United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

May 22, 2024

Tony Xu
Chief Executive Officer
DoorDash, Inc.
303 2nd Street
South Tower, 8th Floor
San Francisco, CA 94107

Dear Mr. Xu:

I write to request information regarding the merchant cash advance (MCA) products that DoorDash, Inc. (DoorDash) makes available to merchants on its platform.

Access to affordable capital is essential for strong small businesses. Affordable rates and fair terms help entrepreneurs build their businesses, invest in their communities, and plan for the future. But when credit becomes high cost or unfair, an entrepreneur's company can come under threat.

That is why I am concerned about MCA products and their potential to damage small businesses that need capital most. MCAs are a form of small business financing where a business receives an upfront lump sum in exchange for a share of its future sales. Merchants typically repay the advance, multiplied by a "factor rate," such as 1.2, through daily payments based on a percentage of their average sales. Lenders usually deduct payments automatically from small businesses' bank accounts.

MCA providers contend that this transaction structure—a purchase of future sales, instead of a loan—exempts MCAs from the protections typically provided in retail credit transactions. Crucially, MCAs are offered without regard to state interest rate caps that would limit the cost of economically equivalent lending products.

As a result, MCAs are often high cost: merchants have paid the equivalent of interest rates over 800 percent or even higher in connection with MCAs, as highlighted in recent enforcement actions against MCA providers.[1] Even at lower effective rates, MCAs are typically far more

[1] *"Strictly Business" Forum Staff Perspective*, FED. TRADE COMM'N 6 (Feb. 2020), https://www.ftc.gov/system/files/documents/reports/staff-perspective-paper-ftcs-strictly-business-forum/strictly_business_forum_staff_perspective.pdf (describing MCAs with equivalent APRs in "triple digits"); Complaint at 4, People v. Yellowstone Cap., No. 450750/2024 (N.Y. Sup. Ct. Mar. 5, 2024), https://ag.ny.gov/sites/default/files/2024-03/nyag-v-yellowstone-et-al.pdf (alleging MCA scheme charging rates as high as 820 percent); People v. Richmond Cap., No. 451368/2020, slip op. at 6 (N.Y. Sup. Ct. Sept. 15, 2023), https://ag.ny.gov/sites/default/files/decisions/richmond-capital-court-order.pdf (describing MCA with effective interest rate over 3000 percent).

expensive than other credit products. MCA providers have also been found to charge steep, poorly disclosed fees.

Because of their high cost, MCAs can overwhelm small businesses financially. The percentage of revenue repaid to MCA providers can exceed firms' profit margins, wiping out profitability. Business owners can be pushed to roll over their MCAs or take out additional MCAs on top of an initial advance—a practice known as "stacking." Some MCAs also require personal guarantees from merchants, leaving small business owners personally liable and forced to repay advances themselves if their firm experiences a downturn.

The high cost of many MCAs—especially when combined with renewing or stacking advances—creates a troubling similarity to payday lending practices that ensnare consumers in persistent cycles of debt. Moreover, since the structure of MCAs ostensibly exempts them from consumer safeguards, MCAs are offered at prices that would be illegal for effectively identical transactions structured as loans.

In addition to their high cost, I am also alarmed by a disturbing history of misrepresentations and abuses with MCAs. Though MCAs purportedly reflect a purchase of a percentage of a business's receivables, MCA firms have repeatedly failed to adjust merchants' payments as sales fluctuate.[2] This has forced merchants with declining sales to pay a greater and greater share of their revenues to MCA firms, despite providers' promises that payments would decrease. Indeed, in some MCAs, the payment adjustment or "reconciliation" mechanism is purely legal window-dressing: while reconciliation provisions are included in contracts to distinguish the agreements from loans, reconciliation is almost never used in practice.[3]

Finally, MCAs have fueled the growth of "confessions of judgment" (COJs) as well. COJs are legal agreements in which a merchant waives rights to contest a collections lawsuit in court. With a COJ, an MCA provider can quickly obtain and enforce a court judgment against a borrower, allowing the lender to seize assets or accounts without notice or an opportunity for the borrower to dispute the lender's claims.[4]

As platforms like DoorDash help to increase the use of MCAs, it is critical that merchants are protected from predatory lending and other abuses. Since 2022, DoorDash has made available MCAs to certain small businesses through its DoorDash Capital Program.[5]

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[2] *See, e.g.*, Complaint at 11, Grewal v. Yellowstone Cap., Dkt. No. HUD-C-180-20 (N.J. Super. Ct. Ch. Div. Dec. 8, 2020), https://www.nj.gov/oag/newsreleases20/Yellowstone_Complaint.pdf.

[3] *See, e.g.*, Complaint at 34-38, People v. Yellowstone Cap., No. 450750/2024 (N.Y. Sup. Ct. Mar. 5, 2024), https://ag.ny.gov/sites/default/files/2024-03/nyag-v-yellowstone-et-al.pdf (describing MCA scheme in which reconciliation provisions almost never used in practice).

[4] *See* Zachary R. Mider & Zeke Faux, *Sign This Agreement and Your Bank Account Might Be Frozen*, BLOOMBERG BUSINESSWEEK (Feb. 10, 2022), https://www.bloomberg.com/news/features/2022-02-10/predatory-lenders-are-using-legal-tricks-to-freeze-borrowers-bank-accounts?sref=Hs89ZntT.

[5] *See* Tom Pickett, *Accessible, Affordable Financing for Merchants with DoorDash Capital*, DOORDASH (Feb. 9, 2022), https://about.doordash.com/en-us/news/accessible-affordable-financing-for-merchants-with-doordash-capital; *Access Financing with DoorDash Capital*, DOORDASH, https://get.doordash.com/en-us/products/capital?_gl=1*300xi0*_gcl_au*MjE2NDE3NzQwLjE3MTQwNjE0Mjk.&_ga=2.36533664.1256575725.1714061456-1807189709.1714061429 (describing DoorDash Capital MCA product).

Given the concerns outlined above, and in order to promote understanding of how MCAs offered through your platform affect merchants, please provide responses to the following by June 12, 2024. Please respond with respect to all MCAs offered by or through DoorDash and its platform, including through any partnership arrangements with third-party vendors or partners.

1. Please identify the number of MCAs sold through or otherwise originating in your platform in the 12-month period ending March 1, 2024. Please also provide the mean, maximum, and minimum of the following with respect to MCAs provided through your platform during that period:
    a. Size of advance;
    b. Factor rate (or capital fee, as a percentage of an advance);
    c. Daily payment amount or remittance rate;
    d. Repayment period; and
    e. For MCAs that have been fully paid off, the equivalent annualized interest rate.

2. Please describe the policies and procedures by which DoorDash and any partners make MCA offers to merchants and evaluate and approve MCA applications. Please also describe how the size, cost, and other terms of an advance are determined.

3. Please describe how a business's payments on an MCA offered through DoorDash Capital are adjusted in accordance with its sales or revenues. Please also identify the proportions of MCAs originating in your platform in the 12-month period ending March 1, 2024 for which payments were increased or decreased, respectively.

4. Please describe how DoorDash and any partners approach merchants that have defaulted on an MCA, including any circumstances in which the balance on an MCA is accelerated. Please also:
    a. Identify the rate at which merchants were deemed to be in default on MCAs originating in your platform in the 12-month period ending March 1, 2024; and
    b. Identify whether your company (or any partner) debits, or has ever debited, a merchant's account for the full amount owed on an MCA following a default.

5. Please describe any policies or procedures governing the use of additional credit products by a small business that has entered into an MCA through DoorDash Capital. Please also identify the proportions of merchants that, in the 12-month period ending March 1, 2024:
    a. Entered into an additional MCA offered through your platform within 30 days of the end of the repayment period of an MCA offered through your platform; or
    b. To the knowledge or DoorDash or any partner, took out additional credit from any source (including through an MCA) during the repayment period of an MCA offered through your platform.

6. Please identify whether MCAs offered through DoorDash Capital include, or have ever included, confessions of judgment. If so, please identify whether DoorDash or any

partner has ever used a judgment obtained through a confession of judgment to seize borrower assets.

7. Please provide a form contract used in MCAs offered through DoorDash Capital.

Thank you for your attention to this matter. Your answers are critical to ensuring that Congress understands how the growth of MCAs may be affecting the availability of fair credit to small businesses.

If you have any questions or concerns about this request, please contact my staff.

Sincerely,

Sherrod Brown

Sherrod Brown
Chairman
Senate Committee on Banking,
Housing, and Urban Affairs