January 22, 2019

California Department of Business Oversight, Legal Division
Attn: Mark Dyer, Regulations Coordinator
1515 K Street, Suite 200
Sacramento, California 95814-4052
regulations@dbo.ca.gov

Re: Invitation for Comments on Proposed Rulemaking, Commercial Financing Disclosures (PRO 01-18)

Dear Mr. Dyer and Mr. Carriere:

On Deck Capital, Inc. ("OnDeck") appreciates the opportunity to comment on the California Department of Business Oversight's ("DBO") proposed rulemaking for SB 1235 (Chapter 1011, Statutes of 2018) as solicited in that letter of invitation from the Commissioner of the California Department of Business Oversight (the "Commissioner"), dated December 4, 2018 (the "DBO Invitation"). OnDeck applauds SB 1235's goal of providing comprehensive and transparent disclosures to small business borrowers and thanks the DBO and the Commissioner for engaging in a thoughtful, collaborative approach to implement SB 1235.

About OnDeck

OnDeck is a publicly-traded company (NYSE: ONDK) that offers transparent and responsible online loans to small businesses through advanced lending technology and a dedication to customer service. Our mission is to increase access to capital for small businesses, so they can invest in their growth and fuel their local economies. Founded in 2006, OnDeck pioneered the use of data analytics and digital technology to make real-time lending decisions and deliver capital rapidly to small businesses online. Today, OnDeck offers a wide range of term loans and lines of credit customized for the needs of small business owners. We also partner with bank clients through ODX, our wholly-owned subsidiary, a comprehensive technology and services platform that facilitates the bank's ability to provide online lending options to its small business customers.

To date, OnDeck has provided over $10 billion in capital to small business customers in the United States, Canada and Australia. Our customers span over 700 different industries and often represent communities that are frequently overlooked, excluded, or underserved by traditional credit markets. Our customer feedback and satisfaction scores rival those of some of America's most popular brands, and our A+ rating with the Better Business Bureau underscores our deeply ingrained commitment to meeting the highest standards of excellence in service.

The SMART Box and the Requirements of SB 1235

OnDeck strongly supports transparency in small business financing and is committed to providing small businesses with responsible and transparent financing options. In 2016, as a founding member of the Innovative Lending Platform Association ("ILPA"), OnDeck helped design a model disclosure tool – the SMART Box™ – that presents small business borrowers with comprehensive pricing metrics and identifies key loan terms using plain, easy-to-understand language. Since then, OnDeck has helped developed and launch the SMART Box in every market in which we operate, including in Australia and Canada.

OnDeck is very proud of the SMART Box initiative, and we believe it embodies the spirit and purpose of SB 1235 by providing a summary of key loan terms, including clear and consistent pricing metrics, calculations and explanations to help small businesses understand the costs of their small business financing options. We strongly believe the SMART box fully satisfies the disclosure requirements laid out in SB 1235, and we hope that we will be able to continue to provide the SMART Box to our small business customers in California in accordance with SB 1235.

Responses to Potential Topics for Rulemaking

OnDeck fully supports the responses included in the ILPA's comment letter (attached hereto). In this letter, OnDeck would like to supplement the ILPA's letter by addressing some of the specific questions and requests raised in the DBO Invitation that pertain to matters particular to OnDeck and its model and products.

1. Definitions of "Provider"

We believe that the definition of "provider" in SB 1235 is unclear and may result in ambiguity as to whether certain transactions and entities are subject to the disclosure requirements, particularly with respect to loans originated by depository institutions (e.g., banks) that partner with non-depository institutions to provide certain services in connection with the bank's originations and servicing platforms.

Banks increasingly are entering into relationships with online lending platforms to expand the banks' ability to efficiently offer commercial loans to their small business customers. There are a variety of ways in which depository institutions may partner with non-depository institutions, and depending upon how the partnership is structured, a variety of services that the non-depository institution may provide to (or on behalf of) the depository institution.

One model is what OnDeck calls our *white label* partnerships. Under this model, OnDeck acts as a Software-as-a-Service (SaaS) provider for the bank's small business financing program, providing technology, underwriting and other support services that help the bank offer small business credit on a uniform basis and automate its business lending processes. The bank typically offers its *branded* financing product on its website to eligible business customers. The bank originates the loans and is the lender on all of the loans, and the loan program is subject to the laws and regulations applicable to the bank and is supervised and examined by the bank's federal regulators. Further, in a white label arrangement, the online lending platform does *not* at any point purchase or have any financial interest in the loans made by the bank. It is the bank's loan product, its loan agreement, its capital and its customer and the loan always remains on the bank's balance sheet – the online lending platform only provides background underwriting in accordance with the bank's credit policy and servicing technology for use by the bank.

We note further that depository institutions are subject to ongoing guidance on programs with third-party service providers and are required by their regulators to have strong vendor oversight and management programs. Therefore, we believe the DBO can provide clarification with respect to white label partnerships to avoid duplicative regulation and potential federal preemption issues *without* sacrificing protections for small business borrowers. Without such clarification, banks may choose not to lend to small businesses in certain states if the mere use of non-bank vendors and service providers would subject their loan program to state-specific regulation. Furthermore, all loans originated by banks under white label programs are subject to federal regulation, and so any state legislation attempting to regulate them could be vulnerable to legal challenges on federal preemption grounds.

A key point of clarification required in the definition of "provider" is the phrase "administered by." The disclosure requirements in the bill apply to loans extended by depository institutions "via an online lending platform administered by" a non-depository institution. Under the current definition of "provider," it is unclear when an online lending platform will be deemed to be "administered by" a non-depository institution and therefore subject to the disclosure requirements of SB 1235. The phrase "administered by" is ambiguous and could be interpreted to cover a broad range of services, including white label products offered by depository institutions.

Therefore, we respectfully request that the DBO provide guidance and clarity on what types of services provided to a bank would mean an online lending platform is "administered by" the non-depository institutions. Under the white label partnership model we have described, the online lending platform is not "administered by" the non-depository vendor because the loan is branded as the bank's product, offered on the bank's website to the bank's customers, originated by the bank, and held on the bank's balance sheet for the life of the loan. Therefore, the non-depository institution should not be deemed to be a provider. Instead, such transactions should fall under the exemption for depository institutions under Section 22801(a). We recommend that the Commissioner clarify this distinction.

We would be happy to provide additional information about our partnerships and the services that we provide in order to assist the Commissioner in providing this critical clarity.

2. Types of Commercial Financing: Open-End Credit Plans

To avoid obstacles in complying with the requirements of SB 1235 with respect to open-end credit plans, we seek clarity from the DBO on the assumptions that must be made with respect to open-end credit plans to calculate and provide the disclosures required under 22802(b) (1), (2), (4) and (6). Put briefly, to calculate and disclose (i) the total amount of funds provided, (ii) the total dollar cost of financing, (iii) the method, frequency and amount of payments and (iv) the total cost as an annualized rate, the providers of open-end credit plans must make assumptions about the amount(s) that will be drawn on the line of credit and the length of time that such funds will be held by the borrower. These assumptions may not be borne out or ultimately reflect the actual costs accruing to the borrower.

For example, in order to provide the total dollar cost of financing for a line of credit, the provider must assume some draw amount. Like a credit card, an open-end credit plan can be utilized by a borrower in different ways, and the amount of money drawn and the length of time such money is held will impact the dollar cost. Again, as with a credit card, if the provider is asked to disclose the dollar amount of interest a borrower will pay, the provider must assume a draw amount to provide that information. In fact, if the business never draws on the line, the interest expense will be $0.

That said, while there are challenges with respect to disclosure around open-end credit plans, we believe the Commissioner can address those obstacles in an efficient and equitable fashion in the rulemaking process. We recommend clarifying that providers offering open-end credit plans should calculate all disclosures based on either (1) the initial amount scheduled to be drawn by borrower at the time of disclosure, or (2) if no initial draw is scheduled, the maximum amount of credit available under the open-end credit program.

In the SMART Box, we assume an initial draw amount equal to the approved credit limit and that such draw is paid off in its entirety according to the agreed payment schedule, that no repayments are missed, and that the borrower does not re-draw on the line. We chose to assume the entire line amount is drawn because that presents our borrowers with the high watermark in terms of costs. We also expressly note that the disclosed total cost is an *estimate* that may not be accurate if the business draws a different amount for a different period of time, and that the borrower's actual costs may differ substantially.

3. Fees and Charges Included in an Annualized Rate Calculation

In the DBO Invitation, the Commissioner requested comments relating to fees and charges for commercial financing types other than fixed-rate, fixed-payment financing. We echo the ILPA's recommendation that the DBO adopt Annualized Percentage Rate (APR) as the annualized rate, to be calculated in accordance with the methodology set forth in Regulation Z. We would further recommend that DBO leverage the definitions in Regulation Z to determine what fees and charges should be included in any annualized rate calculation. Under Regulation Z, APR includes fees that are unavoidable by the borrower and does not include fees that are avoidable, such as late payment fees, returned payment fees, or monthly maintenance fees (in the case of lines of credit) or rejected ACH debits (in the case of advance and factoring products).

We understand the DBO would like us to explain the concept of a "monthly maintenance fee" under an open-end credit plan. OnDeck's lines of credit are subject to a nominal monthly fee to keep an account open each month. We would not include such monthly maintenance fee in the APR calculation for our line of credit products, per the relevant guidance in Regulation Z. Section 1026.14(c) excludes from the calculation of APR "finance charges that are imposed during the billing cycle such as a loan fee […]or similar charge that relates to opening, renewing, or continuing an account." If a fee does not relate to a specific transaction or to specific activity on the account, but relates solely to the opening, renewing, or continuing of the account, our understanding is that such fee may be excluded from the calculation of APR.

4. Prepayment Policies

Many of our products have a fixed interest expense. Under this model, the borrower may be responsible for paying some or all of the outstanding unpaid interest expense upon payment in full. With such products, because the prepayment date is unknown at the time of disclosure, it is impossible to provide the borrower with a dollar amount that will be due upon early repayment. That said, the provider can disclose to the borrower the percentage of the outstanding unpaid interest expense that the borrower will be responsible for if the loan is repaid in full. For example, our loan agreements clearly explain to the customer that if the borrower prepays the loan in full, we will reduce their remaining unpaid interest by a certain percentage (25% - 100%) as of the prepayment date, with the remaining percentage of unpaid interest due upon prepayment. Due to the variety of prepayment policies across products, we believe the clearest way to disclose prepayment policy is to provide a detailed explanation, and we believe SB 1235 takes the correct approach.

* * *

We look forward to continuing to work with the DBO and Commissioner on implementing this important legislation. If you have any questions, please do not hesitate to contact me at cspradley@ondeck.com.

Kind regards,

Christin Spradley
Head of Policy, Senior Associate General Counsel

Cc: Charles Carriere, Counsel for the Commissioner at charles.carriere@dbo.ca.gov

ILPA Comment Letter

(See Attached)

January 22, 2019

SENT VIA ELECTRONIC MAIL & COURIER

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Re: Invitation for Comments on Proposed Rulemaking, Commercial Financing Disclosures (PRO 01-18)

Dear Mr. Dyer and Mr. Carriere:

The Innovative Lending Platform Association ("ILPA") appreciates the opportunity to comment on the California Department of Business Oversight's ("DBO") proposed rulemaking for SB 1235 (Chapter 1011, Statutes of 2018) as set forth in a letter of invitation from the Commissioner of Business Oversight (the "Commissioner"), dated December 4, 2018 (the "DBO Letter"). The ILPA applauds SB 1235's goal of providing comprehensive and transparent disclosures to small business borrowers and thanks the DBO and the Commissioner for engaging in a thoughtful, collaborative approach to implement SB 1235 through the rulemaking process. In this letter, the ILPA provides comments in response to questions posed by the Commissioner in the DBO Letter as well as comments on additional topics on which we seek guidance from the Commissioner.

The ILPA is the leading trade organization for online lending and service companies serving small businesses. Our member companies[1] share a commitment to the health and success of our nation's small businesses and are dedicated to advancing best practices and standards that promote responsible innovation and access to capital. The ILPA strongly supports transparency in small business financing disclosures, and our member companies are committed to providing small businesses with responsible and transparent financing options. In 2016, the ILPA created an industry-first model disclosure tool – the SMART Box™ – that presents small business borrowers with comprehensive pricing metrics and identifies key loan terms in plain, easy-to-understand language. Copies of the three different versions of the SMART Box are attached hereto as Exhibits A, B and C.

The SMART Box empowers small businesses to better understand and compare their financing options. To develop the SMART Box, the ILPA launched a 90-day national engagement period in 2016 to foster an open dialogue with interested lending platforms, trade associations, regulators, policymakers, non-profit organizations, small business advocates, customers of ILPA member companies and other small business owners. The ILPA also conducted surveys of small business stakeholders and engaged directly with networks of Community Development Financial Institutions (CDFIs) and community lenders. Most importantly, the ILPA worked in consultation with small business owners to identify the pricing metrics they deemed most useful when evaluating and comparing the cost of credit. These discussions and surveys helped inform the final disclosures, which are

[1] Members of the ILPA include OnDeck, Kabbage, Lendio, The Business Backer, Breakout Capital, BlueVine, Fundbox, PayNet, 6th Avenue Capital and Orion First.

periodically updated to reflect ongoing feedback from customers. As a result, the SMART Box sets a standard for clear, uniform disclosures in financing products to help small businesses make more informed borrowing decisions, whether they are considering how a certain product fits a business need or how it compares to other financing options.

This industry-driven disclosure has been endorsed by all ILPA members, including some of the nation's largest online lending platforms and has even emerged as an international standard for small business lending disclosures.[2] The SMART Box has also been nationally recognized by the Bipartisan Policy Center and the Federal Reserve for providing increased transparency to borrowers:

> "[The SMART Box] provides easy-to-understand statistics, such as APR and average monthly payments, in one place…" *Bipartisan Policy Center (August 2018)*.
>
> "Participants presented with [the SMART Box] … overwhelmingly liked the format and the wealth of information contained in the table. Among their comments: 'I like this and see what is important to me!'; 'This is exactly how I would like to see the breakdown'; 'This is straight to the point'; and 'It has everything a borrower would want to know'." *Federal Reserve Report (June 2018)*.

In addition, a white paper issued by the Lending Subgroup of the Conference of State Banking Supervisors FinTech Industry Advisory Panel strongly advocates for a flexible, principles-based approach to commercial loan disclosures that would allow disclosures to develop at pace with the marketplace. The white paper also sets forth guiding principles that align closely with the SMART Box and flags the SMART Box as a resource for state financial services regulators that are interested in commercial disclosure issues.

I. The SMART Box and the Requirements of SB 1235

The ILPA is proud of the SMART Box initiative. We believe it embodies the spirit and purpose of SB 1235 by providing a summary of key loan terms, clear and consistent pricing metrics, and calculations and explanations to help small businesses understand and compare the costs of their small business financing options. We strongly believe the SMART Box fully satisfies the disclosure requirements laid out in the legislation. **At the conclusion of the DBO's rulemaking, we hope that ILPA members may take comfort that their continued use of the SMART Box satisfies their obligations under SB 1235.**

As summarized in the DBO Letter, SB 1235 requires a "provider" to disclose specified information that includes: (1) the total amount of funds provided; (2) the total dollar cost of financing; (3) the term or estimated term; (4) the method, frequency and amount of payments; (5) a description of prepayment policies; and (6) the total cost of the financing expressed as an annualized rate.

The SMART Box provides each of the disclosures required by SB 1235. The SMART Box also addresses many questions raised in the DBO Letter by providing clear definitions and explanations of financing terms, demonstrating methods of calculating each disclosure, providing a clear and conspicuous format for disclosure, and specifying a standardized, well-tested method for calculating annualized rate consistent with the APR methodology provisions of the Truth In Lending Act, as amended and implemented by Regulation Z ("TILA").

The ILPA uses three different versions of the SMART Box – for term loans, lines of credit, and merchant cash advances (MCAs) – that account for the inherent differences among those products while still utilizing standardized language and common pricing metrics to facilitate comparisons. The SMART Box features two main

[2] See the following resources on global transparency initiatives in small business financing: https://innovativelending.org/smart-box/ (USA), https://www.canadianlenders.org/smart-box/ (Canada), and https://www.afia.asn.au/aosbl/ (Australia).

parts. The first part presents basic elements of the financing option under consideration, including the amount financed, the funds disbursed, the total repayment amount, the expected term, and the frequency of payment (as applicable). The second part presents four common pricing metrics: total cost of capital, APR (or estimated APR for merchant cash advances), the average monthly payment, and the "cents on the dollar" cost of the financing option. Additionally, each SMART Box disclosure assumes that the finance option will be repaid in its entirety according to the terms of the applicable agreement and that no payments will be missed. A summary of the SMART Box disclosure elements is below:

1. Financing Amount
2. Disbursement Amount, after any fees deducted or withheld at disbursement
3. Repayment Amount
4. Term or Estimated Term[3]
5. Cost Comparison Metrics[4]
    a. Total Cost of Capital[5]
    b. APR or Estimated APR[6]
    c. Cents on the Dollar[7]
6. Periodic Payment Amount or Payment Schedule
    a. If payments are a fixed amount, provide the payment amount and frequency (e.g., daily, weekly, monthly), <u>and</u> the average monthly payment amount
    b. If payments are a variable amount, provide a payment schedule or a description of the method used to calculate payment amounts and frequency of payments, <u>and</u> the average monthly payment amount[8]
7. Prepayment Policy, including a cross reference to a description of any fees, expenses or charges due when the financing is paid in full

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[3] When providing the Estimated Term for products with variable payments and/or no fixed term, we recommend providing the total time for repayment assumed by the lender in the underwriting process.

[4] To calculate APR and Total Cost of Capital for certain products, the lender must make certain assumptions which may not be borne out or ultimately reflect the costs paid by the borrower. To provide the APR for merchant cash advances or other products without a fixed term, the provider must estimate the term. To provide the Total Cost of Capital for a line of credit product with no set draw amount, the provider must assume a draw amount.

[5] The Total Cost of Capital is the total dollar cost to be charged to the borrower, assuming the borrower pays according to the original payment schedule, including all fees and charges that cannot be avoided by the borrower (e.g., origination fee, interest expense, and other upfront fees). When providing the Total Cost of Capital for a line of credit product, we recommend assuming the entire line amount is drawn at the time of disbursement. In such case, we recommend further that disclosures expressly note that the Total Cost of Capital is estimated based on an initial draw of the full line amount held for the full term, and that the quoted Total Cost of Capital will not be accurate if the business draws a different amount for a different period of time.

[6] We recommend that APR be calculated consistent with the APR methodology provisions of TILA and Regulation Z. When providing Estimated APR for a financing with a variable term, we recommend calculating based on the daily, weekly or monthly delivery of receivables or payments from the business that is assumed by the lender in the underwriting process. In such case, we recommend further that disclosures explain that the Estimated APR is intended as a good faith estimate and may not be accurate if the business repays more quickly or slowly than as reflected in the Estimated Term.

[7] The Cents on Dollar metric expresses the total amount of interest, in cents, paid by the borrower per dollar borrowed. This amount is exclusive of fees.

[8] To calculate the average monthly payment for certain products, the lender must make certain assumptions which may not be borne out or ultimately reflect the costs paid by the borrower. The ILPA believes small businesses should be provided with the estimated monthly payment in dollars to allow easy comparisons of costs across products and to empower small businesses owners to understand the effect of the financing on their monthly revenue and expenses. Our research found that it is compelling and intuitive for business owners to think of their business finances in terms of "dollars in" and "dollars out" on a monthly basis.

8. Other potential fees and charges, including a cross reference to all other potential fees and charges that can be avoided by the borrower (e.g., draw fees, late payment fees, returned payment fees)

We discuss in greater detail below how the SMART Box addresses certain challenges with respect to commercial loan disclosures and satisfies the provisions of SB 1235. We would gladly provide any further clarification on the SMART Box that is necessary or helpful to assist the DBO in its rulemaking process.

Because the SMART Box is a product of extensive and thoughtful research, development and testing, and as many California small businesses are accustomed to seeing the SMART Box, we encourage the DBO to entertain a pre-approval process for model forms of disclosure pursuant to which the ILPA could formally submit the SMART Box for consideration. Through a pre-approval process, providers would be able to submit their forms of disclosure for review and comment by the DBO. If the DBO finds that a disclosure form satisfies the requirements of SB 1235, the DBO could designate it as a "model form," so any disclosure form that is substantially similar to the model form will be deemed to comply with SB 1235. The DBO could make this designation either by issuing a formal interpretive opinion[9] or otherwise communicating to the provider(s) that the model form has been pre-approved. This pre-approval would not only provide clarity on how the provider can comply with SB 1235, but more importantly, benefit borrowers who are accustomed to receiving disclosures like the SMART Box in their loan documentation. Furthermore, it would allow the DBO to retain flexibility to review disclosure forms and tools that are not currently contemplated at the time of this rulemaking or not yet available in the market. If the DBO is willing to carry out a review and pre-approval process (or otherwise respond to a request for an interpretation on compliance with SB 1235), the ILPA would like to respectfully submit the SMART Box as a disclosure tool that fully complies with all of the required elements of SB 1235.

II. Responses to Potential Topics for Rulemaking

For clarity and ease of reference, we have structured our comments to follow the headings used in the DBO Letter. In Section III, we provide recommendations and requests for guidance from the Commissioner on certain topics not expressly requested in the DBO Letter. Due to the diversity of lending models, products and services, for some questions, the ILPA has opted to have individual member companies address their specific recommendations in separate comment letters.

A. Definitions

SB 1235 defines terms relating to the commercial financing products that are subject to SB 1235's disclosures and entities that are exempt from making the disclosures. Are additional definitions needed? For the terms already defined, are any definitions unclear; and if so, why? Can the definitions be read to encompass transactions, individuals, or entities not intended to be regulated by the disclosure requirements? Does any definition result in ambiguity regarding whether a transaction, individual, or entity is subject to the disclosure requirements?

We believe the definition of "provider" in SB 1235 is unclear and may result in ambiguity regarding whether certain transactions and entities are subject to the disclosure requirements, particularly with respect to financing products made by depository institutions (e.g., banks) that partner with non-depository institutions (e.g., non-banks) where a non-bank's online platform provides certain services in connection with a bank's originations and servicing programs.

[9] We believe the DBO may issue an interpretive opinion to pre-approve the use of a provider's model disclosure form under SB 1235 in accordance with its general authority to issue interpretive opinions. 10 CCR § 250.12.

Banks are increasingly entering into a variety of partnerships with non-banks to expand their ability to efficiently offer commercial loans to their small business customers. In this kind of relationship, the non-bank's technology platform provides different services to or on behalf of the bank. However, if the online lending platform is deemed to be "administered by" the non-bank as a result of providing such services, loans made utilizing such platform would be subject to the disclosure requirements of SB 1235 even though those loans were originated by the bank. This determination is potentially confusing as banks are expressly exempted from the disclosure requirements pursuant to Section 22801(a) of SB 1235.

Therefore, we recommend that the definition of "provider" be clarified so that it excludes non-banks that act simply as service providers, technology licensors, or vendors in support of a federally exempt bank's small business financing program. In particular, we respectfully request that the DBO provide guidance on what types of services provided to a bank would mean that an online lending platform is "administered by" a non-bank.

Due to the diversity of partnership models and services, the ILPA has opted to have individual member companies describe their models and address their specific recommendations for the "provider" definition in separate comment letters.

In addition, we hope to clarify the timing and scope of an "offer" as it relates to commercial open-end credit plans and similar products. Among other situations where SB 1235's requirements may apply, we request the DBO confirm that the provision of an enrollment agreement, cardmember agreement, or similar agreement establishing a credit account for an open-end line of credit or similar product constitutes an "offer." Our member companies would be happy to provide the DBO with additional information on such agreements to assist the Commissioner in the rulemaking process.

B. Commercial Financing Requiring Estimated Term Disclosures

SB 1235 requires a provider to disclose the "term or estimated term" of the contract. What commercial financing contracts may require an estimated term disclosure, and why? The Commissioner suggests that stakeholders provide sample contracts that may require an estimated term disclosure.

Certain products, like cash advance products and some factoring products, do not have a fixed term or maturity date, so the provider must estimate the term of the financing. For products without a fixed term, the merchant typically agrees to deliver receivables to the provider as they are generated by the merchant's business (and *only if* they are in fact generated), rather than on any set repayment schedule.

The ILPA considered this question when developing the SMART Box for such products and ultimately recommended disclosing an estimated term based on certain stated assumptions, including that (1) the merchant will deliver the same amount of receivables each period and (2) the merchant will deliver all of the receivables sold within the delivery time predicted by the provider when the transaction is underwritten.

C. Disclosure of Method, Frequency, and Amount of Payments for Commercial Financing with Flexible or Contingent Repayment Obligations

Some types of commercial financing offer flexible or contingent repayment obligations. The Commissioner suggests that stakeholders provide examples of these types of commercial financing. How should providers disclose the method, frequency, and amount of payments required under such contracts?

The ILPA does not currently have a view on flexible or contingent repayment obligations.

D. Annualized Rate Disclosure

The version of SB 1235 that was introduced on February 25, 2018 required an annualized rate disclosure as an Annual Percentage Rate (APR) calculated according to provisions of the federal Truth in Lending Act and Regulation Z. A later version required a calculation called Annualized Cost of Capital (ACC). The proposed ACC disclosure would have been calculated as follows:

(Total Dollar Cost of Financing ÷ Total Amount of Funds Provided) × 365 ÷ (Term or Estimated Term) × 100

SB 1235, as enacted, requires the Commissioner to select the appropriate method to express the annualized rate disclosure. Should the Commissioner's rules require APR, ACC, or some other annualized rate disclosure? What are the benefits and drawbacks of each annualized rate disclosure? If disclosing an annualized rate may confuse financing applicants, what measures could the Commissioner require to reduce potential confusion for that disclosure?

We strongly believe that APR is the best annualized metric available to California small businesses. Further, we recommend that APR be calculated consistent with the APR methodology provisions of TILA and Regulation Z. We believe APR is useful because it reflects the cost of the finance product – including total interest and other fees – expressed as an annualized rate. APR takes into account the amount and timing of capital the borrower receives, the fees they pay, and the periodic payments they make. In the context of an open-end product, APR is the cost of the draw in terms of total periodic interest, expressed as a yearly rate. It is worth noting that, while APR can be used to easily compare products with similar time horizons, it is not an interest rate and cannot be used to calculate interest expense or meaningfully compare products with different term lengths, like 6-month loans against 36-month loans. Nevertheless, because APR is a widely accepted industry standard, it is useful as a transparent and readily available comparison metric for finance products of similar duration.

As we explain further below, the adoption of a widely used and standardized metric such as APR is the clearest and most efficient way to determine which fees and expenses to include in financing disclosures and how to consistently apply calculations to different types of finance products, including both close-end and open-end products, as these points are already addressed in great detail in Regulation Z. Accurate metrics that fairly reflect borrower costs across various financing products are necessarily complex, and Regulation Z provides appropriately detailed instructions that set forth the complex methodology for calculating APR for close-end and open-end products and explain the treatment of various fees and charges. Without such detailed guidance, providers are likely to vary their inputs and calculation methodologies. These differences will undercut the comparative value of an annualized rate disclosure.

In connection with developing the SMART Box, we specified different provisions of Regulation Z depending upon the product type to guide APR calculations:

- For open-end small business finance products, apply the methodology set forth in 12 C.F.R. § 1026.14;
- For close-end small business finance products, apply the methodology set forth in 12 C.F.R. § 1026.22;
- For merchant cash advance small business finance products, apply the methodology set forth in 12 C.F.R. § 1026.22; and
- For factoring small business finance products, apply the methodology set forth in 12 C.F.R. § 1026.22.

We strongly oppose "Annualized Cost of Capital" (ACC) as it is a non-standard and untested metric that will cause confusion among both borrowers and providers. ACC has not been used by any company nor recognized by any federal or state government agency. We are not aware of any studies or analyses that evaluate whether ACC yields accurate results across products. Unlike APR, which is accepted as an industry standard, has been widely tested with customers and has developed over time with extensive input and oversight, the ACC does not meet those same high standards. As a new metric with no existing precedent, regulatory infrastructure or marketplace awareness, even if the DBO were to provide guidance, ACC would very likely be calculated inconsistently by different providers, undermining the value of the metric as a comparison tool across products and undercutting the goals of SB 1235. It would also hurt the comparison potential of disclosures across states and markets, as California would be the only state to require ACC and, even then, only on a small subset of loans. We believe ACC does not add any value to existing metrics that are efficient, accurate and trusted by providers and borrowers. In fact, we believe ACC could mislead business owners that are trying to evaluate and compare financing products.

Therefore, we strongly recommend that APR be selected as the required metric for the annualized rate disclosure under SB 1235 for all applicable finance products. In any case, we strongly recommend that the Commissioner select a single method for expressing an annualized rate that applies across all financing products to ensure that potential borrowers are presented with comparable rates from different classes of lenders offering diverse products. If the DBO permits some products to disclose APR and others to disclose ACC or some other annualized metric, customers will not be presented with consistent, comparable rates.

E. Types of Commercial Financing

The Commissioner invites stakeholders to provide examples of commercial financing transactions subject to SB 1235 other than fixed-rate, fixed-payment financing. Examples of such transactions may include those with variable interest rates, multiple, flexible or contingent repayment options, merchant cash advances, open-end credit plans, and recourse and non-recourse factoring. What obstacles do stakeholders anticipate in complying with SB 1235 with respect to such transactions, and how can the Commissioner's rules address those obstacles?

We seek clarity from the DBO on the assumptions that must be made for revolving, open-end and other similar credit products where the information necessary to provide accurate disclosures is unknown at the time of an offer. To calculate and provide the disclosures required by Sections 22802(b) (1), (2), (4) and (6) of SB 1235 – including the total amount of funds provided, the total dollar cost of financing, the amount of payments, and the total cost as an annualized rate – providers of such products must make certain assumptions about how the product will be used by the borrower.

Apart from closed-end, fixed-rate, fixed-payment financing, a provider may not have certain information impacting the cost of credit at the time it makes an offer because of the inherent variability in how the borrower may use the funds. Products such as commercial credit cards, open-end lines of credit, closed-end loans with multiple draws, and numerous others all require that the provider to make assumptions about the amount and timing of the borrower's use of the offered credit. As with a personal credit card, a business line of credit can be utilized in different ways, and the amount of money drawn and the length of time that such money is held will impact the total cost. As with a credit card, if a provider is asked to disclose the dollar amount of interest a borrower will pay, the provider must assume a draw amount to provide that information. If the merchant never draws on the line, the interest expense will be zero.

To account for the variety of products available in the market, and to allow flexibility for providers to determine the appropriate disclosures for their customers, we recommend clarifying that providers of open-end products may comply with SB 1235 by calculating all disclosures based on reasonable assumptions or estimates of the total amount of funds provided, such as (1) the amount scheduled to be drawn by borrower at the time of disclosure, (2) if no initial draw is scheduled, the credit limit or maximum draw amount for the product or (3) a representative sample transaction. This type of estimate is a common practice and consistent with TILA and Regulation Z, which provide that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor may make required disclosures based on the best information reasonably available at the time, as long as such disclosures are identified as estimates.

For open-end credit plans, lines of credit, and similar products, the SMART Box disclosures are based on a default assumption that the merchant borrows the full amount of approved credit, pays that amount off in its entirety according to the agreed payment schedule, that no repayments are missed, and that the merchant does not borrow additional amounts while repaying the initial draw. For other products, it may be more appropriate to provide the SMART Box disclosures based on a representative sample transaction, and the ILPA has approved that approach in the past.[10] Whenever estimates are used, SMART Box requires they be identified as such along with a statement that actual costs may differ substantially (consistent with standard disclosure principles, as set forth in TILA/Regulation Z). Please refer also to our discussion of the disclosure elements under the SMART Box in Section I, "The SMART Box and the Requirements of SB 1235", where we demonstrate the assumptions that are made under the SMART Box for open-end and similar credit products.

F. <u>Types of Financing Requiring Estimated Annualized Rates</u>

SB 1235 requires the Commissioner to determine when a provider can disclose an estimated annualized rate and how providers must calculate the estimated annualized rate. What types of commercial financing will require estimated annualized rates, and why?

As discussed above, APR is a function of the cost of the finance product – including total interest and other fees – expressed as an annualized rate, and APR takes into account the amount and timing of capital the borrower receives, the fees they pay, and the periodic payments they make. To calculate APR for certain products without a fixed term or maturity date, like cash advance products and some factoring products, the provider must estimate the periodic payments and term of the financing and then present an estimated APR on that basis. For such products without a fixed term, the merchant typically agrees to deliver receivables to the provider as they are generated by the merchant's business (and *only if* they are in fact generated), rather than on any set schedule. This creates a challenge when calculating annualized rates, because certain inputs must be estimated.

The ILPA considered this question when developing the SMART Box for such products and ultimately recommended disclosing and calculating an estimated annualized rate based on certain stated assumptions, including that (1) the merchant will deliver the same amount of receivables each period and (2) the merchant will deliver all of the receivables sold within the delivery time predicted by the provider when the transaction is underwritten. Accordingly, to calculate APR for cash advance products and some factoring products, the SMART Box requires that the provider use a "predicted delivery time," which is (a) the delivery time predicted by the provider when the transaction is underwritten and (b) is reasonably similar to the actual delivery time yielded on such product based on appropriate statistical analysis conducted by the provider. The SMART Box for such products including a footnote stating that: "The calculation of estimated [daily/weekly/monthly] payments assumes that there are [X] days in each calendar month and that your business will generate the same amount of receivables each period consistent with our prediction of your business' future sales. The actual amount and frequency of your payments will depend on your business' actual sales and how frequently you submit them to your processor for settlement."

Without assuming a predicted delivery time, providers of advance products and some factoring products would not be able to provide an annualized rate. The ILPA's position is that because the predicted delivery time is accurate enough to be an input in the provider's internal underwriting, it can therefore can be utilized for calculating disclosure metrics.

[10] For example, where an assumption based on the maximum draw amount of financing may be misleading or inconsistent with anticipated use of the product, ILPA has permitted estimated disclosures based on a representative financing amount.

G. Fees and Charges Included in an Annualized Rate Calculation

What type of fees and charges should be included in an annualized rate calculation? The Commissioner requests comments relating to fees and charges for commercial financing types other than fixed-rate, fixed-payment financing.

We recommend that the DBO adopt APR as the benchmark for an annualized rate, to be defined and calculated in accordance with Regulation Z. We would further recommend that DBO leverage the definitions in Regulation Z to determine the fees and charges that should be included in any annualized rate calculation. Regulation Z requires any fees or charges that are a condition of borrowing be included in the APR calculation. The SMART Box calculates APR consistent with Regulation Z and expressly includes an explanation that APR includes fees that are unavoidable for the borrower and excludes fees that are avoidable, such as late payment fees, returned payment fees, monthly maintenance fees (in the case of lines of credit) and rejected ACH debits (in the case of advance and factoring products). For further detail, please refer to our response in Part D, "Annualized Rate Disclosure".

H. Calculating Estimated Terms and Estimated Annualized Rates

How should providers calculate estimated terms and estimated annualized rates for the various commercial financing transactions subject to SB 1235? For example, in a commercial financing transaction with payments set as a percentage of a business's gross receipts, what calculation methodology for estimated term and estimated annualized rate would provide the most helpful disclosure for a business with a recent history of rising gross receipts?

Please refer to our responses in Section II, Parts B and F for a discussion of estimated terms and estimated annualized rates, respectively. See also Section II, Part D for a general discussion of calculation methodology for all product types.

I. Reliance Upon Internal Underwriting Criteria to Calculate Estimated Terms and Estimated Annualized Rates

For certain products where disclosure of an estimated term and estimated annualized rate may be appropriate, should the calculation methodology established by the Commissioner require that provider to rely upon internal assumptions or calculations the provider used to underwrite the transaction? For example, in a commercial financing transaction with payments set as a percentage of a business's gross receipts, should the estimated term incorporate the provider's internal calculation of the business's future gross receipts that the provider relied upon in underwriting the transaction? Why or why not?

Please refer to our responses in Section II, Parts B and F for a discussion of estimated terms and estimated annualized rates, respectively.

J. Explanatory and Qualifying Language in Connection with Estimated Terms and Estimated Annualized Rates

What explanatory and qualifying language should providers include when disclosing estimated terms or estimated annualized rates? How can such language minimize potential confusion for the financing applicant and assist the applicant in understanding how the provider calculated the estimate?

The SMART Box seeks to provide clear disclosures to applicants regarding assumptions or estimations that are made by the provider. We strongly encourage the DBO to consult the attached forms of SMART Box for examples of the explanatory or qualifying language that we use.

K. Disclosures for Factoring and Asset-Based Lending Transactions with Master Financing Agreements

SB 1235 allows providers of factoring and asset-based lending to provide disclosures based upon an example transaction when the providers use agreements that describe the general terms and conditions of the commercial financing transactions that will occur under the agreements. What rules, if any, should the Commissioner establish to clarify when disclosures based upon example transactions are permitted? What rules, if any, should the Commissioner establish governing what example (i.e., financing amount) the provider may use when drafting disclosures?

Please refer to our responses in Section II, Parts B, D, and F for discussion of issues related to disclosures for factoring products. We note additionally that, as discussed in Section II, Part E, certain open-end credit plans and similar revolving products may also require the provider to make disclosures based on a sample transaction. In many cases, these transactions are for revolving draws governed by a single master agreement.

L. Tolerances

SB 1235 requires the Commissioner's rules to "specify the accuracy requirements and tolerance allowances" for estimated annualized rate calculations. What accuracy requirements and tolerance allowances should the Commissioner establish, and why?

We recommend looking to guidance provided by Regulation Z regarding accuracy and tolerance allowances for APR. The ILPA recommends that the DBO use this tested, well-established set of rules.

M. Disclosure Formatting

SB 1235 authorizes the Commissioner to establish rules concerning the formatting of disclosures provided to financing applicants. What, if any, of the information that SB 1235 requires to be disclosed should the disclosure form(s) highlight or prioritize? Should certain disclosures appear at the top of the form(s) in larger or bold font, etc.?

We recommend that the Commissioner avoid setting prescriptive formatting requirements and instead require "clear and conspicuous" disclosures and authorize the DBO to monitor compliance. While the ILPA recognizes and supports transparency in small business lending, prescriptive statutory requirements could impede the continued development and innovation of industry best practices like the SMART Box. In a world where borrowers often review documents on mobile devices and tablets, requirements around mandatory labels, font sizes and exact placement within an agreement unnecessarily frustrates the development of potentially more effective options to present information to customers. We believe the aims of SB 1235 are achievable under flexible and principles-based requirements.

In the context of the SMART Box, we developed the following set of guiding principles that may be useful for the DBO in its rulemaking process: before any actual or prospective customer or user executes or otherwise accepts or agrees to any product documentation, the provider shall cause the appropriate SMART Box to be clearly and conspicuously displayed (i) as a single, uninterrupted image (e.g., without a hyperlink, separate screen or in separate documentation) to such actual or prospective customer or user in the product documentation or (ii) in any other manner whereby such actual or prospective customer or user is unable to bypass viewing such SMART Box, in full, in the product documentation prior to execution or acceptance of such documentation.

N. Prepayment Policies

What types of prepayment policies and charges are common for different commercial financing transactions subject to SB 1235? How are these policies and charges characterized to customers today?

The SMART Box presents the small business owner with two straightforward questions regarding the prepayment policy applicable to the finance option. The first question asks whether prepayment will result in any new fees or charges not already captured in the SMART Box. If the answer is “Yes,” the SMART Box requires a cross-reference to the applicable section of the loan document describing the incremental fee or charge in a clear and conspicuous way. The second question asks whether prepayment will result in any reduction in interest or any applicable fixed fee. If the answer is “Yes,” the SMART requires a cross reference to the applicable section of the loan document stating the amount of the reduction in a clear and conspicuous way. The SMART Box treats the prepayment policy as an enhanced disclosure and highlights it for the benefit of the small business customer. Please also see our discussion of the SMART Box in Section I, “The SMART Box and the Requirements of SB 1235”.

Many ILPA member companies have products with some variation of a fixed fee or a fixed interest expense model. For many of those products, the borrower may be responsible for paying some or all, depending on when prepayment is made, of the outstanding fee or interest expense upon payment in full. In those scenarios, because the prepayment date is unknown at the time of disclosure, it is impossible to provide the borrower with the exact dollar amount that might be due at prepayment. That said, the provider is able to disclose to the borrower the percentage of the outstanding unpaid fee or interest expense that the borrower will be responsible for if the loan is repaid early and in full.

Due to the variety of prepayment policies across lenders and products, we believe the clearest way to disclose prepayment policies to a borrower is to provide a detailed explanation, and we believe SB 1235 takes the correct approach on this point.

III. Other Suggestions and Requests for Clarification

A. Signature Requirement

We recommend clarifying that a borrower’s signature on a financing agreement which includes the required disclosures is sufficient under Section 22802(a). Requiring an additional signature on a separate “disclosure” is likely to lead to customer confusion, inefficiencies and an increase in incomplete loan documents. We believe requiring a separate, earlier signature might confuse merchants as to whether they are agreeing to the loan or agreeing that they have received the required disclosure. We also recommend clarifying that a recipient’s signature be deemed the recipient’s “acceptance” of the disclosure format, as presented.

Finally, we seek clarification that collection of a borrower’s signature prior to consummation is also applicable to factoring products under Section 22803, as it would be inconsistent for signatures to be required only for certain product disclosures and not others.

B. Timeline for Implementation

We seek clarity as to whether the DBO will grant a reasonable period for companies to implement any necessary changes to their products and processes following the Commissioner’s determination of the final regulations. Section 22804(c) of SB 1235 is unclear on this point. We would like to recommend 180 days.

C. Enforcement

We would like to know how the DBO plans to carry out examination and enforcement, if any, as to providers that are not licensed under the California Financing Law. Section 22805 of SB 1235 is unclear on this point.

* * *

We look forward to continuing to work with the DBO and Commissioner on this important rulemaking process. If you have any questions, please do not hesitate to contact me at scott@innovativelending.org.

Best regards,

Scott Stewart, CEO
Innovative Lending Platform Association

cc: Charles Carriere, Counsel for the Commissioner at charles.carriere@dbo.ca.gov

Exhibit A

The SMART Box (Term Loan)

Innovative Lending Platform Association

SMARTBOX™

Capital Comparison Tool

This tool is provided to help you understand and assess the cost of your small business financing.
The calculations below involve certain key assumptions about this Loan, including that the Loan is paid off in its entirety according to the agreed payment schedule and that no repayments are missed.

Loan Amount	Disbursement Amount (minus fees withheld) [1]	Repayment Amount	Term
$[0]	**$[0]**	**$[0]**	**[_] Months** (repaid [daily/weekly/monthly])

METRIC	METRIC CALCULATION		METRIC EXPLANATION
Total Cost of Capital $[0.00]	Interest Expense: Loan Fee: Origination Fee: Other Fees: **Total Cost of Capital:**	**$[0.00]** **$[0.00]** **$[0.00]** **$[0.00]** **$[0.00]**	This is the total amount that you will pay in interest or Loan Fees and other fees for the Loan. The amount does not include fees and other charges you can avoid, such as late payment fees and returned payment fees.[2]
Annual Percentage Rate (APR) [3] [00.00]%	Your Loan will have [daily/weekly/monthly] payments of: **APR:**	**$[0.00]** **[00.00]%**	This is the cost of the Loan – including total interest or Loan Fees and other fees – expressed as a yearly rate. APR takes into account the amount and timing of capital you receive, fees you pay, and the periodic payments you make. While APR can be used for comparison purposes, it is not an interest rate and is not used to calculate your interest expense or Loan Fee.
Average Monthly Payment $[0.00]	Repayment Amount: Term (in months): **Average Monthly Payment:** Specific Monthly Schedule (if available) Months **[_]-[_]** Months **[_]-[_]**	**$[0.00]** ÷ **[_] Months** **$[0.00]** **$[0.00]** **$[0.00]**	This is the average monthly repayment amount of the Loan, which does not include fees and other charges you can avoid, such as late payment fees and returned payment fees.[2] [The actual repayment frequency for the Loan will be [daily/weekly].] This is an estimate for comparison purposes only.
Cents on the Dollar (*excluding fees*) [00.00]¢	Interest Expense or Loan Fee: Loan Amount: **Cents on the Dollar (*excluding fees*):**	**$[0.00]** ÷ **$[0.00]** **[00.00]¢**	This is the total amount of interest or Loan Fee paid per dollar borrowed. This amount is exclusive of fees.
Prepayment	Does prepayment of this Loan result in any new fees or charges?		**[Yes / No]** (see [*cross reference*])
	Does prepayment of this Loan decrease the total interest or Loan Fees owed?		**[Yes / No]** (see [*cross reference*] for the interest or fee reduction amount)

[1] The Disbursement Amount is the amount of capital that a business receives and may be different from the Loan Amount. The Disbursement Amount is net of fees withheld from the Loan Amount. A portion of the Disbursement Amount may be used to pay off any amounts owed from a prior loan or an amount owed to a third party.

[2] Your business may incur other fees that are not a condition of borrowing, such as late payment fees, returned payment fees, or monthly maintenance fees. Those fees are not reflected here. See the agreement for details on these fees (see [*cross reference*]).

[3] APR should be considered in conjunction with the Total Cost of Capital. APR may be most useful when comparing financing solutions of similar expected duration. APR is calculated here according to the principles of 12 C.F.R. § 1026 (Regulation Z)[, using [__] payment dates per year for weekly pay products and [__] payment dates per year for daily pay products].

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Exhibit B

The SMART Box (Open-End Line of Credit)

Innovative Lending Platform Association

SMARTBOX™

Capital Comparison Tool

This tool is provided to help you understand and assess the cost of your small business financing.

The calculations below are based on an initial draw of an amount equal to your full Approved Credit Limit. The calculations also involve certain key assumptions about your use of this line of credit, including that the Draw is paid off in its entirety according to the agreed payment schedule, that no repayments are missed, and that you do not re-draw on this line. Actual costs may differ substantially.

Approved Credit Limit	Disbursement Amount (minus fees withheld) [1]	Repayment Amount	Expected Term
$[0]	**$[0]**	**$[0]**	**[_] Months** (repaid [daily/weekly/monthly])

METRIC	METRIC CALCULATION		METRIC EXPLANATION
Total Cost of Capital $[0.00]	Interest Expense: Draw Fee: Origination Fee: Other Fees: **Total Cost of Capital:**	**$[0.00]** **$[0.00]** **$[0.00]** **$[0.00]** **$[0.00]**	This is the total amount that you will pay in interest or Draw Fees and other fees for the Draw. The amount does not include fees and other charges you can avoid, such as late payment fees and returned payment fees.[2]
Annual Percentage Rate (APR) [3] [00.00]%	Your Draw will have [daily/weekly/monthly] payments of: **APR:**	**$[0.00]** **[00.00]%**	This is the cost of the Draw in terms of total periodic interest expressed as a yearly rate. APR is computed by multiplying the periodic rate by the number of periods in a year. While APR can be used for comparison purposes, it is not an interest rate and is not used to calculate your interest expense or Draw Fee.
Average Monthly Payment $[0.00]	Repayment Amount: Expected Term (in months): **Average Monthly Payment:**	**$[0.00]** **÷ [_] Months** **$[0.00]**	This is the average monthly repayment amount of the Draw, which does not include fees and other charges you can avoid, such as late payment fees and returned payment fees.[2] [The actual repayment frequency for the Draw will be [daily/weekly].] This is an estimate for comparison purposes only.
Cents on the Dollar (*excluding fees*) [00.00]¢	Interest Expense or Draw Fee: Draw Amount: **Cents on the Dollar (*excluding fees*):**	**$[0.00]** **÷ $[0.00]** **[00.00]¢**	This is the total amount of interest or Draw Fee paid per dollar borrowed. This amount is exclusive of fees.
Prepayment	Does prepayment of this Draw result in any new fees or charges?		**[Yes / No]** (see [*cross reference*])
	Does prepayment of this Draw decrease the total interest or Draw Fees owed?		**[Yes / No]** (see [*cross reference*] for the interest or fee reduction amount)

[1] The Disbursement Amount is the amount of capital that a business receives and may be different from the Approved Credit Limit. The Disbursement Amount is net of fees withheld from the Approved Credit Limit. A portion of the Disbursement Amount may be used to pay off any amounts owed from a prior loan or an amount owed to a third party.

[2] Your business may incur other fees that are not a condition of borrowing, such as late payment fees, returned payment fees, or monthly maintenance fees. Those fees are not reflected here. See the agreement for details on these fees (see [*cross reference*]).

[3] APR should be considered in conjunction with the Total Cost of Capital. APR may be most useful when comparing financing solutions of similar expected duration. APR is calculated here according to the principles of 12 C.F.R. § 1026 (Regulation Z).

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Exhibit C

The SMART Box (Merchant Cash Advance)

Innovative Lending Platform Association

SMARTBOX™

Capital Comparison Tool

This tool is provided to help you understand and assess the cost of your small business finance product.

This Merchant Cash Advance ("MCA") is a purchase of future receivables ("Receivables"), not a loan. If you take this MCA, you will deliver Receivables to us as they are generated by your business (and only if they are generated by your business) and not on any set schedule. There are no fixed or minimum payment amounts and no term or maturity date. In order to compare the cost of this MCA to a loan, SMART Box provides the calculations below based on several assumptions, including that you will deliver the same amount of Receivables each period and that you will deliver all of the Receivables you sold within a predicted period of time. In practice, these amounts will vary. Unlike a loan, this MCA has no payment schedule and no interest rate; your obligation is to deliver Receivables as your business generates them.

Purchase Price Amount	Disbursement Amount (minus fees withheld) [1]	Future Receivables Sold	Predicted Delivery Time [2]
$[0]	**$[0]**	**$[0]**	**[_] Months**

METRIC	METRIC CALCULATION	METRIC EXPLANATION
Total Cost of Capital $[0.00]	Future Receivables Sold minus Purchase Price: **$[0.00]** Origination Fee: **$[0.00]** Other Fees: **$[0.00]** **Total Cost of Capital: $[0.00]**	This is the total amount that you will pay, including up-front fees, for capital. The amount does not include fees and other charges you can avoid, such as fees for reversed payments.[3] It also assumes your business will generate all of the Receivables we are purchasing.
Annual Percentage Rate (APR) [4] [00.00]%	Assumed [daily/weekly/monthly] delivery of Receivables[5] : **$[0.00]** **APR: [00.00]%**	This is the cost of capital – including fees – expressed as a yearly rate. APR takes into account the amount and timing of capital you receive, fees you pay, and Receivables you deliver. It assumes that your business will generate and deliver the same amount of Receivables each period, and that all of the Receivables will be delivered in the Predicted Delivery Time. While APR can be used for comparison purposes, it is not an interest rate.
Average Monthly Cost $[0.00]	Future Receivables Sold: **$[0.00]** Predicted Delivery Time: **÷ [_] Months** **Average Monthly Cost: $[0.00]**	This is the average monthly cost to your business for the MCA, which does not include fees and other charges you can avoid, such as fees for reversed payments.[3] It assumes that your business will generate and deliver the same amount of Receivables each period, and that all of the Receivables will be delivered in the Predicted Delivery Time. This is an estimate for comparison purposes only.
Cents on the Dollar (*excluding fees*) [00.00]¢	Future Receivables Sold minus Purchase Price: **$[0.00]** Purchase Price Amount: **÷ $[0.00]** **Cents on the Dollar (*excluding fees*): [00.00]¢**	This is the price of Future Receivables Sold minus the Purchase Price per dollar of Purchase Price Amount. This amount is exclusive of fees.
Prepayment	If I prepay this MCA, will that result in any new fees or charges?	**[Yes / No]** (see [*cross reference*])
	If I prepay this MCA, will that decrease my Total Cost of Capital?	**[Yes / No]** (see [*cross reference*] for the reduction amount)

[1] The Disbursement Amount is the amount of capital that a business receives and may be different from the Purchase Price Amount. The Disbursement Amount is net of fees withheld from the Purchase Price Amount. A portion of the Purchase Price Amount also may be used to pay off any amounts owed from a prior MCA or an amount owed to a third party.

[2] Note that you will provide a fixed percentage of your business' Receivables until the Future Receivables Sold are delivered. As a result, we can only estimate the period of time over which the Future Receivables Sold will be delivered.

[3] Your business may incur other fees that are not a condition of borrowing, such as fees incurred in the event of rejected Automated Clearing House (ACH) debits. Those fees are not reflected here. See the agreement for details on these fees (see [*cross reference*]).

[4] APR should be considered in conjunction with the Total Cost of Capital. APR may be most useful when comparing commercial finance solutions of similar expected duration. APR is calculated here according to the principles of 12 C.F.R. § 1026 (Regulation Z)[, using [__] payment dates per year for [daily/weekly/monthly] pay MCAs].

[5] The calculation of estimated [daily/weekly/monthly] payments assumes that there are [30] days in each calendar month and that your business will generate the same amount of Receivables each period consistent with our prediction of your business' future sales. The actual amount and frequency of your payments will depend on your business' actual sales and how frequently you submit them to your processor for settlement.

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