through its ability to issue SPNB charters to fintech companies. We appreciate the opportunity to offer our comments and recommendations and welcome further discussion on any of the issues discussed in this letter or in our previous letter. We can be reached at info@responsiblebusinesslending.org.

Sincerely,

The Responsible Business Lending Coalition

Members of the Responsible Business Lending Coalition: Accion, Aspen Institute, Community Investing Management, Fundera, Funding Circle, Lending Club, MultiFunding, Opportunity Fund, Small Business Majority.

Attachments:

- The RBLC's letter to Comptroller Curry - January 17, 2017
- List of white papers and articles on small business lending and borrower protections



January 17, 2017

Mr. Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219
(Emailed to: specialpurposecharter@occ.treas.gov)

Re: “Exploring Special Purpose National Bank Charters for Fintech Companies”

Dear Comptroller Curry,

The Responsible Business Lending Coalition (“RBLC”) writes to express our support for the development of a special purpose national bank charter that enables critically needed small business lending innovation while also protecting borrowers from irresponsible lending. We applaud the OCC for asking, in Question #6 of your request for comment, whether to “use its chartering authority as an opportunity to address the gaps in protections afforded individuals versus small business borrowers, and if so, how?” The OCC should address the gap in small business borrower protections, which is currently contributing to practices being compared to the subprime mortgage market during the lead up to the 2008 financial crisis.¹ In this letter, we offer specific standards based on the Small Business Borrowers’ Bill of Rights that the OCC should adopt as conditions of small business lending through a special purpose national charter to address the following problems now facing small business owners:

- a) Obfuscation of very high financing costs
- b) Misaligned incentive between lenders and borrowers
- c) Double-charging borrowers when loans are renewed by “double dipping”
- d) Mismatch between financial product’s use as suggested to the borrower and actual use behavior encouraged by the lender
- e) Hidden prepayment charges

¹ For examples, see list of articles and whitepapers in attached, including “Why Online Small Business Loans Are Being Compared to Subprime Mortgages,” Forbes, Dec 10, 2015.

- f) Misaligned broker incentives steering small businesses into expensive products
- g) “Stacking” of too much debt
- h) Lack of legal protections in collections, and
- i) Need for financial inclusion (also addresses OCC Question 3)

At the same time, we recognize that the status quo of the traditional small business lending requires innovation to meet small business’ needs and become financially inclusive. Small businesses continue to suffer from a gap in access to capital, which technology-based innovations in financial product design, operation, and delivery are beginning to solve. The OCC’s proposed special purpose charter can promote the offering of these innovations on a national scale, as could the harmonization of state laws and a responsible-managed use of the originating bank model.

By developing a uniform set of standards, based on our suggestions below, the OCC can encourage responsible innovation that addresses both the gap in access to capital and rise of irresponsible business lending.

The Small Business Borrowers’ Bill of Rights

The Responsible Business Lending Coalition (“RBLC”) is a diverse association of non-profit and for-profit organizations serving small businesses that have joined together out of concern about the need for increased access to capital for small business, and the rise of irresponsible small business lending practices.

The mission of the RBLC is to drive responsible practice in the small business lending sector. RBLC’s members are the Aspen Institute, a nonpartisan policy studies organization and the facilitator of the coalition; Accion and Opportunity Fund, the two largest nonprofit CDFI small business lenders; Funding Circle and Lending Club, two leading FinTech innovators in marketplace lending; Fundera and MultiFunding, two leading responsible brokers; Community Investing Management, an investor in responsible FinTech small business lending; and Small Business Majority, a nonprofit trade association and advocate for small businesses.

In 2015, we joined together to create the Small Business Borrowers’ Bill of Rights, a cross-sector consensus on the responsible lending practices that all small businesses deserve. It has been signed by over 70 for-profit FinTech innovators, nonprofit CDFIs, advocacy and

community groups, investors, small banks, lenders, brokers, and marketplaces,² who across so many differences all agree that small businesses deserve the following six rights:

1. The Right to Transparent Pricing and Terms
2. The Right to Non-Abusive Products
3. The Right to Responsible Underwriting
4. The Right to Fair Treatment from Brokers
5. The Right to Fair Collections Practices
6. The Right to Inclusive Credit Access

Each of these rights is described in detail in the Small Business Borrowers' Bill of Rights, with specific practices that lenders, marketplaces, and brokers should abide by to uphold these rights for their small business customers. The full text of the Small Business Borrowers' Bill of Rights and a list of signatories and endorsers are attached and available online at www.ResponsibleBusinessLending.org.³

In order to become a "Signatory" of the Small Business Borrowers' Bill of Rights, a lender, marketplace, or broker must sign an attestation form affirming that they abide by each and every relevant practice set forth in the Small Business Borrowers' Bill of Rights. There is no option to abide by certain requirements and ignore others; lenders and brokers sign one standard set of attestations and brokers sign another.⁴ Organizations that do not provide lending or brokering services, such as think tanks and advocates, may sign as "Endorsers" of the Rights.

Recommendation: Create specific guidelines addressing the gap in borrower protections

The OCC should address the gap in protections for small businesses by creating a uniform set of borrower protection standards that apply to all special purpose national banks. The OCC should require a discussion of compliance with these standards as part of a special purpose charter applicant's business plan. To create these standards, specific elements can be drawn from the Small Business Borrowers' Bill of Rights in order to protect borrowers from the practices described below.⁵

² Please note that while these 70+ organizations have signed or endorsed the Small Business Borrowers' Bill of Rights, this letter represents only the views of the RBLC, and does not necessarily represent the views of all signatories or endorsers of the Small Business Borrowers' Bill of Rights.

³ Note that the Small Business Borrowers Bill of Rights can be periodically updated to respond to market practices and to improve the document, with the engagement of signatories and endorsers. The portions quoted here reflect the first update of the document since its launch in August 2015.

⁴ For example, the Right to Transparent Pricing and Terms applies to lenders, marketplaces, and brokers, while the Right to Responsible Underwriting applies to lenders and marketplaces but not to brokers.

⁵ A number of these recommendations also draw on the 2016 working paper by former SBA Administrator Karen Mills and Brayden McCarthy, "The State of Small Business Lending: Innovations and Technology and the Implications for Regulation, Harvard Business School, 2016. Brayden McCarthy is also a contributor to the Responsible Business Lending Coalition through his position at Fundera.

Each of these recommendations is intended to foster responsible innovation, such as increasing access to capital, lowering operating costs to lend, and easing the application process, as well as avoiding negative developments, such as new models that serve to insulate the lender from the borrower's risk, thereby creating moral hazard to lend irresponsibly. The success of the lender should always be based on the success of the borrower, and lender profits should come from creation of real value for the borrower.

a) Obfuscation of very high costs. The most direct way to profitably make loans that frequently default is to simply increase prices to cover the cost of losses. The APRs of some newer financing products are commonly above 50%, and can reach over 300%.^{6,7} Increasing rates to approve more applicants does not necessarily represent innovation, but rather a greater acceptance of high loss rates, operational expenses, and high fees paid to brokers and other marketing channels.

Higher costs can be appropriate and managed by borrowers if they are understood, but interest rates or APRs are not disclosed by many providers of high-cost business loan products.⁸ Often, percentage rates are advertised which are not interest rates, but instead a percentage figure much lower than the actual interest rate.⁹ For example, a 20% "rate" quoted can correspond to a 57% interest rate. Federal Reserve research has indicated that mom-and-pop small businesses frequently misunderstand the cost of these products.¹⁰

Recommendation: The OCC should apply the transparency disclosure principles of the Truth in Lending Act, which applies only to consumer lending, to small business financing where appropriate. This should include disclosure of APRs and the other items identified in the Right to Transparent Pricing and Terms including:

- **“Transparent Rate** – Disclose the Annual Percentage Rate (APR), as the all-in annualized price of the financing, and the annualized interest rate if one is used.
- **No Hidden Fees** – Disclose all upfront and scheduled charges.
- **Plain-English Terms** – Describe all key terms in an easy-to-understand manner, including the loan amount, total amount provided after deducting fees or charges, payment amount and frequency, total monthly payment amount if payment frequency is other than monthly, collateral requirements, and any prepayment charges.

⁶ Opportunity Fund, “Unaffordable and Unsustainable: The New Business Lending on Main Street.” May 2016.

⁷ Clark, Patrick. “How Much is Too Much to Pay for a Small Business Loan,” May 16, 2014. Bloomberg.

⁸ Lipman, Barbara and Ann Marie Wiersch. “Alternative Lending Through the Eyes of ‘Mom & Pop’ Small-Business Owners: Findings from Online Focus Groups.” Federal Reserve Bank of Cleveland. August 25, 2015

⁹ Kassari, Ami, “Ami Kassari: Know the True Cost of Short-Term Online Loans,” Wall Street Journal. 5/14/14.

¹⁰ Lipman, Barbara and Ann Marie Wiersch. “Alternative Lending Through the Eyes of ‘Mom & Pop’ Small-Business Owners: Findings from Online Focus Groups.” Federal Reserve Bank of Cleveland. August 25, 2015

- **Clear Comparison** – Present all of these pricing and other key terms clearly and prominently, in writing, to the borrower when the loan offer is summarized for the borrower and whenever a term sheet, offer summary, or equivalent is provided.”

The OCC may elect to create a standardized disclosure box, similar to what is required for consumer lending under the Truth in Lending Act, designed for small business financing. The SMART Box, created by the Innovative Lending Platform Association, is an example of such an effort. We applaud the SMART Box as a step forward for including APR and a standard form of disclosure, but also believe it should be improved with respect to transparency of the cost of prepayment, the characterization of APR, and a number of other items. We hope to endorse the SMART Box if sufficient improvements are made, and these are listed in the attached “Statement on the SMART Box.”

The OCC may also consider whether the obfuscation of costs represents an unfair, deceptive, or abusive act or practice.

b) Misaligned incentives between lenders and borrowers. A lender’s incentive to avoid making loans that the borrower cannot afford to repay is weakened or inverted when a lender is able to profit from those loans. This moral hazard encourages lenders to make irresponsible loans.

Some newer financing products are structured to be repaid from the borrowers’ top-line gross revenue, rather than bottom-line net revenue. In other words, the lender gets paid first. This is not a problem in and of itself, and can contribute to responsible innovation. But to do so, it requires lenders to proactively account for the borrowers’ ability to repay. This is because a lender receiving payment from top-line revenue needs to confirm only that the business will continue to earn top-line revenue, not that business can afford to cover its expenses and the loan payments. For example, a merchant cash advance is typically paid as a percentage of each credit card payment made by a customer. Many lenders use a daily payment structure. In both cases, the revenue coming into the business is diverted to the lender before the borrower is able to make use of it. These structures allow the lender to be repaid even if the borrower cannot afford their other expenses.

This has led to unaffordable loan making. The Opportunity Fund report “Unaffordable and Unsustainable: The New Business Lending,” found that, out of a sample of 104 businesses with alternative loans or merchant cash advances, the average monthly loan payment was 178% the business’ net incomes.¹¹ The *average* loan was pushing the small business from profitability far into unprofitability.

While it is never in a lender’s interest for a borrower to default, a perverse incentive may emerge in which struggling borrowers become attractive customers as they fall into a “debt trap.” These debt-trapped borrowers who find their cash flow overstressed may borrow again in order to try

¹¹ Opportunity Fund, “Unaffordable and Unsustainable: The New Business Lending,” 2016. Note that this sample includes many borrowers seeking to refinance their expensive loans.

and stay afloat.¹² The combination of short repayment periods and high costs creates very expensive payments. Expensive payments can stress cash flow, which can produce a debt-trap dynamic if underwriting permits it. Yet a lender can profit through this practice through additional fees with each new loan.

Recommendation: Just as the OCC would not charter a bank with a business model built on excessive late-fees, the OCC should not charter business models similarly misaligned with the success of the customer. The OCC should require that products which take payment from the borrower's top-line revenues also underwrite the borrower's bottom-line ability to repay. This is described in the Right to Responsible Underwriting and the Right to Non-Abusive Products, including:

- **“Believe in the Borrower** – Offer financing only with high confidence that the borrower can repay its *entire* debt burden without defaulting or re-borrowing.
- **Alignment of Interests** – Lenders who receive repayment directly from the borrower's gross sales must also verify, through documents, data from third parties, and/or due diligence, that the borrower can repay all debt and remain profitable, or that it has a credible path to profitability. Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid.
- **Right-sized Financing** – Size loans to meet the borrower's need, rather than to maximize the lender's or broker's revenue. Seek to offer the borrower the size of loan that they need, rather than offering the largest amount they could qualify for.”
- **“No Debt Traps** – If the borrower is unable to repay an existing loan, extend new credit only if due diligence indicates that the borrower's situation has changed, enabling them to repay the new loan.”

c) Double Dipping. Borrowers in a cycle of repeat borrowing can become more profitable though a practice known as “double dipping,” a process of partially double-charging a borrower when their loan is renewed. This can add \$3,000 to \$10,000 in hidden fees to a typical small-dollar transaction, according to one alternative financing provider.¹³ For example, consider a \$50,000 loan with a fixed cost of 20%, or \$10,000. The borrower must repay \$60,000. Once the borrower has repaid half, \$30,000, a lender may reach out to the borrower and offer to renew the loan with similar, or sometimes more favorable, terms. If the borrower renews to \$50,000 and they again must repay \$60,000, it seems as if they have received the same deal a second time. But they have been double-charged. While the second loan again charged a 20% fee of \$10,000 on \$50,000, it only provided \$20,000 in new capital. The borrower was essentially double charged on the \$30,000 they had already borrowed.

¹² “How Short-Term Lenders Keep You on the Hook,” Ami Kassir. Inc. Magazine, 8/12/2013.

¹³ “What is Double Dipping?” The Business Backer, <https://www.businessbacker.com/double-dipping/>, accessed 11/17/2016

Recommendation: The OCC should not permit double dipping, as described in the Right to Non-Abusive Products:

- **“No “Double Dipping”** – Do not double-charge the borrower. When refinancing or modifying a loan with a fixed-fee as the primary financing charge, do not charge fees on the borrower’s outstanding principal unless there is a tangible cost benefit to the borrower.”

The OCC may also consider whether inadequate transparency about the costs associated with refinancing, due to this practice of “double dipping,” represents an unfair, deceptive, or abusive act or practice.

d) Mismatch between financial product’s intended use and encouraged use. The high-cost of short term financing may make sense for borrowers’ short-term uses, such as the purchase of inventory at an unusual discount or bridging a non-recurring cash shortfall. Some high-cost lenders feel that concern about high annualized rates is misplaced because the products are designed for short-term use, and that focus should instead be on the dollar cost of a single short-term loan.

However, short-term lenders may design their business practices to encourage long-term use of these short-term products. For example, a short-term lender may employ an inside-sales team, with a standard operational practice of calling borrowers before payoff and encouraging them to renew their financing.¹⁴ One alternative financing provider advertises the long-term use of their short-term product as sign of borrower satisfaction: “Approximately 90% of our Merchant Cash Advance clients participate in the program more than once. In fact, the average customer renews about ten times!”

The encouragement of ongoing use of these short-term products suggests that annualized rates are in fact an important consideration. In fact, because of the additional costs of “double-dipping” and prepayment charges, a single loan’s APR may understate the true annualized cost of using a short-term product on a long-term basis. This also suggests that borrowers may be experiencing debt-traps.

Recommendation: The OCC should prohibit chartered banks from marketing financial products contrary to their appropriate use, as described in the Right to Non-Abusive Products, bullet four:

- **“Appropriate Product** – Match loan product design and loan product use. If presenting a loan product as designed for one use, do not encourage borrowing behavior contrary to that use. For example, short-term products may be well suited for short term use, but not

¹⁴ Faux, Zeke, “Wall Street Finds New Subprime with 125% Business Loans,” Bloomberg, May 21, 2014.

for long-term recurring use. Long-term products with prepayment penalties may be well suited for long-term use, but not for short-term needs.”

e) Hidden prepayment charges. Unlike a traditional loan, the financing charges of some newer products are fixed. It is not possible for borrowers to save money by prepaying. For example, \$50,000 in financing may require a borrower to repay \$60,000, whether it takes them twelve months or three months. Some providers may advertise that there is no prepayment penalty, although there is effectively a significant prepayment charge if there is no savings from prepayment. Some providers offer a discount, such as a 25% “prepayment savings.” This may give the impression of prepayment terms more favorable than a traditional loan, when in fact the 25% prepayment savings is akin to a 75% prepayment charge.

Recommendation: The OCC should require that prepayment charges be clearly described and disclosed, as described in the Right to Non-Abusive Products:

- **“No Hidden Prepayment Charges -** If the borrower receives no savings, or limited savings, in early payoff, disclose this in the original loan term sheet or offer summary, and again at the time of payoff. For financing with a fixed term, if a prepaying borrower owes a fixed repayment amount or a certain percentage of that amount regardless of when they pay off the financing, disclose this as prepayment charge. This charge is equal to the remaining financing charge owed at payoff, which is the cost the borrower is paying for the unused portion of the loan.”

The OCC may also consider whether non-disclosure or insufficient disclosure of prepayment charges represents an unfair, deceptive, or abusive act or practice.

f) Misaligned broker incentives. Small business brokers often earn significantly higher fees for referrals to the significantly more expensive products. For example, a broker may earn fees as high as 17% for placing a borrower in a merchant cash advance that charges an equivalent APR of 109%, as compared to 1-2% for placing them in an SBA loan with an APR in the single digits or low teens.¹⁵ As a result, brokers often have clear financial incentives to steer borrowers into the most expensive loans. These fees paid and the conflict of interest may be completely unknown to the borrower. “It’s a direct parallel to what happened in the subprime mortgage space,” said Mark Pinsky, as chief executive officer of Opportunity Finance Network, the trade association of community development financial institutions.¹⁶

Recommendation: Although brokers are unlikely to apply for a special purpose national bank charter, we believe they should have a fiduciary duty to the small business customers

¹⁵ Clark, Patrick. “Brokers Get Big Commissions for Selling Entrepreneurs Costly Loans.” Bloomberg, March 31, 2014.

¹⁶ Ibid.

they advise, obtain a license or registration, and be held to the standards of the Right to Fair Treatment from Brokers, included in the Small Business Borrowers' Bill of Rights in the appendixes.

g) *Stacking.* Brokers seeking additional fees, and the borrower's own desire for more capital than a single lender will provide, can lead to "stacking," in which multiple lenders layer financing on top of each other. If two merchant cash advance companies are each diverting 10% of sales and the business' profit margin is below 20%, making repayment or even continuing operations can be very difficult. One merchant cash advance provider wrote that "the failure rate for business owners who take a third merchant cash advance is 100% based our direct experience of working with these business owners."¹⁷

Stacking can be difficult for lenders to prevent if they are not able learn of the other financing a borrower already has. For example, a borrower may apply to multiple lenders at one time, or existing lenders may not be reporting to credit bureaus or otherwise making their financing publicly known.

Recommendation: The OCC should require lenders to assess an applicant's existing debt load and their ability to afford additional debt, as described in the Right to Responsible Underwriting, as quoted above, and also including:

- **"Responsible Credit Reporting** – Report loan repayment information to major credit bureaus and consult credit data when underwriting a loan. Such reporting enables other lenders to responsibly underwrite the borrower and helps the borrower build a credit profile that may facilitate access to more affordable loans in the future. Lenders must inform the borrower and any guarantors if they intend to report loan repayment performance to guarantors' credit bureaus only in certain circumstances, such as after a default."

h) *Lack of legal protections in the collections process.* Although most of the new nonbank small business lending is unsecured, collections remain an important part of small business lending and consumer law protections in the collections process do not apply.

Recommendation: The OCC should apply the principles of the Fair Debt Collection Practices which are appropriate for commercial borrower to small business lending, as described in the Right to Fair Collection Practices:

- **"Fair Treatment** – Abide by the spirit of the Fair Debt Collection Practices Act and provide borrowers similar protections as described in that Act.

¹⁷ Ballentine, Jay, "[Stacking: Merchant Cash Advance Funders Jeopardize Main Street](http://archive.is/KI90X)" 2/17/14. Buynance. <http://archive.is/KI90X>

- **Responsible Oversight** – Diligently vet and oversee the collections practices of third-party collectors and debt buyers. Do not work with collectors or debt buyers who fail to treat borrowers fairly.
- **Accurate Information** – Transmit accurate, current, and complete information about the loan to third-party collectors and debt buyers.”

i) Need for financial inclusion. Innovations in small business lending are making important strides in financial inclusion. This innovation has focused on lending below \$500,000, and generally below \$150,000, which is an underserved segment of the market that generally corresponds to smaller businesses. Federal Reserve research indicates that minority-owned small businesses represent 36% of applicants to online lenders, as compared to 14% of applicants to traditional banks.¹⁸ This impressive figure indicates the extended reach and impact that innovators can have on minority communities—both negative and positive.

While we have focused thus far on the need for increased protections, the OCC must ensure that regulatory action does not cut off access to responsible capital, precluding this opportunity to better serve women- and minority-owned businesses and underserved communities.

Recommendation: We offer the following suggestions to encourage financial inclusion:

- **Move forward with the special purpose national charter.** A clear, unified, and efficient regulatory structure for small business lending will support national innovation around financial inclusion.
- **Require a strategic plan for financial inclusion.** This strategic plan might include representation targets, partnerships and/or investments with CDFIs, programs specifically designed for underserved communities, philanthropy, or measurement and reporting of the impact on businesses financial health.
- **Gather data on small business lending.** Relatively little is known about the scale and impact small business lending because of the dearth of data. Discussions of the market, including this comment letter, draw on information from surveys, focus groups, and our direct experience with small businesses. But there is no broad data set, such as the mortgage data generated through HMDA, to draw broad conclusions. We recommend the OCC gather data, harmonized with any data gathering by the CFPB under Dodd-Frank section 1071, to assess pricing, financial inclusion, default rates, and other valuable information.
- We also highlight the Right to Inclusive Credit Access, bullet one:
“Non-Discrimination – Respect the letter and intent of fair lending laws, including the Equal Credit Opportunity Act. Do not discriminate against small business owners on the basis of race, color, religion, national origin, sex, marital status, age, sexual orientation or

¹⁸ Ann Marie Wiersch, Barbara J. Lipman, Brett Barkley, “Click, Submit: New Insights on Online Lender Applicants from the Small Business Credit Survey,” Federal Reserve Bank of Cleveland. October 12, 2016.

identity, or any other protected class. Lesbian, Gay, Bisexual and Transgender (LGBT) small business owners deserve the same protection when seeking or obtaining credit.”

Conclusion

Responsible innovation is providing much-needed access to capital. However, business models that exploit information asymmetries and misaligned incentives will not bring the economic opportunity hoped for, and damage businesses and families. Moreover, irresponsible practices can create a “tipping point” that affects an entire industry. If lenders obfuscate costs and pay 12% fees to brokers to attract customers, there is significant pressure on others in the industry to do the same in order to compete.

The OCC has a unique opportunity through its ability to create the special purpose national charter to lay a path for responsible innovation that guides small business lending through each of these problems into a better small business lending market. We welcome further discussion of these recommendations, and can be reached at info@responsiblebusinesslending.org.

Sincerely,

The Responsible Business Lending Coalition

Members of the Responsible Business Lending Coalition include:

Accion
Aspen Institute
Community Investing Management
Fundera,
Funding Circle
Lending Club
MultiFunding
Opportunity Fund
Small Business Majority

Attachments:

- The Small Business Borrowers’ Bill of Rights
- List of list of signatories and endorsers of the Small Business Borrowers’ Bill of Rights
- Recommendations for improvement of the SMART Box



SMALL BUSINESS BORROWERS' BILL OF RIGHTS

The way small businesses borrow money is being transformed. Innovators are providing faster and easier ways to borrow and increasing access to credit in communities that have historically been underserved. This transformation will achieve its potential only if it is built on transparency, fairness, and putting the rights of borrowers at the center of the lending process.ⁱ To that end, we have identified the fundamental financing rights that we believe all small businesses deserve. These rights are not yet protected by law, in most cases. We encourage the entire small business financing industry to join us in upholding these rights.

1. The Right to Transparent Pricing and Terms

You have a right to see the cost and terms of any financing being offered in writing and in a form that is *clear, complete, and easy to compare* with other options, so that you can make the best decision for your business.

In order to protect your Right to Transparent Pricing and Terms, lenders and brokers must:

- **Transparent Rate** – Disclose the Annual Percentage Rate (APR),ⁱⁱ as the all-in annualized price of the financing, and the annualized interest rate if one is used.
- **No Hidden Fees** – Disclose all upfront and scheduled charges.
- **Plain-English Terms** – Describe all key terms in an easy-to-understand manner, including the loan amount, total amount provided after deducting fees or charges, payment amount and frequency, total monthly payment amount if payment frequency is other than monthly, collateral requirements, and any prepayment charges.
- **Clear Comparison** – Present all of these pricing and other key terms clearly and prominently, in writing, to the borrower when the loan offer is summarized for the borrower and whenever a term sheet, offer summary, or equivalent is provided.
- **Fair warning** - If a lender or broker refers an applicant to another lender who may charge that borrower a rate higher than 36% APR and is not a signatory of the Small Business Borrowers' Bill of Rights, provide the following warning in writing prior to making the referral:

“Warning: This lender or broker may offer you financing with an APR that is higher than 36%. Regretfully, some loans and cash advances can trap borrowers in cycles of high-cost debt. Before taking any financing, make sure you know the APR, the total payment amount you would owe monthly (even if payments are made daily or weekly), and whether you would owe financing charges even if you pay off early. Make sure you are confident you can afford to pay off any financing you take.”

2. The Right to Non-Abusive Products

You have a right to loan products that will not trap you in an expensive cycle of re-borrowing. Lenders' profitability should come from your success not from your failure to repay the loan according to its original terms.

In order to protect your Right to Non-Abusive Products, lenders must:

- **No Debt Traps** – If the borrower is unable to repay an existing loan, extend new credit only if due diligence indicates that the borrower's situation has changed, enabling them to repay the new loan.
- **No "Double Dipping"** – Do not double-charge the borrower. When refinancing or modifying a loan with a fixed-fee as the primary financing charge, do not charge fees on the borrower's outstanding principal unless there is a tangible cost benefit to the borrower.
- **No Hidden Prepayment Charges** —If the borrower receives no savings, or limited savings, in early payoff, disclose this in the original loan term sheet or offer summary, and again at the time of payoff. For financing with a fixed term, if a prepaying borrower owes a fixed repayment amount or a certain percentage of that amount regardless of when they pay off the financing, disclose this as prepayment charge. This charge is equal to the remaining financing charge owed at payoff, which is the cost the borrower is paying for the unused portion of the loan.
- **Appropriate Product** – Match loan product design and loan product use. If presenting a loan product as designed for one use, do not encourage borrowing behavior contrary to that use. For example, short-term products may be well suited for short term use, but not for long-term recurring use. Long-term products with prepayment penalties may be well suited for long-term use, but not for short-term needs.
- **Pressure Free** – Allow borrowers a reasonable time to consider their loan options free from pressure or artificial timelines.
- **Prompt Prepayment Assistance** – If a borrower seeks to prepay a loan, provide any information required for prepayment within two business days of the borrower's request.
- **Responsive Complaint Management** – If a complaint is submitted, provide a confirmation of receipt within five days and in writing, when possible, and research and resolve the complaint in a timely manner.

3. The Right to Responsible Underwriting

You have a right to work with lenders who will set you up for success, not failure. High loss rates should not be accepted by lenders simply as a cost of business to be passed on to you in the form of high rates or fees.

In order to protect your Right to Responsible Underwriting, lenders must:

- **Believe in the Borrower** – Offer financing only with high confidence that the borrower can repay its *entire* debt burden without defaulting or re-borrowing.
- **Alignment of Interests** – Lenders who receive repayment directly from the borrower’s gross sales must also verify, through documents, data from third parties, and/or due diligence, that the borrower can repay all debt and remain profitable, or that it has a credible path to profitability. Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid.
- **Right-sized Financing** – Size loans to meet the borrower’s need, rather than to maximize the lender’s or broker’s revenue. Seek to offer the borrower the size of loan that they need, rather than offering the largest amount they could qualify for.
- **Responsible Credit Reporting** – Report loan repayment information to major credit bureaus and consult credit data when underwriting a loan. Such reporting enables other lenders to responsibly underwrite the borrower and helps the borrower build a credit profile that may facilitate access to more affordable loans in the future. Lenders must inform the borrower and any guarantors if they intend to report loan repayment performance to guarantors’ credit bureaus only in certain circumstances, such as after a default.

4. The Right to Fair Treatment from Brokers

You have a right to transparency, honesty, and impartiality in all of your interactions with brokers.

In order to protect your Right to Fair Treatment from Brokers, brokers must offer:

- **Transparent Loan Options** – Disclose all loan options for which the borrower qualifies through the broker’s services, emphasizing the lowest APR option, and disclose all lenders to which the broker sends loan applications on the borrower’s behalf.
- **Transparent Broker Fees** – Disclose all compensation paid to the broker, and all charges that will be paid directly or indirectly by the borrower, whether paid up front or financed in the loan.
- **Transparent Results** – Post clearly and prominently on the broker’s website the anonymous and aggregated results of borrowers who obtain financing through the brokers’ services, in terms of APR and financing product.
- **Empower Borrowers to Make Informed Financing Decisions** – Educate the borrower on each loan option and ensure that the borrower reasonably understands the cost and terms as well as

the pros and cons of financing decisions *before* they sign a loan document. Brokers should use tools that help the potential borrower comparison shop, including APRs and loan calculators.

- **Disclosure of Conflicts of Interest** – Disclose any conflicts of interest, the broker’s fee structure, and any financial incentives they have, including whether the broker receives higher fees for brokering certain loans. Brokers who are paid higher fees with certain lenders, loan types, or terms other than the size of the loan, may not state they are acting in the best interest of the potential borrower.
- **No Fees for Failure** – No fees can be charged to the potential borrower if the broker is unable to find them a loan and if the borrower does not accept a loan secured through the broker's services.
- **Responsive Complaint Management** – If a complaint is submitted, provide a confirmation of receipt within five days and in writing, when possible, and research and resolve the complaint in a timely manner.

5. The Right to Inclusive Credit Access

You have a right to fair and equal treatment when seeking a loan.

In order to protect your Right to Inclusive Credit Access, lenders and brokers must:

- **Non-Discrimination** – Respect the letter and intent of fair lending laws, including the Equal Credit Opportunity Act. Do not discriminate against small business owners on the basis of race, color, religion, national origin, sex, marital status, age, sexual orientation or identity, or any other protected class. Lesbian, Gay, Bisexual and Transgender (LGBT) small business owners deserve the same protection when seeking or obtaining credit.

6. The Right to Fair Collection Practices

You have a right to be treated fairly and respectfully throughout a collections process. Collections on defaulted loans should not be used by lenders as a primary source of repayment.

In order to protect your Right to Fair Collections Practices, lenders must:

- **Fair Treatment** – Abide by the spirit of the Fair Debt Collection Practices Act and provide borrowers similar protections as described in that Act.
- **Responsible Oversight** – Diligently vet and oversee the collections practices of third-party collectors and debt buyers. Do not work with collectors or debt buyers who fail to treat borrowers fairly.
- **Accurate Information** – Transmit accurate, current, and complete information about the loan to third-party collectors and debt buyers.

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ⁱ The term “loan” and related terms used here such as “lending” are intended to be interpreted in the broadest sense possible so as to include loans, lines of credit, merchant cash advances, and similar products offered and provided to U.S. small businesses, whether or not such credit products are characterized legally or otherwise as loans. Similarly, the terms “lender” and “borrower” are intended to be interpreted in the broadest sense possible so as to include, in the case of lenders, credit marketplaces that facilitate loans on behalf of lenders, cash advance providers, and all manner of persons providing loans to U.S. small businesses or evaluating the creditworthiness of such small businesses in connection with providing a loan, and, in the case of borrowers, all U.S. small businesses who seek or obtain a loan.

ⁱⁱ APR (annual percentage rate) is the annual rate that is charged for borrowing, expressed as a single percentage number. It includes fees as well as interest rate, and represents the actual yearly cost of funds.



RESPONSIBLE BUSINESS LENDING COALITION

Small Businesses Borrowers' Bill of Rights Signatories

These lenders, brokers, and marketplaces have taken a stand for small businesses by attesting that they abide by the *Small Businesses Borrowers' Bill of Rights*. We call on the entire small business financing industry to join us in demonstrating that they abide by the *Small Business Borrowers' Bill of Rights*.

1 Main Street Capital

ABLE

Accion

Accion Chicago

Accion East

Accion NM

Accion SD

Adelante Fund Meda

Akouba Credit

Anchor Capitol for A Common Goal

BCL of Texas

Bell Funding Solutions

Bond Street

Borrowize

Business Center for New Americans

Business Solutions Advocates (BAS)

Camino Financial

Cityfirst Enterprises



RESPONSIBLE BUSINESS LENDING COALITION

Colorado Lending Source

Common Capital

Community Capital New York

Community Enterprise Development Services (CEDS)

Community Reinvestment Fund, Inc

CopperLine Capital, LLC

Credibility Capital

Creditera Inc.

Dealstruck

ECDI

Excelsior Growth Fund

Fast Capital 360

FinVoice

Fresno CDFI

Fundera

Funding Circle

Funding Societies

Growth Capital Corporation

Halo Business Finance

Justine Petersen

Latino Economic Development Center

LendingClub



RESPONSIBLE BUSINESS LENDING COALITION

Lighter Capital

Market Street Funders

Micro Enterprise Services of Oregon

Money Matchmaker Co Capital

Mountain Biz Works

Multifunding

Next-Financing

OBDC Small Business Finance

Opportunity Fund

P2B Investor

Pacific Community Ventures

Quote 2 Fund

Small Business Finance

Street Shares

The Credit Junction

The Intersect Fund

The Support Center

Washington Area Community Investment Fund (Wacif)

Wisconsin Women's Business Initiative Corporation (WWBIC)

Women's Economic Ventures

Working Solutions

Zip Cap



RESPONSIBLE BUSINESS LENDING COALITION

Small Businesses Borrowers' Bill of Rights Endorsers

These organizations care deeply about responsible business lending and actively support the *Small Business Borrowers' Bill of Rights*.

Alliance Partners

Amiba American Independent Business Alliance

Asian Pacific Islander Small Business Program

Beneficial State Bank

California Association for Micro Enterprise Opportunity

Calvert Foundation

CFED

CNHED

Community Investment Management LLC

Evolution Capital Management

Human Scale Business, a Benefit Corporation

Jefferson Economic Development Institute (JEDI)

Lighter Capital

Little Tokyo Service Center

Microenterprise Collaborative of Inland Southern California

National CAPACD

National League of Cities

Nerd Wallet



RESPONSIBLE BUSINESS LENDING COALITION

Next-Financing

SGE

Small Business California (SB-Cal)

Small Business Finance Institute

Small Business Majority

The Aspen Institute

The Law Project of the Chicago WDB-

Law offices of William D. Black



RESPONSIBLE BUSINESS LENDING COALITION

Statement on SMART Box

The SMART Box, developed by the Innovative Lending Platform Association (ILPA) in partnership with the Association for Enterprise Opportunity (AEO), is a positive step forward in promoting greater transparency for small businesses seeking financing, especially around the disclosure of APR and average monthly payment. However, the Responsible Business Lending Coalition (RBLC) believes it does not go far enough.

There is room for improvement in the box to better inform small businesses of the cost and affordability of the financing they are being offered, including around clearer prepayment cost disclosures, less emphasis on the dollar cost of financing, and other minor issues.

Last year, the RBLC launched the Small Business Borrowers' Bill of Rights (BBoR), which called on the industry to take greater strides in promoting responsible lending products and practices. The SMART Box represents strong progress with regard to rate transparency and we hope to see similar developments across the industry on the other critical elements of responsible lending, including borrowers' rights to non-abusive products, responsible underwriting, fair treatment from brokers, inclusive credit access and fair collections practices.

Q&As

Can BBoR signatories and endorsers adopt the SMART Box?

While the SMART Box is a positive step forward in promoting greater transparency for borrowers, it does not adequately address the "transparent pricing and terms" requirements stipulated in the Bill of Rights - particularly around prepayment cost disclosures. If a signatory chooses to adopt the box, they will need to also clearly disclose the amount of any prepayment costs to ensure their policies and practices remain compliant with the BBoR.

Was the RBLC given the opportunity to provide feedback on the box before it was launched?

Yes. The RBLC provided feedback on the essential elements we believe should be included in a standardized disclosure box to the ILPA and AEO in July. We were subsequently invited to provide additional feedback on the box during the later stages of its development. While we were pleased some of our feedback was incorporated into the box, including the clear and prominent disclosure of APR and average monthly payment, we believe the final product does not go far enough in providing clarity to borrowers on the cost of financing.

Will the RBLC be announcing its own version of a disclosure box?

We have no current plans to do so. Our hope is that we can continue in dialogue with the ILPA and others in the industry to develop a single standard disclosure box that we believe is consistent with the rights of borrowers we identified in the BBoR.

What elements within the SMART Box would need to be updated for the RBLC to endorse it?

1. We have serious concerns that the prepayment section, as-is, can obscure the difference between a very large effective prepayment charge and none at all. It portrays a “25% repayment savings” essentially identically to a traditional bank loan with no prepayment penalty.

Our recommendation for the two questions would be to add “How much.”

- Q1 “Does prepayment of this Loan result in any new fees or charges?” Yes/No. If Yes, add “Up to \$xxx.”
- Q2 “Does prepayment of this Loan decrease the total interest or Loan Fees owed?” Yes/No. If Yes, “Up to \$xxx, X% of the Interest Expense Outstanding”

2. The layout of the box, together with the combined/redundant use of Repayment Amount on the top bar along with Total Cost of Capital and Cents on the Dollar, overemphasize the dollar cost of the financing. The problem is that this obscures the cost of capital over time, and the real annualized cost of using a product repeatedly. We would recommend adding APR to the top bar to add balance with the traditional cost metric which does take time into account.

3. We do not believe “cents on the dollar” is an appropriate metric to include in a disclosure box but remain open to arguments for its importance to a small business owner.

4. In fine print, we disagree with the phrase “APR may be most useful when comparing financing solutions of similar expected duration.” We recommend removing it. APR is useful also in comparing products with different durations which can be prepaid, or comparing the cost of repeated use of a product over time.

5. The total cost of capital footnote #1 notes that a monthly maintenance fee would not be included. Why would this not be included in “Other Fees”? Any scheduled fee should be included.

6. We believe that the design of the box could be improved to ensure that potential borrowers are able to clearly read and understand the information it includes.

A Collection of White Papers, Speeches, and Articles Establishing the Need for Small Business Borrower Protections

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