



May 8, 2019

FTC HOSTS SMALL BUSINESS FINANCING FORUM

This morning the Federal Trade Commission (“FTC”) hosted a public forum with three stakeholder panels that (i) gave an overview of the small business financing marketplace, (ii) examined merchant cash advance products and (iii) discussed small business protection risks in the small business financing marketplace and potential legislative, self-regulatory and educational efforts to better protect small businesses. The FTC is the primary federal regulator of nonbank actors in the small business financing marketplace.

Commissioner Rohit Chopra opened the forum with remarks focused on the lack of freedom small businesses have to negotiate terms of “take-it-or-leave-it” financing contracts offered by a small set of dominant firms. While confession of judgment clauses were discussed briefly, the panelists discussed instead disclosures and transparency at length.

Among other things, panels highlighted the tension between small business owners’ lack of time and immediate need of financing, on one hand, and the owners’ understanding of small business financing options and terms on the other. The diversity of small business financing options presents challenges when it comes to creating standardized disclosures that enable small businesses to make apples-to-apples comparisons of products. Some panelists noted the problems with using an annual percentage rate as a comparison metric for small business financing options and identified certain “floor” disclosure terms that are product-agnostic and important to small businesses seeking financing. Industry-efforts to create standardized disclosures were discussed along with the pressure points among stakeholders involved in the passing of California’s recent commercial financing disclosure statute.

The forum noted other risks in the current small business financing marketplace including, but not limited to: (i) “double dipping” and “stacking” of financing obligations, (ii) brokers’ activities, (iii) data protection and (iv) the lack of long-term data on how small business financing products help or hurt small businesses overtime.

This forum kicks off the FTC’s efforts to further analyze the small business financing marketplace. It would not be unprecedented for the FTC to follow up today’s forum with a summary of key risks and benefits of the current small business

financing eco-system and the FTC staff’s perspective on the issues. We will keep you updated on developments. □

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