H. R. _____

To apply the Truth in Lending Act to small business financing, to regulate brokers and require the licensing of brokers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. Velázquez introduced the following bill; which was referred to the Committee on ____________________

A BILL

To apply the Truth in Lending Act to small business financing, to regulate brokers and require the licensing of brokers, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Small Business Lend-
5 ing Disclosure and Broker Regulation Act of 2020”.
TITLE I—SMALL BUSINESS
FINANCING

SEC. 101. APPLICATION OF THE TRUTH IN LENDING TO
SMALL BUSINESS FINANCING.

(a) In General.—The Truth in Lending Act (15
U.S.C. 1601 et seq.) is amended by adding at the end
the following:

“CHAPTER 6—SMALL BUSINESS
FINANCING

“192. Application of this title to small business financing.
“193. Additional disclosures.
“194. Restrictions on double-dipping.

§ 191. Definitions

“In this chapter:

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

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

“(2) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ‘consumer financial product or service’ has the meaning given that term under section 1002 of the Consumer Financial Protection Act of 2010.

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

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

“(5) FINANCE CHARGE.—

“(A) IN GENERAL.—The term ‘finance charge’ means the cost of financing as a dollar amount, and includes any charge payable directly or indirectly by the recipient of the financing and imposed directly or indirectly by the provider of the financing as an incident to or a condition of the extension of financing.
“(B) Calculation in open-end commercial credit plans.—In any open-end commercial credit plan, the finance charge shall be computed assuming the maximum amount of credit available to the recipient, in each case, is drawn and repaid at the minimum rate.

“(C) Calculation in factoring transactions.—In any factoring transaction, the finance charge shall include the discount taken on the face value of the accounts receivable.

“(D) Calculation in lease financing transactions.—In any lease financing transaction, the finance charge shall include the sum of the lease payments and, if there is a fixed-price purchase option or a purchase option with a price that can be calculated at the time of disclosure, the purchase price listed in the contract that the lessee may pay to acquire the leased goods at the end of the lease, minus—

“(i) if the finance company selects, manufactures, or supplies the goods to be leased, the price that the finance company would sell the goods in a cash transaction; or
“(ii) if the finance company does not select, manufacture, or supply the goods to be leased, the price the finance company will pay to acquire the property to be leased.

“(E) Inclusion of certain prepayment charges.—

“(i) In general.—If, as a condition of obtaining the offered commercial financing the provider requires the recipient to pay off the balance of an existing loan or advance from the same provider, any prepayment charge or penalty required to be paid on the existing financing shall be included as a financing charge.

“(ii) Treatment when repayment amount is calculated as a fixed amount.—For purposes of clause (i), for financing for which the total repayment amount is calculated as a fixed amount, the prepayment charge is equal to the original finance charge multiplied by the required prepayment amount as a percentage of the total repayment amount, minus any portion of the total repayment amount
forgiven by the provider at the time of pre-

payment.

“(6) OPEN-END COMMERCIAL CREDIT PLAN.—
The term ‘open-end commercial credit plan’ means
any small business financing provided by a person
under a plan in which the person reasonably con-
templates repeat transactions, which prescribes the
terms of such transactions, and which provides for
a finance charge which may be computed from time
to time on the outstanding unpaid balance.

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

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

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

“(A) means a transaction where there is
an extension of financing to a recipient that is
repaid by the recipient, over time, as a percent-
age of sales or revenue, in which the payment
amount may increase or decrease according to
the volume of sales made or revenue received by
the recipient; and
“(B) includes transactions with a ‘true-up mechanism’.

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

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

“(A) means any line of credit, closed-end commercial credit, sales-based financing, or other non-equity obligation or alleged obligation of a partnership, corporation, cooperative, association, or other entity that is $2,500,000.00 or less; and

“(B) does not include any obligation or alleged obligation of an individual that is primarily for personal, family, or household purposes.

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

§ 192. Application of this title to small business financing

(a) In General.—This title shall apply to small business financing made to a small business to the same extent as this title applies to extensions of credit made to a consumer.

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

(c) Bureau Authority.—For purposes of carrying out this chapter and other Federal laws, including the Consumer Financial Protection Act of 2010, the Bureau shall have the same authority with respect to small business financing as the Bureau has with respect to consumer financial products and services.

§ 193. Additional disclosures

(a) In General.—Any provider offering small business financing to a small business shall disclose the following pieces of information to a recipient at the time of extending a specific offer for small business financing:

(1) Financing amount.—The total amount to be paid to the small business, taking into account all fees and charges to be withheld at disbursement.

(2) Annual percentage rate.—
“(A) CLOSED-END COMMERCIAL CREDIT.—
With respect to closed-end commercial credit, the annual percentage rate, using only the words ‘annual percentage rate’ or the abbreviation ‘APR’, expressed as a yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient.

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

“(C) SALES-BASED FINANCING.—
“(i) IN GENERAL.—With respect to sales-based financing, the estimated annual percentage rate, using the words ‘annual percentage rate’ or the abbreviation ‘APR’, expressed as a yearly rate, inclusive of any fees and finance charges, based on the esti-
mated term of repayment and the projected periodic payment amounts.

“(ii) CALCULATION OF CERTAIN PAYMENT AMOUNTS.—The estimated term of repayment and the projected periodic payment amounts shall be calculated based on the projection of the recipient’s sales, called the projected sales volume.

“(iii) CALCULATION OF PROJECTED SALES VOLUMES.—For purposes of clause (ii), the projected sales volume may be calculated—

“(I) according to a method defined by the Director based on the recipient’s historical sales volume over a defined period of time that is used for all sales-based financing transactions by that provider; or

“(II) by another method defined by the provider and approved by the Director, with ongoing monitoring by the Director for accuracy based on a comparison of the annual percentage rate as disclosed to the recipient and
as calculated retrospectively upon repayment of the financing.

“(D) FACTORING.—

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

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

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

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

“(III) the term is established by the payment due date of the receivables.

“(iii) ALTERNATE METHOD TO ESTIMATE TERM.—Notwithstanding clause (ii)(III), a provider may estimate the term for a factoring transaction as the average payment period, its historical data over a period not to exceed the previous twelve months, concerning payment invoices paid.
by the party owing the accounts receivable in question.

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

“(A) for payment amounts that are fixed—

“(i) the payment amounts and frequency (e.g., daily, weekly, monthly); and

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

“(B) for payment amounts that are variable—

“(i) a full payment schedule or a description of the method used to calculate the amounts and frequency of payments; and

“(ii) if the term is longer than one month, the estimated average total monthly payment amount.

“(4) TERM.—For financing other than factoring, the term of the small business financing, either in months or in years, or, if the term is not fixed, the estimated term, calculated using the same
assumptions used to calculate the estimated annual percentage rate.

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

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

“(A) whether the recipient would be required to pay any finance charges other than interest accrued since the recipient’s last payment; and

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

“(C) whether the recipient would be required to pay any additional fees not already included in the finance charge.

“(7) COLLATERAL REQUIREMENTS.—Any collateral requirement that will be imposed on the small
business in connection with the small business financing.

“(b) FORM OF DISCLOSURES.—

“(1) IN GENERAL.—Disclosures made pursuant to this section shall be in writing, at the time a specific offer is made, and in a manner that is clear, conspicuous, complete, and allows the small business to compare the range of small business financing options that the small business may be considering.

“(2) PROMINENCE OF DISCLOSURES.—In making any disclosure pursuant to this section, the disclosures required under paragraphs (1), (2), and (3) of subsection (a) shall be displayed most prominently.

“§ 194. Restrictions on double-dipping

“When a lender of small business financing refinances or modifies an existing loan with a fixed fee as the primary financing charge, the lender may not charge a fee on the small business’s outstanding principal unless there is a tangible benefit to the small business.

“§ 195. Additional provisions

“(a) RULE OF CONSTRUCTION.—Nothing in this chapter maybe construed to prevent a provider from providing or disclosing additional information on a small business financing being offered to a recipient, provided how-
ever, that such additional information may not be dis-
closed as part of the disclosure required by this chapter.

“(b) USE OF TERMS.—

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

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

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

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

“6. SMALL BUSINESS FINANCING ... 191”.
(c) Rulemaking Deadline.—Not later than the end of the 24-month period beginning on the date of enactment of this Act, the Director of the Bureau of Consumer Financial Protection shall issue final rules to carry out the amendments made by this section.

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

TITLE II—REGULATION OF BROKERS

SEC. 201. OFFICE OF BROKER REGULATION.

Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493) is amended by adding at the end the following:

“(i) Office of Broker Regulation.—There is established in the Bureau an Office of Broker Regulation, which shall be responsible for carrying out section 1018.”.

SEC. 202. REGULATION OF BROKERS.

(a) In General.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) by redesignating section 1018 as section 1019; and

(2) by inserting after section 1017 the following:
"(a) DEFINITIONS.—In this section:

"(1) BROKER.—The term ‘broker’ means a natural person who—

"(A) is not a creditor or purchaser; and

"(B) solicits and presents offers of commercial financing on behalf of a third party.

"(2) DIRECTOR.—The term ‘Director’ means the Director of the Bureau of Consumer Financial Protection.

"(3) STATE.—The term ‘State’ means each of the several States, the District of Columbia, and the territories and possessions of the United States.

"(4) OTHER TERMS.—The terms ‘small business’ and ‘small business financing’ have the meaning given those terms under section 193 of the Truth in Lending Act.

"(b) REGULATIONS.—

"(1) IN GENERAL.—A broker shall, in facilitating financing offered by a third-party lender for a small business—

"(A) provide the small business with a disclosure containing the information described under paragraph (2); and

"(B) educate the small business on each small business financing option and ensure that
the small business reasonably understands the
cost and terms of the small business financing
as well as the pros and cons of the small busi-
ness financing decision before the small busi-
ness enters into a contract for such small busi-
ness financing.

“(2) CONTENTS OF DISCLOSURE.—Each disclo-
sure required under paragraph (1) shall include:

“(A) A list of all small business financing
options for which the small business qualifies
through the broker’s services and, with respect
to each such small business financing option,
the disclosures described under section 193 of
the Truth in Lending Act.

“(B) The lowest annual percentage rate
option.

“(C) All the lenders to which the broker
has sent or will send small business financing
applications on the small business’s behalf.

“(D) All compensation that will be paid to
the broker, including—

“(i) all charges that will be paid di-
rectly or indirectly by the small business;
“(ii) whether such compensation paid to the broker will be paid up front or financed through the life of the small business financing.

“(E) All conflicts of interest the broker may have.

“(F) A break down and explanation of the broker’s fee structure, including—

“(i) any financial or economic interest the broker has in offering a product to the small business; and

“(ii) whether the broker will receive a higher fee for brokering a certain small business financing over another small business financing.

“(3) **Public Disclosure of Previous Borrower Results.**—

“(A) **Website Disclosure.**—Each broker shall post clearly and prominently on the website of the broker the anonymous and aggregated results of previous small business borrowers who have obtained small business financing through the broker’s services, in terms of annual percentage rate and financing product.
‘‘(B) Brokers without websites.—

Notwithstanding subparagraph (A), if a broker does not have a website, the broker shall disclose the information described in subparagraph (A) in a paper format, upon request by any small business borrower.

‘‘(4) Small business complaints with respect to brokers.—The Director shall—

‘‘(A) collect complaints from small businesses with respect to their experiences with brokers; and

‘‘(B) make such complaints available to the public on the website of the Bureau of Consumer Financial Protection.

‘‘(5) Restriction on best interest claims.—A broker that is paid higher fees with certain lenders, small business financing types, or through terms other than the size of the small business financing may not state that the broker is acting in the best interest of the potential small business borrower.

‘‘(6) Prohibition on steering.—A loan originator or broker may not steer a small business to small business financing that is not in the small business’s best interest.
“(7) Restrictions on certain fees.—

“(A) No fee if parties do not come to
an agreement.—A broker may not charge a
small business any fee if—

“(i) the broker is unable to find the
small business financing; or

“(ii) the small business chooses not to
accept financing through the broker’s serv-
ices.

“(B) Replacement of existing financ-
ing.—If a broker or third-party lender offers
an existing small business customer new financ-
ing, neither the broker nor the third-party lend-
er may charge the small business a new financ-
ing charge for the financing being replaced.

“(c) Broker licensing and enforcement.—

“(1) State broker licensing.—A person
may only perform the function of a broker in a State
if the person is licensed as a broker—

“(A) with respect to a State that has a
covered broker licensing law, by the State; or

“(B) with respect to a State that does not
have a covered broker licensing law, by the Bu-
reau.
“(2) COVERED BROKER LICENSING LAW.—With respect to a State, the term ‘covered broker licensing law’ means a State law that the Director determines meets the following requirements:

“(A) LICENSING.—The law provides for a process to license brokers operating in the State.

“(B) PROHIBITION ON UNLICENSED BROKERS.—The law prohibits any person from acting as a broker in the State unless such person is licensed by the State as a broker.

“(C) PROHIBITION ON LICENSING CERTAIN INDIVIDUALS.—The law prohibits licensing an individual as a broker if such individual—

“(i) has had a State license revoked for cause in any State;

“(ii) has had a Federal license revoked for cause; or

“(iii) has been convicted of any crime involving lying, deceit, or misappropriation of the truth.

“(D) LIMITATION ON BROKER EMPLOYEES.—The law prohibits a broker from employing any individual, other than a clerical emp-
ployee, who is described under clause (i), (ii), or (iii) of subparagraph (C).

“(E) EXAMINATION.—The law requires a licensed broker to undergo State audits and provides for examination of the broker by State regulators.

“(F) ENFORCEMENT.—With respect to any violation of a State law or regulation in connection with performing the duties of a broker, the law provides for—

“(i) an initial warning being given to the broker;

“(ii) a cure period offered to the broker during which the broker can cure the violation; and

“(iii) if the broker fails to cure the violation, civil or criminal penalties which include—

“(I) the revocation of any broker license granted to the violator; and

“(II) a ban on the violator being granted any other professional license for a period of not less than 5 years.

“(G) PUBLIC AVAILABILITY OF DISCIPLINARY ACTIONS.—The law requires the State
agency in charge of licensing brokers to maintain a website that lists all disciplinary actions taken against brokers.

“(3) BUREAU BROKER LICENSING.—Not later than the end of the 12-month period beginning on the date of enactment of this section, the Director shall establish a Federal broker licensing program that, to the extent practicable, meets the requirements for a covered broker licensing law described under paragraph (2).

“(4) EFFECTIVE DATE.—

“(A) IN GENERAL.—Subsection (a) shall take effect after the end of the 2-year period beginning on the date of enactment of this section.

“(B) SAFE HARBOR.—Notwithstanding subsection (a), a person acting as broker in a State on the date of enactment of this section who has applied for a broker license under a State covered broker licensing law (or, with respect to a State that does not have a covered broker licensing law, with the Federal broker licensing program established under paragraph (3)) may continue to act as a broker in such State while the application is pending.
“(d) RULEMAKING.—The Director may issue such rules as may be necessary to carry out this section.

“(e) PENALTIES.—

“(1) CIVIL PENALTIES.—Any person who violates a provision of this section shall—

“(A) be fined not less than $5,000 and not more than $72,000;

“(B) disgorge any funds or other property obtained in connection with such violation;

“(C) in the case of an individual licensed as a broker by the Bureau, have such license suspended for 1 year; and

“(D) in the case of an individual licensed as a broker by the Bureau who has violated a provision of this section previously, have such license permanently revoked;

“(2) CRIMINAL PENALTY.—Any person who violates a provision of this section in an egregious manner shall be fined not more than $5,000,000 or imprisoned not more than 20 years, or both.

“(3) LIABILITY FOR EMPLOYER.—Any person employing a broker at the time the broker violates a provision of this section shall—

“(A) be fined not more than $853,062;
“(B) disgorge any funds or other property obtained in connection with such violation;

“(C) be prohibited from taking any action involving small business lending or the brokerage industry for not more than 30 business days; and

“(D) in the case of a violation that was in an egregious manner, be prohibited from taking any action involving small business lending or the brokerage industry for more than 30 business days, which may include a permanent prohibition on the person taking any action involving small business lending or the brokerage industry.

“(4) FEDERAL BAR FOR STATE VIOLATORS.—If an individual has their State broker license revoked by reason of violating a State law or regulation in connection with performing the duties of a broker—

“(A) any professional license granted to the individual by the Federal Government shall be terminated; and

“(B) the individual may not receive a professional license from the Federal Government before the end of the 5-year period beginning on the date of such revocation.
“(5) **State enforcement authority.**—An

action to enforce a violation of this section may also

be brought by a State attorney general in any appro-

priate United States district court, or any other

court of competent jurisdiction.”.

(b) **Clerical amendment.**—The table of contents

in section 1(b) of the Dodd-Frank Wall Street Reform and

Consumer Protection Act is amended by striking the item

relating to section 1017 and inserting the following:

“Sec. 1017. Regulation of brokers.

“Sec. 1018. Effective date.”.