



# RESPONSIBLE BUSINESS LENDING COALITION

## BBOR 2.0 DRAFT FOR REVIEW

The BBoR 2.0 draft below shows all of the changes being proposed to the original BBoR – with **new language highlighted in yellow** and deleted provisions ~~struck~~.

### Summary of Key Changes:

#### Right #1: The Right to Transparent Pricing and Terms

BBoR 2.0 requires lenders and brokers to disclose Annual Percentage Rate (APR). All renewing signatories and new signatories will have 180 days to comply with the new APR disclosure requirement.

BBoR 2.0 requires that lenders and brokers use clear terms to disclose the total amount paid to a borrower and clear language to disclose monthly payment amount.

#### Right #2: The Right to Non-Abusive Products

BBoR 2.0 clarifies the prohibition against “double dipping” in order to accommodate standard loan modification fees.

BBoR 2.0 clarifies the language prohibiting hidden penalties to ensure that the any costs or savings associated with prepaying are described clearly and disclosed.

BBoR 2.0 includes a new provision requiring that a lender respond to a complaint in a timely manner.

BBoR 2.0 requires that a lenders or broker provide a mandatory **fair warning label** when referring an applicant to another lender who is not a BBoR signatory and offering financing with an APR that is higher than 36%. All renewing signatories and new signatories will have 180 days to comply with the new fair warning label requirement.

#### Right #3: The Right to Responsible Underwriting

BBoR 2.0 includes language to clarify that lenders should to make loans that the borrower cannot afford

#### Right #4: The Right to Fair Treatment from Brokers

BBoR 2.0 includes a new provision requiring that a lender respond to a complaint in a timely manner.

## SMALL BUSINESS BORROWERS BILL OF RIGHTS<sup>i</sup> 2.0

### 1. The Right to Transparent Pricing and Terms

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

~~What this means for lenders and brokers~~ In order to protect your Right to Transparent Pricing and Terms, lenders and brokers must:

- **Transparent Rate** – Disclose ~~an annualized interest rate or~~ the Annualized Percentage Rate (APR)<sup>ii</sup>, as the all-in annualized price of the financing.
- **No Hidden Fees** – Disclose all upfront and scheduled charges.
- **Plain-English Terms** – Describe all key terms in an easy-to-understand manner, including the loan amount, **total amount paid to a borrower after deducting fees or charges**, payment amount and frequency, **total monthly payment amount if payment frequency is other than monthly**, collateral requirements, and the cost of prepayment.
- **Clear Comparison** – Present all of these pricing and other key terms clearly and prominently, in writing, to the borrower when the loan offer is summarized for the borrower and whenever a term sheet, offer summary, or equivalent is provided.

### 2. The Right to Non-Abusive Products

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

~~What this means for lenders~~ In order to protect your Right to Non-Abusive Products, lenders must:

- **No Debt Traps** – If the borrower is unable to repay an existing loan, extend new credit only if due diligence indicates that the borrower's situation has changed, enabling them to repay the new loan.
- **No "Double Dipping"** – **Do not double-charge the borrower.** When refinancing or modifying a loan with a fixed-fee as the primary financing charge, **do not charge fees on the borrower's outstanding principal unless there is a tangible cost benefit to the borrower.** ~~do not add new fees or fixed charges on existing principal.~~ <sup>iii</sup>
- **No Hidden Penalties** – ~~Charge interest only on the time period that the loan remains outstanding. If the borrower pays off a loan early, do not charge interest or periodic costs associated with the remaining period of the loan, unless such costs have been clearly disclosed, prior to making the loan and~~

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

- **Pressure Free** – Allow borrowers a reasonable time to consider their loan options free from pressure or artificial timelines.
- **Prompt Prepayment Assistance** – If a borrower seeks to prepay a loan, provide any information required for prepayment within two business days of the borrower's request.
- **Responsive Complaint Management** – If a complaint is submitted, provide a confirmation of receipt within five days and in writing, when possible, and research and resolve the complaint in a timely manner.
- **Fair warning** - If a lender or broker refers an applicant to another lender who is not a signatory of the Small Business Borrowers' Bill of Rights and may charge that borrower a rate higher than 36% APR, provide the following warning in writing prior to making the referral:

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

### **3. The Right to Responsible Underwriting**

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

~~What this means for lenders~~ In order to protect your Right to Responsible Underwriting, lenders must:

- **Believe in the Borrower** – Offer financing only with high confidence that the borrower can repay its *entire* debt burden without defaulting or re-borrowing.
- **Alignment of Interests** – Lenders who receive repayment directly from the borrower's gross sales must also verify, through documents, data from third parties, and/or due diligence, that the borrower can repay all indebtedness and remain profitable, or that it has a credible path to profitability. Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid.

- **Right-sized Financing** – Size loans to meet the borrower’s need, rather than to maximize the lender’s or broker’s revenue. Seek to offer the borrower the size of loan that they need, rather than offering the maximum amount they qualify for.
- **Responsible Credit Reporting** – Report loan repayment information to major credit bureaus and consult the borrower’s credit data when underwriting a loan. Such reporting enables other lenders to responsibly underwrite the borrower and helps the borrower build a credit profile that may facilitate access to more affordable loans in the future. Lenders must inform the borrower and any guarantors if they intend to report loan repayment performance to guarantors’ credit bureaus only in certain circumstances, such as after a default.

#### **4. The Right to Fair Treatment from Brokers**

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

What this means for lenders **In order to protect your Right to Fair Treatment from Brokers, brokers must offer:**

- **Transparent Loan Options** – Disclose all loan options for which the borrower qualifies through the broker’s services, emphasizing the lowest APR option, and disclose all lenders to which the broker sends loan applications on the borrower’s behalf.
- **Transparent Broker Fees** – Disclose all compensation paid to the broker, and all charges that will be paid directly or indirectly by the borrower, whether paid up front or financed in the loan.
- **Transparent Results** – Post clearly and prominently on the broker’s website the anonymous and aggregated results of borrowers who obtain financing through the brokers’ services, in terms of APR and financing product.
- **Empower Borrowers to Make Informed Financing Decisions** – Educate the borrower on each loan option and ensure that the borrower reasonably understands the cost and terms as well as the pros and cons of financing decisions *before* they sign a loan document. Brokers should use tools that help the potential borrower comparison shop, including APRs and loan calculators.
- **Disclosure of Conflicts of Interest** – Disclose any conflicts of interest, the broker’s fee structure, and any financial incentives they have, including whether the broker receives higher fees for brokering certain loans. Brokers who are paid higher fees with certain lenders, loan types, or terms other than the size of the loan, may not state they are acting in the best interest of the potential borrower.
- **No Fees for Failure** – No fees can be charged to the potential borrower if the broker is unable to find them a loan and if the borrower does not accept a loan secured through the broker's services.
- **Responsive Complaint Management** – If a complaint is submitted, provide a confirmation of receipt within five days and in writing, when possible, and research and resolve the complaint in a timely manner.

## 5. The Right to Inclusive Credit Access

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

~~What this means for lenders~~ In order to protect your Right to Inclusive Credit Access, lenders and brokers must:

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

## 6. The Right to Fair Collection Practices

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

~~What this means for lenders~~ In order to protect your Right to Fair Collections Practices, lenders must:

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

Product of the [Responsible Business Lending Coalition](#)

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

ii An annual percentage rate (APR) is the annual rate that is charged for borrowing, expressed as a single percentage number that represents the actual yearly cost of funds over the term of a loan. This includes any fees or additional costs associated with the transaction.

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<sup>iii</sup> While it may be appropriate to charge a reasonable service fee for loan modifications that clearly help the borrower, it is not acceptable to effectively double-charge the borrower while refinancing or renewing by assessing the predominant financing charge, such as a 20% factor rate, on a borrower's outstanding principal, which they have already paid for.