OLA
Online Lenders Alliance

June 1, 2020

By electronic submission to 2020-RFI-Taskforce@cfpb.gov

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Request for Information to Assist the Taskforce on Federal Consumer Financial Law Docket No. CFPB-2020-0013

Dear Sirs and Madams:

The Online Lenders Alliance ("OLA") welcomes the opportunity to respond to the request for information issued by the Bureau of Consumer Financial Protection ("CFPB") Taskforce on Federal Financial Law to support its work to harmonizing, modernizing, and updating the federal consumer financial laws.

OLA represents the growing industry of innovative companies that develop and deploy financial technology, including proprietary and innovative underwriting methods, big data analytics, and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders, consumer reporting agencies, payment processors, and online marketing firms.

A. Expanding Access to Credit

Even prior to the current pandemic, many Americans struggled to pay even a $400 expense.[1] These are the millions of Americans with a credit score below prime. Having a non-prime credit score makes it difficult or near impossible to secure many forms of credit from traditional financial institutions. This credit exclusion is self-perpetuating, as consumers can find it difficult to address financial challenges without credit access and can suffer further deterioration of their credit profile.

[1] Report of the Economic Well-Being of U.S Households (May 2019) https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf

This population has limited access to traditional finical services. The 2017 Federal Deposit Insurance Corp. (FDIC) National Survey of Unbanked and Underbanked Households found that 18.7% of U.S. households were underbanked,[2] meaning they had an account at a FDIC-insured institution but also used "an alternative financial services provider," which includes small-dollar loans from online lenders.

Due to their lower cost structure and greater accuracy in underwriting, fintech companies are playing an important role in opening new avenues for individuals with limited credit options. These changes will provide for future improvements that will benefit every aspect of our financial markets.

Much of this innovation assists traditional institutions reach new markets and customers. Banks routinely rely on relationships with third parties to deliver financial services more broadly, more efficiently, and with less risk to consumers and the banks themselves. Today those banks that lack the technical know-how to market, underwrite, originate, service and collect loans over the Internet can bridge these challenges by partnering with a fintech company. Many of these firms have spent years developing innovative technology and analytics for these specific tasks. Their investment of time and resources allows the banks to benefit from fintech firms' expertise.

The Center for Financial Services Innovation, in a comment letter to the FDIC, characterized this as a "win-win-win" for all involved, including consumers. Banks win because they can serve a broader and deeper segment of the consumer market than they could without such relationships. Third-party fintech providers win by creating an opportunity to offer products and services to consumers to whom they traditionally lacked access. Consumers win because they "get access to high-quality credit that they otherwise would not." These partnerships also allow "smaller and more rural lenders to broaden the set of products and services they can offer to consumers and small businesses in their communities."[3]

The Taskforce is encouraged to adopt policy statements and guidance that support the growth of these partnerships. This will enable fintech companies that offer safer, more transparent, and lower cost products to reach millions of Americans in need of financial products and services.

OLA also would caution the Taskforce against policies that place arbitrary restrictions or limits on financial markets. One such example is the establishment of rate caps. Rate cap advocates justify them as a way to rein in abusive lending practices; what they fail to take into account are the negative ramifications a rate cap will have on the millions of working families with nonprime scores that stand to lose access to credit.

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[2] FDIC National Survey of Unbanked and Underbanked Households
https://www.fdic.gov/householdsurvey/2017/2017report.pdf

[3] CFSI Comment Letter on Proposed Guidance for Third-Party Lending (Oct. 27, 2016),
https://cfsinnovation.org/research/cfsi-comment-letter-on-proposed-guidance-for-third-party-lending/.

There is a plethora of evidence that shows rate caps do not work. Research by the Federal Reserve found that in states with significantly restrictive rate caps in place, consumers had fewer options to access credit and higher incidences of overdraft and late payments.[4] More recently, a World Bank study found that rate caps can have "substantial unintended side-effects," including reducing access to credit and an increase in decline rates for consumers with thin or poor credit histories.[5] Both these studies underscore the reality that the end result of rate caps is to deny consumers access to credit.

Attempts at the federal level to establish rate cap programs have been unsuccessful. For proof all one needs to do is look to the FDIC's small-dollar loan pilot program. This initiative encouraged banks to make small-dollar loans to consumers at rates of 36% or below. At the end of the two-year pilot program, the participating institutions stopped offering these products because they were not financially sustainable. The drawbacks of rate caps were reinforced at a House Financial Services Committee hearing entitled *"Ending Debt Traps in the Payday and Small Dollar Credit Industry,"*[6] where a witness representing small banks stated that to make these types of loans at a 36% rate would require some form of government subsidies, without which they were not economically viable.

Given the divergent views on the issue of rate caps, the Taskforce is encouraged to take a leadership role in supporting additional research into their costs and benefits as well as an economic study on the cost of delivering loan products to a base of high risk borrowers. This will ensure that any future policymaker actions will fully take into account the impact that rate caps have on working families searching for access to loans.

B. Consumer Data

The ability to secure credit plays a role in every major consumer financial decision. Whether purchasing a home, starting a business, financing an education, or even paying for auto repairs, the ability to find and secure credit is often a determining factor. Individuals facing barriers to accessing credit due to late payments, a lack of credit history, or other problems often have fewer options and wind up paying more in the form of higher rates.

For decades, much of the lenders' credit decision-making was predicated on a consumer's credit score from one of the big three credit bureaus. However, many traditional credit scores do not

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[4] The Credit Card Act and Consumer Finance Company Lending (2017)
https://www.federalreserve.gov/econres/feds/files/2017072pap.pdf

[5] Interest rate caps : the theory and the practice
http://documents.worldbank.org/curated/en/244551522770775674/Interest-rate-caps-the-theory-and-the-practice

[6] Ending Debt Traps in the Payday and Small Dollar Credit Industry
https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403646

provide the full picture of a consumers' credit history. Many consumers have credit data – but not the type of data that the major credit bureaus track and record. This is where alternative data comes into play.

A cell phone payment, checking account activity, utility payments, rent and other everyday transactions that might not seem to be predictive of a consumer's credit worthiness are all part of the growing alternative data efforts pioneered by many OLA members. When these items are teamed with compliant modeling techniques, they become a powerful tool in helping consumers secure loans and fine-tune other borrowers' credit reports. Alternative data can be used in conjunction with traditional credit scores to round out a borrowers' profile. Research by LexisNexis found that when alternative data is factored into a borrowers' existing credit history, 20 percent of those borrowers qualify for a loan with better terms and conditions.[7] This can aid in providing greater financial flexibility to the consumer. This holds significant promise, not just for unlocking and improving credit to millions of Americans, but also expanding credit markets and enabling the financial services industry to offer new products.

One of the unique aspects of alternative data is the ability to layer varying levels of data to expand the credit universe for those customers whose credit history in previous years would not have enabled them to qualify for a loan. With these increased data points, alternative data improves customer profiles, allowing financial institutions to anticipate customer needs. Alternative data can also play a role in developing new products; in fact, it has spawned partnerships between banks and online lenders, spurring new product offerings and providing greater consumer choices.

While alternative data is playing a significant role in making credit available to millions with limited credit options, there are potential barriers to reaching its full potential. Many of the statues that govern credit decision making, like the Fair Credit Reporting Act, have become inflexible in this new age of data. This in turn creates uncertainty with regulators who have at times been overly cautious and communicated inconsistently with lenders on the role that alternative data can play. Regulators need to take a modern view of credit markets when examining enforcement actions. If the message regulators send results in lenders interpreting those directives as translating into higher compliance costs, it will obstruct a lender's ability to find new and creative uses for alternative data, limiting availability of credit to consumers

Therefore, OLA encourages the Taskforce to include in its evaluation of data issues the role that alternative data plays in credit decisions and consider rules and directives that provide clear and practical guidelines that foster the use of alternative data, thus lowering unnecessary barriers to credit.

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[7] Alternative data uncovers new opportunities in a changing environment https://risk.lexisnexis.com/insights-resources/white-paper/loan-growth-in-a-new-economy

C. Regulations

We applaud the CFPB for revisiting the Small-Dollar Rule's ability-to-repay provisions. We believe these provisions are overly prescriptive and burdensome as compared to similar products, such as the CARD Act, which are much simpler and more flexible. In addition, this provision would choke off access to credit for consumers who need it most and present a myriad of other legal and policy issues. While much attention has been focused on potential revisions to the ability-to-repay sections of the Rule, equally important is the need for revisions to the payment provisions contained in Subpart C of the Rule. These provisions apply to all covered loans, impacting a broad range of lenders.

For example, section 1041.8(b) of Subpart C prohibits a lender from attempting to withdraw payment from a consumer's account in connection with a covered loan after two consecutive payment transfer attempts fail due to a lack of sufficient funds. In addition, section 1041.7 declares a lender's violation of this prohibition to be an unfair and abusive practice. Exceptions apply if the lender obtains a new and specific authorization from the consumer to make further withdrawals from the account.[8] These payment restrictions apply to any payment transfer initiated via electronic fund transfer (including a preauthorized electronic fund transfer), interinstitutional transfer, and several other means.

In developing the Rule, the Bureau identified one potential harm associated with covered loans: if lenders make repeated unsuccessful attempts to debit consumer accounts for repayment and, as a potential consequence, consumers incur nonsufficient funds (NSF) fees or have their accounts closed.[9] While NSF fees and account closures raise legitimate concerns, revisions to NACHA rules have effectively addressed the consumer harm identified by the Bureau for ACH transactions, rendering the payment provisions of the Rule unnecessary. Even if the Bureau retains the Subpart C payment provisions, they should be made consistent with the re-presentment provision of the NACHA rules, rather than creating a different and inconsistent standard especially when these provisions create a discriminatory effect amongst different classes of borrowers in the lending universe. Moreover, given that reducing the number of NSFs caused by small-dollar loans was the CFPB's sole articulated reason for imposing the Rule's payment provisions, there is no justification for including debit card payments within the scope of these provisions. The Rule's prohibition on withdrawal attempts by means of debit card payments after two failed attempts imposes an unnecessary restriction without providing any benefit to consumers.

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[8] 12 C.F.R. § 1041.8(c) and (d); *see also* 12 C.F.R. § 1041.7.

[9] The CFPB also identified overdraft fees as a potential consumer harm. However, if a consumer incurs overdraft fees, it means that the payment transfer attempt was *successful,* and the loan payment was made.

Finally, the current reauthorization for payment requirements under the Rule would make small-dollar loans the only financial product where a regulation requires the consumer to reauthorize auto-debits after some number of failed payments attempts. This requirement alone will add to the growing number of notices and disclosures consumers currently receive, which can overwhelm consumers and make it less likely that consumers read any individual notice, including a request to reauthorize payments from their account. As a result, consumers may bear the harmful consequences of their loans going into collections more often than the CFPB assumes. These notices also create the opportunities for sophisticated fraudsters to try to confuse borrowers by sending unsolicited payment authorization requests.

OLA believes there are alternatives to the Rule and given these impacts, OLA encourages the Taskforce to review the payment provisions of the Rule and consider options to pursue a similar course of action as has been undertaken to review the Rule's underwriting provisions. This will allow for a more practical solution to the current payment provisions. Improving consumer protections

D. Improving Consumer Protections

The fintech industry is regulated by federal statutes, along with various state and local laws with which companies must comply. Like any rapidly growing industry, the online lending marketplace is not without bad actors attempting to operate outside legal and regulatory boundaries. It therefore is important for industry leaders to ensure a safe marketplace. As technology evolves and consumer comfort with online lending grows, these efforts will be ever more critical for protecting consumers.

OLA is leading the way in improving consumer protections. The industry is pioneering advances in technology, software, and underwriting so that lenders can provide smarter credit options to meet today's consumer credit needs while instilling trust in the online lending marketplace.

This starts with a set of robust standards to ensure that borrowers are fully informed, fairly treated, and using lending products responsibly. To accomplish this, OLA members agreed to hold themselves to set of Best Practices that are standards above and beyond the current legal and regulatory structure. These are standards that OLA members, the industry, and any partners with whom OLA members work use to stay current on the changing legal and regulatory landscape. OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most importantly, OLA Best Practices are designed to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.[10]

In an effort to inform consumers as to which online financial services providers follow OLA's Best Practices, thus signaling that they treat consumers fairly and with respect, OLA created its own seal designed to help consumers borrow with confidence. Companies with the OLA Seal on their websites show customers and regulators that they abide by OLA's Best Practices, a sign of

[10] Online Lenders Alliance Best Practices https://onlinelendersalliance.org/best-practices/

commitment to the highest standards of conduct, including having procedures for handling complaints. Consumers who look for the Seal can be assured that they are working with a reputable company. The Seal's growing visibility gives consumers the peace of mind that they are being treated fairly and are fully informed about loan options and features.

To aid consumers further, OLA developed the OLA Consumer Hotline, enabling callers to speak to a live operator and obtain help with their loan or to report fraud. Hotline operators are available to help online loan customers having difficulty reaching their loan company or dealing with repayment issues. The operators can be effective intermediaries in helping customers connect with the right person at the loan company so that their concerns can be addressed. Annually the Hotline fields approximately 25,000 calls from consumers, many times, these issues are resolved within 72 hours[11]. The information collected during these calls is used to investigate their issues, including fraudulent efforts to collect a debt. When appropriate, the OLA Consumer Hotline brings the matter to regulators' attention.

Recognizing the growing need to monitor the web for fraudulent actors, one of OLA's centerpieces of consumer protection efforts is an ambitious web-crawling program that searches Internet sites to identify any misleading claims. Once identification is complete, OLA works with the websites to delete or change any misleading statements. The effort has been successful: since initiating the program in 2016, more than 1 million websites have been reviewed for potential violations of OLA Best Practices with remediation rates that annually reach approximately 98 percent. Violators who do not comply are published and details turned over to the appropriate federal regulator.

OLA appreciates the Taskforce providing this opportunity to offer input on these key issues. If you have questions or need additional information, please feel free to contact me at Redacted

Respectfully submitted,

Mary Jackson President and CEO
Online Lenders Alliance

[11] "Policing the Internet to Protect Consumers" https://onlinelendersalliance.org/wp-content/uploads/2019/02/OLA_Policing_the_Internet_rev4_single-pages-web.pdf