



Online Lenders Response to Consumer Financial Protection Bureau Request for Information Regarding Inherited Regulations; Docket No.: CFPB-2018-0011

VIA ELECTRONIC SUBMISSION

June 19, 2018

Bureau of Consumer Financial Protection
1700 G St., NW
Washington, DC 20552
FederalRegisterComments@cfpb.gov

Re: Request for Information Regarding the Bureau's Adopted Rulemaking and New Rulemaking Authorities (Docket No. CFPB-2018-0011)

Ladies and Gentlemen:

The Online Lenders Alliance ("OLA") respectfully submits this response to the Bureau of Consumer Financial Protection's ("Bureau's") Request for Information Regarding the Bureau's Adopted Regulations and New Rule Making Authorities ("RFI").¹ This letter addresses the Bureau's final rule on Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (November 22, 2016)² as amended by the Rules Concerning Prepaid Accounts Under the Electronic Funds Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (January 25, 2018)³ (collectively, the "Final Rule").

OLA is the center for lending, technology and innovation, representing the growing industry of companies offering loans online. OLA is comprised of lenders, advertisers, specialty credit bureaus and software developers – the entire fintech community. Our members abide by a rigorous set of Best Practices and a Code of Conduct to ensure their customers are treated fairly. OLA also serves as a resource to federal and state policymakers on issues related to access to credit. Beyond our role in serving and leading our members, OLA provides resources including a consumer hotline, that is a portal to report fraud, and consumer tips.

¹ 85 Fed. Reg. 12286.

² 81 Fed. Reg. 83834.

³ 83 Fed. Reg. 6364.

As expressed in our prior comment letter (dated March 23, 2015) submitted in response to the Bureau's Notice of Proposed Rulemaking ("NPRM"),⁴ the OLA supports the Bureau's mission expressed in the NPRM to promote consumer protections in the prepaid market. In that letter, OLA expressed concern that the scope and the breadth of the NPRM had the potential to stifle innovation and limit consumer access to these important financial products and services. After reviewing the Final Rule, the OLA and its members remain concerned that aspects of the Final Rule would have a significant adverse impact on the millions of unbanked and underbanked consumers in the United States who rely upon and utilize overdraft and credit features in connection with prepaid accounts.

OLA submits this letter to address two specific concerns. First, it is not clear from the Final Rule that funds from a loan other than a student loan can be disbursed to a prepaid card or prepaid account. Second, the extension of certain credit-related provisions of Regulation Z to "hybrid prepaid-credit cards" limits the availability of credit and overdraft features of prepaid accounts to consumers.

1. Disbursement of Loan Funds to Prepaid Accounts.

The Final Rule and related commentary in the Federal Register notices refer to the use of prepaid cards to distribute funds to consumers and include specific references to the use of prepaid cards for the disbursement of student loan funds. Disbursement of funds from other types of loans (e.g., consumer installment loans or business loans) to prepaid cards or accounts is not addressed in the Final Rule or related commentary. OLA requests that the Bureau make clear that prepaid cards and accounts may be used for the disbursement of funds from any type of loan. The consumers most often utilizing prepaid cards and accounts are those that are unbanked or underbanked. These consumers rely on short-term loans when they have unexpected expenses or emergencies, such as healthcare bills, utility bills, or a loss or reduction of income. With limited or no access to a deposit account or other account at a financial institution, offering disbursement of a loan to a prepaid card or account is the only option for the unbanked and underbanked consumers. Leaving in question whether such disbursement is allowed under the Final Rule causes confusion in the industry and among consumers while also limiting consumers' access to needed funds.

2. Regulation Z Credit Requirements.

In our prior comment letter, OLA expressed concerns about the Bureau's proposal to extend a number of Regulation Z's credit requirements to prepaid accounts that include an overdraft or credit feature. Our concerns remain based on the application of Regulation Z's credit requirement to "hybrid prepaid-credit cards" in the Final Rule.

In the Final Rule, the Bureau adopted the term "hybrid prepaid-credit card"⁵ to describe credit products that allow consumers the option of spending more money than they have

⁴ 79 Fed. Reg. 77102.

⁵ 10 C.F.R. § 1026.61(a) (see 81 Fed. Reg. 84370).

deposited into the prepaid account. Further, the Bureau extended many of Regulation Z's credit card requirements to such hybrid prepaid-credit cards. This includes:

- Requiring a waiting period of thirty days after a prepaid account has been registered before a consumer may access credit;
- Permitting a creditor to only debit funds once per month from a prepaid account;
- Requiring ability-to-repay analysis before approving credit or overdraft;
- Requiring that consumers have at least 21 days to repay amounts associated with a credit feature prior to assessing any late fees, together with a requirement that such fees be "reasonable and proportional" to the account violation;
- Restricting increases on interest rates applicable to the use of a credit feature, unless the card holder has missed two consecutive payments;

OLA is concerned that this application of Regulation Z's credit requirements to hybrid prepaid-credit cards will impair the convenience and flexibility of prepaid products, especially since consumers look to prepaid products as a faster, more convenient alternative to credit cards. OLA believes the practical impact of extending Regulation Z provisions related to credit to hybrid prepaid-credit cards will be to limit consumer choice and access to overdraft services and other credit features.

Restricting short-term lending through regulations impacting hybrid prepaid-credit cards could deny access to credit for the consumers most in need and force those consumers to seek more costly alternatives. Further, innovation in the industry will be stifled by the regulation of these products, which will ultimately lead to limitations on the availability of money to consumers when they need it most.

OLA believes that consumers are in the best position to determine when and how to use their prepaid accounts, and that the Bureau can promote consumer choice by applying more flexible issuance rules to prepaid accounts. To that end, the OLA encourages the Bureau to further weigh the costs and benefits of extending Regulation Z's credit provisions to hybrid prepaid-credit cards. OLA believes that in doing so, the Bureau will find that the extension of Regulation Z's credit provisions adversely impacts the ability of consumers to use their prepaid accounts to obtain overdraft and related credit features. Consistent with its initial comment letter, OLA encourages the Bureau to support consumers through its final rule on prepaid accounts by ensuring they have access to short-term funds rather than making such funds cost-prohibited or unavailable.

OLA appreciates the opportunity to provide information to the Bureau in response to its RFI. We look forward to working with the Bureau to revise the Final Rule to ensure that important consumer protections are established without stifling innovation in the market or consumer access to overdraft or credit features.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Mary Jackson', with a long horizontal flourish extending to the right.

Mary Jackson
CEO