December 1, 2020

By electronic submission to:
Comment Intake
Bureau of Consumer Financial Protection 2020-RFI-ECOA@cfpb.gov
1700 G Street NW
Washington, DC 20552

Re: Request for Information on the Equal Credit Opportunity Act and Regulation B Docket No. CFPB-2020-0026

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) on ways to prevent credit discrimination and build a more inclusive financial system.

A. About OLA and its Members

OLA represents the growing industry of innovative fintech 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.

Fintech companies have pioneered innovative and modern online techniques for advertising and marketing, preventing and managing fraud risk, underwriting and managing credit risk, servicing loans, and conducting compliant collection activities in a manner that is fair and transparent to consumers seeking to obtain a loan online and over the over the Internet. Online loans are unsecured personal loans ranging from $300 to $10,000 with terms that vary from two weeks to three years. Lines of credit are also offered by our lenders and are the most popular amongst consumers. Our online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that simply are not available through traditional lending markets.

Much of the innovation undertaken by OLA members has given consumers greater access to financial services and products across multiple applications and platforms in a safe and accessible manner. We encourage the CFPB to pursue policies that support the online lending industry's ability to innovate in a manner that serves American consumers' needs in a safe and secure manner.

B. Alternative Data's Role in Credit Inclusion

Access to 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 with low scores due to late payments, high debt, a lack of credit history or other problems often end up paying more in the form of higher rates or find themselves locked out from mainstream credit altogether.

For decades, much of the lenders' credit decision-making process was predicated on a consumer's credit score from one of the big three national credit bureaus. However, many traditional credit scores do not provide the full picture of a consumers' credit history, which has prevented millions of Americans from accessing the credit they sorely need. These consumers have credit data, but not the type of data that the major credit bureaus track and record.

Alternative data can play an important role in creating a more inclusive financial system. 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 field pioneered by many OLA members. In addition, these types of data have been a staple of business reporting credit agencies like Dun & Bradstreet and its benefits are now being felt in the consumer credit market. When these alternative data points are teamed with compliant modeling techniques, they become a powerful tool in fine-tuning borrowers' credit reports. This aids in creating a more inclusive credit system that holds significant promise for unlocking credit for millions of Americans. Research by LexisNexis found that when alternative data is factored into a borrowers' existing credit history, twenty percent (20%) of those borrowers qualify for a loan with better terms and conditions.[1]

Alternative data also plays a role in developing innovative new products; in fact, it has spawned new working relationships between banks and online lenders, leading to innovative offerings and providing more choices to consumers with a wide range of credit profiles and histories.

The rise in alternative data is due in large part to shifts in today's credit markets. There have been more innovations in the alternative data industry in just the past year than in the past decade, as consumers seek new products or look for new ways to improve their credit.

For financial institutions that aim to serve consumers who lack access to formal financial services, new data tools offer an unprecedented opportunity. The ability to capture and analyze vast amounts of data supports real-time, in-depth analytics to improve credit models, identify

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

new customers, evaluate the products they need at the right time, and create seamless customer opportunities. This is achieved through layering varying levels of data to gain a far more complete credit profile, which unlocks credit markets for populations who in the past, were excluded from traditional credit markets. The result is deeper financial inclusion and accelerated economic growth.

As with any new or evolving product, ensuring fairness, verifiability and reliability of alternative data is crucial. One of the early concerns identified with alternative data was the quality of the data itself. As the internet has become more ubiquitous in daily life, the quality of data has improved, along with the reliability of the sources of information. This increased flow of more reliable information, together with the development of next generation systems that are created exclusively to work with alternative data, has addressed many early challenges. Still, unlike the traditional data used by the big three national credit bureaus, alternative data may vary in the type of information captured. This is why OLA members have pioneered the practice of partnering with consumers and empowering them to have control over their own data. This is accomplished via mechanisms through which consumers can input missing data, which in turn, increases the likelihood of a complete and comprehensive alternative data picture.

It is equally critical that consumers understand the implications of accessing credit through the use of alternative data. Alternative data increases a consumer's prospects of getting credit and moving up in the credit spectrum. This makes financial education vital. It is incumbent on the industry, consumer groups and regulators to work in concert to ensure greater emphasis is placed on helping consumers understand the role that alternative data plays in their financial health.

As with any online transaction, privacy and the ability to protect consumers' personal information is always paramount. This is why privacy is a key component of the OLA Best Practices, which all members must follow. OLA Best Practices sets standards above current legislative and regulatory requirements to ensure that consumers' data is safeguarded.

Similarly, guarding against unintended bias is an essential facet of the use of alternative data. The online lending process, and the models and algorithms it uses, can combat some of the unintended bias that may creep into traditional lending transactions. It is possible to further mitigate against systemic bias through regular monitoring of how data is mined and used to ensure that it is not having a negative impact on a particular group of borrowers.

Fintech companies also routinely take steps to test their underwriting models for compliance with fair lending laws, including the use of CFPB's report on fair lending analysis to test for potential discriminatory impacts in their models. In addition, companies are regularly making use of model risk management guidance from federal banking regulators to review their models for unintended bias; and, many companies are employing third parties, including consulting and law firms specializing in fair lending, to test their systems for compliance with fair lending laws. These pro-active steps have helped to mitigate any potential for unintentional biases creeping into the modeling employed by fintech companies.

While alternative data is playing a significant role in making credit available to millions of Americans with limited credit options, there are potential barriers to reaching its full potential.

Many of the statutes that govern credit decision-making, like the Fair Credit Reporting Act, have become inflexible and are in need of modernization to better reflect evolving credit markets. Failure to do so will continue the current environment of uncertainty that has seen regulators apply an overly cautious approach, resulting in mixed messages to lenders on the role that alternative data can play. Regulators need to take a modern view of credit markets that considers the full impacts of new data collection~~s~~ and usage approaches. If regulators continue sending inconsistent messages, lenders could interpret those directives as translating into higher compliance costs, hampering their ability to find new and creative uses for alternative data and limiting the availability of credit to consumers.

The number of otential opportunities that alternative data holds for the future is limitless. Expanding access to credit to more consumers, fueling economic growth, increasing the tax base, optimizing subsidy disbursements, and much more are possible through the use of alternative data. Therefore, OLA encourages the Bureau to include in its evaluation of strategies to prevent credit discrimination and build a more inclusive financial system the positive role that alternative data plays in credit inclusion.

C. Expanding Access to Credit

Even prior to the COVID-19 pandemic, many Americans struggled to pay even a $400 expense.[2] This reality highlights the fact that millions of consumers have credit scores below prime. Having a non-prime credit score makes it difficult or nearly impossible to secure many forms of credit from traditional financial institutions, making this population more likely to be impacted by credit discrimination and be excluded from our nation's mainstream financial system. This credit exclusion is self-perpetuating, as these consumers struggle to address financial challenges without credit access, therefore going further into debt and suffering further deterioration of their credit profile.

The 2017 Federal Deposit Insurance Corp. (FDIC) National Survey of Unbanked and Underbanked Households found that 18.7% of U.S. households were underbanked,[3] 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 can play an important role in reducing credit discrimination and building a more inclusive financial system for these consumers. Their innovations pave the way for future improvements that will broaden credit opportunities and improve consumers' credit options.

Fintech helps traditional institutions reach new markets and broaden credit opportunities for previously underserved consumers. Banks routinely rely on relationships with third parties to

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

deliver financial services more broadly, more efficiently, and with less risk to consumers and the banks themselves. Thanks to recently finalized "True Lender" and "Valid When Made" regulations, banks that lack the technical know-how to serve these segments of the market can work with a fintech company. Many of these firms have spent years developing innovative technology and analytics for these specific tasks. By working with fintech companies, traditional financial institutions can help provide previously overlooked consumers greater access to our credit markets.

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 whom traditionally lacked access. Consumers win because they "get access to high-quality credit that they otherwise would not." These relationships 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."[4] The Bureau is encouraged to pursue policies that support the growth of these relationships which will be key in creating a more inclusive financial system and help prevent credit discrimination.

OLA also would caution against policies that place arbitrary restrictions or limits on financial markets, as such actions only serve to restrict access to capital and create a less inclusive financial system. 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.

There is a plethora of evidence that shows rate caps simply do not work and fail to reasonably meet proponents' ostensible goals. 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.[5] 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.[6] Both these studies underscore the reality that the end result of rate caps is to deny consumers access to credit and promulgate unforeseen overall negative effects.

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[4] 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/

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

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

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. With the online consumer installment loan market estimated to be $4.2 billion,[7] the limited reach of a few lenders will be insufficient to serve this growing segment. This was reinforced during a House Financial Services Committee hearing entitled *"Ending Debt Traps in the Payday and Small Dollar Credit Industry,"*[8] where a witness representing small banks stated that making these types of loans at a 36% rate would require some form of government subsidies, without which they were not economically viable. Given the consequences, rate caps will have a significantly detrimental impact on the goal of creating a more inclusive credit system, limiting working families' access to credit.

D. Improving Consumer Protections

An important aspect of preventing credit discrimination and building a more inclusive financial system is ensuring strong consumer protections are in place. 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 that guards against harmful outcomes like credit discrimination. 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.

Consumer protection 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 voluntarily agreed to hold themselves to a set of Best Practices, *i.e.*, a set of rigorous standards above and beyond the current legal and regulatory requirements. 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.[9]

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[7] Sources: Jefferies, CFSA 2019 Presentation, and company data from ENVA and CURO

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

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

Companies with the OLA Seal on their websites can thus demonstrate to customers and regulators alike that they abide by OLA's Best Practices, a sign of their commitment to the highest standards of conduct, including having procedures for handling complaints. Consumers who find the OLA 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 has developed the OLA Consumer Hotline, enabling callers to speak to a live operator to 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. Many times, these issues are resolved within 72 hours. 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 most innovative 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 website owners 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 ninety-eight percent (98%). Violators who do not comply are published and details turned over to the appropriate federal regulator.

OLA appreciates the opportunity to offer input on these key issues and looks forward to continuing working with the Bureau towards a more inclusive, fair credit system that enables every consumer and community to have a place in our nation's credit system. If you have questions or need additional information, please feel free to contact me at mjackson@oladc.org.

Respectfully submitted,

Mary Jackson
President and CEO