



Advancing Innovation and Providing Access to Capital for Small Businesses

Code of Ethics

Preamble

Whereas, the members of our coalition and advisory board members represent a diverse set of businesses, associations and other stakeholders (“CRBF Members”) interested in the health and success of the small business economy;

Whereas, access to capital is vital to the small business economy as it enables small businesses to manage their liquidity and invest in the economic future of their businesses, thereby facilitating economic growth;

Whereas, access to capital in amounts under \$1 million is particularly important to small businesses, and CRBF Members can help provide access to such capital;

Whereas, small businesses require varied, individualized, and diverse financing options to meet each small business’s unique capital needs;

Whereas, CRBF Members believe that small businesses benefit from the availability of a broad array of responsibly delivered financing products from both regulated depository institutions and non-traditional finance providers;

Whereas, CRBF Members believe that small business owners and operators should be informed with accurate and thorough information to make sensible decisions regarding the benefits and risks of the utilization of capital according to their particular needs and circumstances;

Resolved hereto, that CRBF Members have adopted the following best practices to support the development of a highly responsible and ethical marketplace for the provision of financing to responsible small businesses:

Best Practices That Will be Employed by CRBF Members Involved in the Provision or Facilitation of Capital

**For purposes hereof, the terms "Financing" or "Capital" shall not include equity financing arrangements.*

1. Offers of Credit or Financing Will Be Transparent and Comprehensive

Offers of financing to small businesses should contain clear and comprehensive information on fees, payment structure, total contractual amounts owed, collateral or security requirements, prepayment implications, and implications of delinquency and/or default.

- When delivering a Provisional Offer of capital to a small business, a CRBF Member will disclose clearly to the obligor that the offer or proposed terms are subject to underwriting, the offer could change substantially, and that the offer does not constitute a binding offer of capital.
- When delivering a Binding Offer of capital to a small business, a CRBF Member will present the principal terms of the financing in writing (or in electronic format) and in a form that is clear, complete, and easy to compare with other options. At a minimum, the Binding Offer will stipulate the following:
 - The CRBF Member's role in the transaction – as either an Agent or Principal
 - The type of contract that is being offered (Equipment Lease, Equipment Financing Contract, Installment Loan, Line of Credit, Term Loan, Fixed Repayment Term Loan, Purchase of Receivables, Purchase of Future Receivables or Invoice Discount Contract)
 - Upfront fees or charges including fees charged by the Principal and all amounts that will be disbursed to Agents involved in the transaction
 - Recurring fees or charges including any fees resulting from subsequent draws from lines of credit and any contractual fees that will be paid by the obligor over the life of the contract, other than fees or charges resulting from delinquency
 - Net proceeds available to the obligor (specifically, the principal amount of the contract less upfront fees)
 - Payment / delivery structure, specifically:
 - The frequency of payments, or in the case of a merchant cash advance or purchase of future receivables, the frequency of delivery
 - Payment/delivery amounts, including (i) how payments/delivery are calculated and (ii) the dollar amount of payments/delivery; or
 - The percentage of receivables purchased, where applicable
 - Total Contractual Amounts that will be made by the obligor on the contract if paid through maturity or completion (inclusive of any contractual fees).

- The amounts owed if obligor elects to payoff the contract prior to maturity (or a description of how such amounts are determined)
- The terms for renewals and refinancing (see section 3)
- Collateral or security requirements, if any
- When delivering a Contractual Financing Agreement to a small business, the contract will present all of the key terms in a readable and accessible document, include all of the terms required in a Binding Offer of credit, and specify important key terms, including, at a minimum:
 - The amounts owed if the obligor is deemed delinquent (or a description of how such amounts are determined)
 - Events triggering a default on the contract
- When delivering a Provisional Offer or a Binding Offer, CRBF Members will provide at least two [2] measures of cost that conform to the definitions provided in the “Definition of Terms” section hereto.

2. Members will not Engage in Deceptive or Unfair Practices

Small businesses should not be misled or pressured into finance agreements or transactions that intentionally result in a breach of contract or a default with an existing capital provider or lender.

- No Time Pressure to Accept Offers – Allow customers at least ten (10) calendar days to consider a Member’s offer prior to expiration of the offer.
- Preventing “Harmful Stacking” – in underwriting or deciding on potential extensions of capital or credit, Members will perform responsible due diligence to determine whether existing financing exists and will not knowingly encourage an obligor to breach an existing financing agreement. Members will also perform responsible due diligence to ensure the small business can afford the financing terms.
- Accurate Marketing and Advertising - Members will take all reasonable steps to ensure advertising and marketing materials are accurate; At a minimum,
 - Any reference to financing terms must reflect an offer of financing that a Principal has provided, or an Agent has procured on behalf of a small business, within the last 60 calendar days;
 - Any reference to speed of delivery of funds must reflect the actual experience that a small business has had with a Member within the last 60 calendar days;
 - Members will not refer to or portray cash advances, factoring, purchases of receivables or purchases of future receivables as “loans,” “credit”, or use any other term, which would reasonably lead a small business into believing they are obtaining a loan; and
 - Members will not refer to the “cents on the dollar” cost or a factor rate as an “interest rate.”

Preventing Harmful Stacking

When a small business receives a loan or financing, the owner often agrees, in the financing contract, not to obtain additional funds without permission from the original provider of capital. This is because the capital provider is seeking to protect its investment in the small business and expects the small business to maintain an appropriate capital position and cash flow available to service its liabilities.

“Harmful Stacking” occurs when a capital provider knowingly induces and misleads small business owners into taking additional financing in violation of existing financing obligations and with repayment terms that are unsustainable. Often with minimal underwriting, 3-4 month repayment terms, cost in excess of 40% of the funded amount, and payments as high as 20-50% of gross revenue, it is not uncommon for these repayment terms to create a crisis for the business, or create a desperate cycle of additional borrowing that leads to 3-5 or more additional “stacking” financings from which the small business cannot recover.

3. Requirements When Borrowers Elect to Refinance or Prepay Contracts

Small businesses should know whether there are any pre-payment penalties or fees and should have a full understanding of how a renewal or refinance works, especially if there is an outstanding balance.

- Prompt Payoff Assistance – If an obligor seeks to prepay a contract, provide any information required for prepayment within two (2) business days of the obligor’s request.
- Disclose Amounts Owed in a Clear and Concise Manner – Provide the obligor with a Payoff Notice that stipulates at least the following:
 - Fees or charges triggered by the election to prepay
 - Contractual amounts accrued but unpaid
 - Contractual amounts that are being accelerated upon prepayment
- Disclosures for renewals and refinancing / Preventing Harmful Double Dipping – Where (a) a contract includes the total cost of financing in the outstanding balance at origination (e.g., \$100,000 loan with 20% ‘fee’ or ‘factor rate’ for a total repayment balance at origination of \$120,000); and (b) when an obligor is offered a refinance or renewal while an outstanding balance exists; and (c) if all, or any portion, of a refinance or renewal will pay off the existing balance; then Member will clearly disclose to the obligor the net new funds and the cost (or total obligation amount) of these net new funds in their binding offer and contractual financing agreement for the refinance or renewal transaction.

Preventing Harmful Double Dipping

When a loan or funding contract adds the full cost to the balance at origination, refinancing can introduce potential customer confusion about the true cost of the financing and even more confusion of the effective cost to the obligor at the time of refinancing or renewal.

Assume a \$100,000 loan at a 1.20x factor rate, making the initial balance \$120,000. When the contract is paid down to \$50,000 the customer refinances their balance with a new \$100,000 contract at 20% interest fee, which is the same as their first contract. The customer may believe their cost of funds is 20%.

If the new contract proceeds, in part, will pay off the existing balance of \$50,000, the customer will receive \$50,000 in new funds **not at 20% as the contract implies, but at 40%**, as their balance increases from \$50,000 to \$120,000 (\$70,000) for \$50,000 in new funding.

Clearly disclosing the true costs and mechanics of these kinds of transactions can prevent customers from being misled or confused about the actual cost of the financing. In combination with excessively high contractual payments which trigger repeat funding to cover cash flow, and aggressive sales tactics which attempt to compel customers to repeatedly renew/refinance, we consider these practices “harmful double dipping”.

4. Special Requirements for Agents and Brokers

Agents or Brokers should disclose to the small businesses their compensation and charges as well as all the options the small business qualifies for through that agent's services.

- Will honor the same disclosure and transparency requirements as outlined above.
- Disclose all financing options for which the obligor has qualified through the Agent's or Broker's services, thereby removing the ability to maximize compensation by not disclosing less expensive options.
- Disclose whether compensation is paid to an Agent or Broker, and whether charges will be paid directly by the obligor or indirectly through the financing provider, whether paid up front or within the terms of a financing contract.

5. Underwriting, Servicing and Collections Practices

Adherence to applicable state and federal law is an obligation every capital provider and lender must take seriously and precedes the commitment to abide by this Code of Ethics.

- Members will abide by all federal and state lending laws, if applicable.
- Members will report both positive and negative repayment information (or direct their applicable servicer to report) to at least one major commercial credit bureau and will advise obligors on the value of reporting such information.
- Members will not base any lending or financing decisions on race, national origin, gender, age, marital status or whether a borrower receives public assistance and will adhere to the applicable requirements of the Equal Credit Opportunity Act (ECOA), if applicable.
- Members will develop and adhere to policies to review and oversee the collections practices of third-party collectors and debt buyers, and will transmit accurate, current, and complete information about the obligations to third-party collectors and debt buyers.
- Members will cease attempting ACH debits on an obligor's account following the Member becoming aware of 3 consecutive failed debits. Once a Member is aware of 3 consecutive failed debits, the Member will work with the obligor to determine if an acceptable workout plan can be initiated.

6. Other Requirements

Capital providers and lenders should monitor their agents and brokers for adherence to these principles and they should ensure privacy and security measures accompany customer information throughout the supply chain.

- Members that are Principals, will enact a formal due diligence process on all Agents or Brokers that refer business to them
- Members (and their material vendors or subcontractors) will protect the privacy and security of an obligor's personal information (including business information).

7. Implementation of the Code of Ethics

Fair transactions depend on the responsibility of all parties involved. Capital providers and lenders should make sure their employees understand and follow this Code of Ethics. Additionally, small business owners have a responsibility to enter into transactions fully informed and with the intentions of meeting contractual obligations.

- Adoption of this Code of Ethics requires that Members ensure that all employees are aware of the requirements.
- Accordingly, Members must evidence that this Code of Ethics is part of the day-to-day activities of their businesses. This means that Members must ensure that the appropriate components of this Code of Ethics are:
 - Reflected in training for new hires and employee manuals; and
 - A prominent part of any training classes; and
 - Incorporated as part of the Member's formal policies; and
 - Reflected in agreements with Vendors, as appropriate.
- Members must establish procedures for handling complaints with respect to this Code of Ethics. These procedures must ensure that all employees are aware of the Code of Ethics and are acting in conformance therewith.

Characteristics of Responsible Small Businesses

Whereas, the provision of capital to small businesses in a responsible manner requires small businesses and small business owners to partake in responsible behavior;

Resolved, that the Members have adopted the following expectations of Responsible Small Businesses seeking capital within the United States:

- Willingness to Pay – Providers of capital expect that a Responsible Small Business intends to repay the contract
- Truthful Disclosure - Providers of capital will rely, in part, on the information supplied to a capital provider in an application for capital that cannot be easily verified. Responsible Small Businesses will disclose information about themselves, their business and their need for capital in an honest manner
- Knowledge of Existing Obligations – A Responsible Small Business will disclose to its Agent or a Principal any existing liabilities or obligations that might be jeopardized by the provision of new capital to the business

Definitions of Terms Utilized by CRBF Members

Customers and capital providers rely on an honest and ethical exchange of information during a transaction. An understanding, by all parties, of the terminology used during the transaction and throughout the business relationship is critical to ensure fairness. CRBF Members commit to using these terms as defined (below) and will rely on responsible small businesses to understand and use terminology consistent with these definitions.

“Agent” means the Member is acting as an advisor or facilitator of the transaction between the obligor and a Principal, and will receive a fee for this service.

“Annual Percentage Rate” or “APR” means the annual effective rate payable by the obligor (including all contractual fees). The APR will be calculated consistent with how it is governed by the Truth in Lending Act.

“Binding Offer” means a bona fide offer made to a business whereby the terms presented represent the actual terms whereby a Principal (or a Principal facilitated by an Agent) intend to close a transaction.

“Contractual Financing Agreement” means a binding contract between a capital provider and an obligor.

“Customer” means a responsible small business seeking financing.

“Delivery” is a reference to payment made under a merchant cash advance contract or a purchase and sale contract of future receivables.

“Equipment Financing Contract” means a financing contract secured by equipment but structured as a loan agreement rather than a lease.

“Equipment Lease” means a contractual arrangement calling for the lessee (user) to pay the lessor (owner) for use of an asset where the lessor is the legal owner of the asset and the lessee obtains the right to use the asset in return for regular rental payments.

“Factor Rate” means a measurement, expressed as a decimal, measuring the total contractual payments of a contract compared to the notional amount of the contract.

“Fixed Repayment Term Loan” means a contract that is structured as a business loan agreement or a promissory note but requires the debtor to repay a fixed dollar amount irrespective of if the contract is retired prior to maturity by the debtor.

“Invoice Discount Contract” means an arrangement where the finance company will allow an obligor to draw a percentage of outstanding sales invoices whereby the finance company charges a monthly fee for the service and interest on the amount borrowed against sales invoices.

“Installment Loan” means a debt financing contract that is repaid over time with a set number of scheduled payments of principal and interest.

“Interest” means the dollar amount of interest over a specified timeframe.

“Interest Rate” means the annualized rate of interest payable on a debt-financing contract. Members may also refer to the Interest Rate as the “Coupon Rate.”

“Line of Credit” means a debt financing contract whereby a Principal makes a commitment to fund a specified amount of capital upon demand by an obligor.

“Payback Percentage” means a percentage, calculated as the total contractual amounts owed over the life of a contract (including all fees and finance charges) divided by the Net Proceeds to the obligor.

“Personal Guarantee” means a promise made by a specific person (the guarantor) to accept responsibility for some other party’s contractual obligations in the event the obligor fails to pay it.

“Provisional Offer” means an indicative offer of capital that is not binding in any way on the capital provider and which is based on only a set of information that is insufficient to provide a Binding Offer.

“Principal” means the CRBF Member will originate and intends to hold the contract for its own account or sell the contract or a contractual right to all or a portion of the cash flows of the contract to a third party.

“Purchase of Future Receivables” means a contract requiring providing a fixed lump sum payment to a business in exchange for an agreed-upon percentage of future credit card sales, debit card sales or revenue of the business.

“Purchase of Receivables” means a sale of receivables, in which the purchaser assumes ownership of the asset and all of the risks associated with it, and the seller relinquishes any title to the receivables sold.

“Responsible Small Business” means a small business that conducts itself consistent with the Characteristics of Responsible Small Businesses.

“Simple Interest” means the total amount of contractual interest payable on a credit instrument through maturity.

“Simple Interest Rate” means the total amount of contractual interest payable on a credit instrument through maturity measured as a percentage of the notional contract amount.

“Term Loan” means a debt financing contract that has regular payments over a set period of time and may have either a fixed or floating rate of interest.

“Total Contractual Amounts” – the total dollars that an obligor is required to pay through maturity of a contract including interest, fees, delivery and/or principal and (a) in the case of any floating rate contracts, assuming no changes in prevailing interest rates, and (b) assuming the obligor is not delinquent or does not default over the life of the contract.

Measures of Cost

- “Annual Percentage Rate” or “APR” means the annual effective rate payable by the obligor (including all contractual fees). The APR will be calculated consistent with how it is governed by the Truth in Lending Act.
- “Factor Rate” means a measurement, expressed as a decimal, measuring the total contractual payments of a contract compared to the notional amount of the contract.
- “Interest Rate” means the annualized rate of interest payable on a debt-financing contract. Members may also refer to the Interest Rate as the “Coupon Rate.”
- “Payback Percentage” means a percentage, calculated as the total contractual amounts owed over the life of a contract (including all fees and finance charges) divided by the Net Proceeds to the obligor.
- “Simple Interest Rate” means the total amount of contractual interest payable on a credit instrument through maturity measured as a percentage of the notional contract amount.
- “Total Contractual Amounts” – the total dollars that an obligor is required to pay through maturity of a contract including interest, fees, delivery and/or principal and (a) in the case of any floating rate contracts, assuming no changes in prevailing interest rates, and (b) assuming the obligor is not delinquent or does not default over the life of the contract.

While the CRBF Best Practices help small businesses compare costs by ensuring thorough disclosure of costs and fees, the coalition is also participating in the Innovative Lending Platform Association’s [SMART Box](#) initiative focused on developing an industry-wide model disclosure that will help small businesses comparison shop for additional capital.