

Introduction

Small businesses act as an important engine in the U.S. economy by providing economic opportunity for entrepreneurs and employment for millions of job seekers. They are woven into the commercial and social fabric of local communities, offering the goods and services on which consumers rely day-to-day. Like other enterprises, small businesses need financing to operate and grow. While many can obtain loans from traditional lenders, like local banks, in recent years small businesses have increasingly turned to relatively new sources of financing, including online loans,¹ lines of credit, and other alternative products. While these forms of financing offer some potential benefits for small businesses consumers (for example, broadening the availability of credit), they have also raised some consumer protection concerns.

The Federal Trade Commission (“FTC” or “Commission”) has broad jurisdiction under the FTC Act and other laws² to stop deceptive, unfair, and other unlawful practices by small business financing providers and their marketplace servicers, and collectors. In recent years, the Commission has used its authority to bring dozens of actions to protect small businesses from frauds, like fake invoice and unordered merchandise scams.³ Additionally, the Commission has worked to stop unlawful conduct in the online lending marketplace by bringing actions against lenders for allegedly deceiving consumers about key aspects of their loans, like rates, consumer savings, and servicing-related features.⁴ The agency remains committed to protecting small businesses, including in the lending marketplace.

In order to further examine recent trends in small business financing, on May 8, 2019, the FTC hosted a public forum, “Strictly Business” (or “Forum”).⁵ This event brought together a variety of stakeholders and experts to discuss consumer protection issues associated with this marketplace. This Staff Perspective highlights some of the key issues discussed during the Forum, as well as other information gathered through law enforcement and from existing research. In particular, we provide background on recent trends in the small business financing marketplace, discuss some potential benefits of newer online financing products, and examine some of their risks for small businesses.

heightened understanding of business financing necessary to effectively comparison shop and find the most appropriate products. Some panelists argued that business owners, drawing from their more common experiences with personal credit, may be likely to mistakenly assume that business financing products share the same characteristics. For example, accruing interest over time and offering prepayment savings.

While Forum panelists generally emphasized the problems posed by non-uniform disclosures, they voiced disagreement about which methods for calculating costs would be most relevant and understandable. Some panelists, including consumer advocates, argued that business owners would be most likely to understand costs and fees expressed as an APR or interest rate. On the other hand, some industry panelists argued that, for shorter-term financing arrangements that consumers repay within several months (as opposed to the years associated with traditional

Third, two MCA providers at the Forum expressed concerns that, during the repayment of MCAs, some providers may fail to conduct promised “~~ups~~” or “reconciliations” to lower merchants’ daily payment amounts to reflect drops in their sales. ~~As noted above, MCAs are designed to require businesses to repay a fixed percentage of their daily revenues. Accordingly, it would be concerning, and potentially unlawful, if MCA providers fail to adjust payment amounts to reflect a decrease in sales.~~

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Fourth, our panelists and other observers have expressed concerns about the use of potentially abusive collection tactics by MCA providers and their agents against business owners who struggle with repayments. In particular, in recent years, some MCA providers have required that business owners execute a “confession of judgment (COJ)” — in which the business owner waives his or her right to contest any collection lawsuit to obtain the unpaid MCA amount and collection-related fees. Although the FTC’s Credit Practices Rule prohibits the use of COJs in

by small business finance providers and their collectors.³⁴ The Commission has engaged in extensive enforcement efforts to stop unlawful collections practices used to collect personal debts, and many of the same protections apply to small businesses. Staff would caution small business finance providers and their collectors to avoid the types of conduct we have alleged to be unlawful — such as collecting amounts consumers do not owe, making egregious false threats of arrest or other severe consequences, disclosing private debt information to third parties (such as family members) or harassing consumers with continuous calls or abusive language.³⁵

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Conclusion

As the small business financing marketplace continues to evolve, the FTC remains committed to protecting businesses and their owners from potentially unlawful practices. Through our “Strictly Business” Forum, and the Staff Perspective paper, we have worked to engage in a dialogue with stakeholders in this marketplace, and to better inform the public understanding of these products and our relevant law enforcement work.

Endnotes

¹ This Staff Perspective uses the terms "online financing" and "online lending" generally to describe all of these new products, despite the fact that some companies may promote them off through other channels, like telemarketing

² See, e.g. Fair Credit Reporting Act 15 U.S.C. §§ 1681-1681x, Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.

³ For example, the Commission recently engaged "Operation Main Street," jointly with the FDIC, CFPB, and the FTC, in (see

²⁶ See Innovative Lending Platform Association, *The SMART Box™ Model Disclosure In Depth*, available at <https://innovativelending.org/smart-box-model-disclosure-depth/> (requiring disclosure of, among other things, APR, total cost of capital, and ramifications of repayment); Responsible Business Lending Coalition, *Small Business Borrowers’ Bill of Rights*, available at <http://www.borrowersbillofrights.org/bill-of-rights.html> (requiring disclosure of, among other things, APR). As FTC staff has noted previously, for self-regulatory programs to be effective, industry participants should ensure that such programs include mechanisms for robust monitoring and enforcement, such as dismissal from the program and referral to the FTC for companies that fail to comply with standards outlined in the code. See, e.g., FTC Staff Perspective, *“Follow the Lead” Workshop* (Sept. 2016), at 7, available at <https://www.ftc.gov/reports/follow-the-lead-workshop-staff-perspective>

²⁷ See *supra* notes 8-9 and accompanying text.

²⁸ See *supra* note 4; *infra* note 29.

²⁹ See, e.g., *FTC v. Career Education Corp.*, No. 19-cv-05739 (N.D. Ill. filed Aug. 27, 2019), FTC Press Release, *Operator of Colorado Technical University and American InterContinental University Will Pay \$30 Million to Settle FTC Charges it Used Deceptive Lead Generators to Market its Schools* (Aug. 27, 2019), at <https://www.ftc.gov/news-events/press-releases/2019/08/operator-coloradotechnicaluniversity-american-intercontinental>; *FTC v. Edutrek*, No. 19-cv-01984 (N.D. Ill. filed Mar. 22, 2019); FTC Press Release, *FTC Charges Telemarketing Operation with Misleading Job Seekers and Making Millions of Illegal, Unsolicited Calls* (Apr. 12, 2019), at <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-charges-telemarketing-operation-misleading-job-seekers-making>; *FTC v. Sunkey Publishing*, No. 18-cv-01444 (N.D. Ala. filed Sept. 6, 2018); FTC Press Release, *FTC Takes Action against the Operators of Copycat Military Websites* (Sept. 6, 2018), at <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>; *FTC v. Sequoia One, LLC*, No. 15-1512 (D. Nev. filed Aug. 7, 2015); FTC Press Release, *FTC Puts An End to Data Broke Operation that Helped Scam More Than \$7 Million from Consumers’ Accounts* (Nov. 30, 2016), at <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-puts-end-data-broker-operation-helped-scam-more-7-million>; *FTC v. Intermundo Me*, 0 TC BT /CS0 cs 0 2 v49 (r)2.8 (sp)2.8 (s)2.83.2 ()3.2 () r mre (e)3. (v)-2.2 (.)-4t

³⁵ See, e.g. *FTC v. Global Asset Fin. Servs. Group*, No. 3:19cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC v. Campbell Capital LLC et al*, No. 1:18cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *U.S. v. Consumer Portfolio Services, Inc.*, No. 1:08cv-00819 (C.D. Cal. filed May 28, 2014); *FTC and State of Nevada v. Cash Today, Ltd.*, Civ. A. No. 3:08CV-590 (D. Nev.).