OLA Online Lenders Alliance

2023 POLICY PRIORITIES

INTRODUCTION

According to the FDIC, approximately one in five Americans are underbanked or unbanked, leaving alternative financial service (AFS) providers as an important source of credit for millions of Americans.[1] While the number of banked U.S. households hit a record high in 2021[2], many consumers still lack access to the credit products they need. Nearly a third of the population is considered nonprime and another fifth of the population is credit invisible or nonscorable.

Many of these consumers do not have access to the credit products they need from other financial institutions, for reasons including:

- They have lower credit scores with credit histories that are often sparse or nonexistent
- Financial products at the smaller loan amounts they want are uncommon within the mainstream banking system and/or they do not want to risk their assets (such as their home or automobile) as collateral
- They choose the convenience and speed at which fintech companies can make lending decisions, underwrite the loan, and transfer funds—even when other options are available

Largely in part due to innovation and competition, a robust marketplace populated with fintech companies now exists, offering more products and choices to meet consumers' unique financial needs. Within this marketplace, online installment lending has become one of the fastest growing sectors in the AFS space because it provides consumers a greater loan duration flexibility, often combined with smaller, more manageable payments.[3] Within small dollar lending specifically, data indicates that for every two borrowers who go from an online to a brick-and-mortar storefront lender, there are 10 who migrate to online companies.

In 2021, according to Clarity's data, the average amount of an installment loan from an AFS provider was $1,250. Fifty-two percent of loans were taken out in amounts of less than $1,000 and approximately 80 percent were taken out in amounts of less than $2,000. The average repayment term in 2021 was 8.1 months, with more than 80 percent of installment loans paid in less than one year.[4]

Lastly, complaints about these financial products continue to rank at the bottom of complaints submitted to the Consumer Financial Protection Bureau (CFPB). In the CFPB's 2021 Consumer Response Annual Report[5], complaints about personal loans comprised less than one percent of total complaints submitted to the bureau.

Protecting this marketplace and the products within it thus remains an imperative for those who believe consumers should have credit options to choose from when financial needs arise. This document includes background on key issues impacting the online lending ecosystem and OLA's main policy priorities for consideration by the Biden Administration, regulators, and members of the 118th Congress. We look forward to continuing our work and collaboration with policymakers and opinion leaders to serve consumers' best interests with access to safe and affordable credit options.

ABOUT THE ONLINE LENDERS ALLIANCE

The Online Lenders Alliance's (OLA) core mission is to promote a diverse and responsible marketplace for innovative online financial products and services while expanding access to credit for all consumers—including those who are financially underserved. The products and services that our members offer empower consumers to access non-collateralized, shorter-term, smaller-dollar financial products with competitive, market-leading fees and rates.

OLA members encompass a growing variety of businesses providing credit to a wide array of consumers, including the 100 million nonprime consumers who are often unable to obtain the assistance they need from mainstream financial institutions. We represent distinctly innovative financial technology companies committed to the highest standards of conduct and the best possible customer experience as we strive to provide consumers with innovative, safe, and responsible credit products. Our members work with policymakers to protect consumers and preserve credit access for the millions of Americans who choose online lending as a preferred financial solution.

As a trade association, OLA has developed a dynamic series of Best Practices that helps govern its members and influence the industry. We work tirelessly to ensure consumers are protected and better understand the credit products available to them. Only lenders who comply with OLA's strict standards may display the OLA seal, which means consumers can trust the company they work with, that the company is committed to the highest standards of conduct, and that it is dedicated to ensuring the best possible experience for its customers.

Moreover, OLA operates a sophisticated and comprehensive policing effort designed to root out those looking to commit fraud or harm consumers. These efforts consist of a Consumer Hotline and web crawling service that scours the Internet for prohibited marketing terms that mislead those looking for safe and reliable credit access.

The Consumer Hotline allows consumers to speak with a live operator if they have any outstanding issues they are not able to resolve with a lender in the marketplace. That operator can report this activity and help the consumer navigate the online lending market. Cases of suspected fraud are forwarded to the Federal Trade Commission (FTC). OLA's hotline receives hundreds of calls each month and served as an especially important resource for consumers needing help. Our online policing efforts have analyzed more than a million websites, remediating where possible and referring to authorities when companies refuse to act.

KEY ISSUES

APR Caps

OLA Position: To ensure that affordable loan products and options are available to all consumers, including those with thin or poor credit, OLA opposes non-market priced APR caps.

Background: Banks and credit unions are largely absent from the small dollar loan market. A 2022 report[6] from the Government Accountability Office (GAO) found that these traditional financial institutions don't offer these products because of cost and regulatory uncertainty.

Many opponents of market-priced, short-term, small-dollar loans attack them by advocating for government-imposed maximum allowable caps measured by Annual Percentage Rate (APR). These APR caps on loans do not reduce the cost of credit; rather, they lessen its availability to consumers.

The APR is a misleading representation of the true cost of short-term loans for the borrower as the APR calculation is heavily impacted by the duration of the loan. For example, the APR for a $100 loan that charges $1 in interest and fees would be the following:

- If paid in one year, the APR would be 1%
- If paid in one month, the APR would be 12%
- If paid in one week, the APR would be 52%
- If paid in one day the APR would be 365%

The Federal Reserve[7] found that due to the fixed costs associated with making any loan—whether $500 or $5,000—smaller loans result in higher interest rates as the costs are more readily spread across larger loan amounts. Furthermore, another recent academic study[8] found that average loan amounts increased significantly for consumers following enactment of a rate cap.

Furthermore, the push to implement rate caps on a state or national level fundamentally ignores the real-world impacts on consumers in states where rate caps have been enacted. While consumer advocates claim that rate caps will benefit consumers by reducing the costs associated with accessing credit, data shows that they actually reduce the availability of credit. This leaves consumers with fewer available options and often leaves them in worse financial situations.

Since enactment of the 36% rate cap in Illinois in March 2021:

- The number of licenses held by installment lenders in Illinois declined by 45%[9]
- The number of loans to subprime borrowers declined by 44%
- The average loan size to subprime borrowers increased by 40%

Furthermore, a survey[10] of nearly 700 Illinois borrowers who had taken out short-term, small-dollar loans prior to the rate cap found that their financial situation did not improve after the rate cap took effect and actually declined in many instances:

- Most borrowers said that they have been unable to borrow money when they needed it;
- Only 11 percent of the respondents answered that their financial well-being increased; and
- Seventy-nine percent answered that they wanted the option to return to their previous lender.

Some advocates of rate caps point to the Military Lending Act's 36% APR limit as a model for the rest of the nation. However, research data and surveys[11] report negative impacts on servicemembers and their families since the implementation of the law.

Additional Resources:

- Dr. J. Brandon Bolen, Dr. Gregory Elliehausen, and Dr. Thomas Miller: Effects of Illinois' 36% Interest Rate Cap on Small-Dollar Credit Availability and Financial Well-Being (January 3, 2023)
- Federal Reserve: The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates: Evidence from the Federal Reserve Board's 2015 Survey of Finance Companies (August 12, 2020)
- Online Lenders Alliance: Illinois Open Records Request Exposes the Truth: The PLPA's 36% Rate Cap is not Working—and the Data Proves It (April 26, 2022)
- Online Lenders Alliance: An Illinois Consumer Survey: Understanding the Impact of the 2021 Rate Cap on Consumers
- U.S. Military Academy, West Point: Much Ado About Nothing? New Evidence on the Effects of Payday Lending on Military Members (2017)
- Government Accountability Office: Banking Services: Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved (February 14, 2022)
- HarrisX: Financial Pressure in U.S. Military Households (November 14, 2019)

Bank-Fintech Relationships

OLA Position: Bank-sponsored consumer lending programs assisted by financial technology companies (fintechs) enable small and mid-size banks to serve more customers, thereby enhancing competition among lenders while giving a greater number of consumers more credit options. Given the importance of banks working with third parties to help provide products and services to customers, policymakers should promote and encourage banks to enter into responsibly managed customer-facing third party agreements.

Background: The Federal Deposit Insurance Act (FDIA) and the National Banking Act (NBA) authorize state and federally chartered banks to charge interest rates permitted in the bank's home state to customers in other states. Furthermore the OCC and FDIC's "valid when made" rules clarified established law that enables banks to sell loans in the secondary market without impacting the original interest rate terms.

An American Bankers Association "Fintech Playbook" indicates that community banks will lose tens of billions of dollars in potential revenue if they cannot keep up with the big banks going online. Working with fintech service providers, banks can increase their geographic service footprint and offer new products to an expanded group of consumers—providing consumers with more options to choose from when determining the best solution for their unique financial needs. The Center for Financial Service Innovation called bank-fintech relationships a "win-win-win" for all involved, including borrowers.

The U.S. Treasury Department recognized this in a 2018 report[12] when it highlighted several ways in which non-bank fintech companies are positively contributing to the financial services industry, including through expanded access to credit and financial services. This expanded access is the result of bank-fintech partnerships' developing business models that utilize new types of data and credit analysis to serve consumer and small business borrower segments that may not otherwise have access to credit through traditional underwriting approaches.

The Treasury report also noted that nonbank fintech companies also offer "expanded speed, convenience, and security," as well as a "reduced cost of services and operational efficiencies." These are all outcomes that banks want but often lack the resources in-house to achieve.

As service providers to banks in these programs, fintechs must be fully compliant with all applicable regulatory guidance and bank policies, as the bank has full authority over all aspects of these relationships, the lending process, and customer outcomes. The Federal Reserve, OCC, and FDIC have published detailed guidance for banks to adhere to when managing these relationships, providing a roadmap for agency supervisory staff to follow in exercising oversight of the agreements that govern them.

Additional Resources:

- U.S. Department of the Treasury: A Financial System that Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation (July 2018)
- Scott Pearson and Eric M. Knight: Bank-fintech partnerships don't need more regulation (September 29, 2022)
- Federal Reserve, Federal Deposit Insurance Corporation, and Department of Treasury: Proposed Interagency Guidance on Third-Party Relationships: Risk Management

Data Security

OLA Position: Data must be both secure and available. OLA supports the development of a national data standard that protects customers while facilitating innovation.

Background: As technology revolutionizes the financial services industry, data is at the vanguard. The availability, assessment, and manipulation of vast amounts of information has enabled the industry to reach more consumers with new products and services not possible just years ago. While the increased availability of data has made it easier for the financial sector to meet consumer needs, it also exposes the industry to increased risks associated with security breaches. While data privacy rules have a sizable influence over innovation and growth in the fintech sector, an antiquated, patchwork regulatory structure hinders the innovation that benefits consumers.

The harmonization of definitions, requirements, and expectations for data protection through a national standard would provide a level of legal certainty that would help facilitate the continued growth of these new technologies, while protecting consumers from unwanted access and use of their data.

A national standard that offers the flexibility and space to innovate gives companies of all sizes the ability to take an appropriate risk-based approach to data security that is tailored to their own business models, needs, and practices. This is particularly critical for smaller companies, allowing them to devote their limited resources to expanding their products and services instead of compliance with multiple standards that may not fit their risk profiles. This also makes it easier for firms to operate securely across various jurisdictions and enter new markets.

Data Ownership/Aggregation

OLA Position: Open banking allows third party fintechs to provide innovative and valuable services to consumers that enhance their overall financial well-being. OLA supports policies that enable the continued development of these products and services while ensuring that consumers have appropriate rights and safeguards around their data.

Background: Open banking is a significant source of innovation in the banking and financial services industry. Open banking allows consumers to share their bank data with another financial service provider—either a different financial institution or third party—to empower them to use that data to offer an enhanced service or product. These third-party providers can include fintechs, currency exchanges, merchants, and other digital platforms. Open banking helps financial services customers to securely share their financial data with other financial institutions—facilitating processes between financial institutions or using consumers' transaction data to identify the best financial products and services for them.

Through the use of networked accounts, open banking can help lenders get a more accurate picture of a consumer's financial situation and risk level in order to offer more favorable loan terms. It could also help consumers get a more accurate picture of their own finances before taking on debt.

Open banking enables smaller and newer banks to better compete with their larger counterparts, ideally resulting in lower costs, better technology, and better customer service.

Section 1033 of the Dodd Frank Act (DFA) authorizes the Consumer Financial Protection Bureau (CFPB) to issue rules governing consumer information in the control or possession of consumer financial services providers. The CFPB is in the process of developing a rule on this important issue.

In general, OLA believes that this rule (or others) should be structured to promote innovation and the continued development of more products to help consumers, while fostering greater competition in the marketplace.

It is incumbent on all stakeholders—traditional lenders, agencies, and fintechs—to work in concert towards marketplace enhancements. OLA would encourage policy makers to develop clear and practical guidelines that allow consumers greater control over their data by lowering unnecessary barriers that currently limit consumer access. A balanced regulatory approach to data access and use will enable consumers to access greater choices, ultimately improving their financial health.

Operation Chokepoint

OLA Position: Government at any level should not be able to use access to banking services as a political weapon against lawful industries or companies. Furthermore, governments should not impose policies that impede the flow of capital and credit from investors or banks.

Background: Launched in 2013, Operation Choke Point pushed thousands of legal, licensed, and regulated companies out of business by cutting off their access to the U.S. banking system. Unsealed court documents revealed an effort by high-ranking, unelected FDIC and OCC officials to discontinue banking relationships with small dollar online lenders based on their personal and subjective views of these and other lawful industries.

While the government officially put an end to Operation Choke Point in 2017, OLA supports continued efforts that would ensure the integrity of the banking system and protect the millions of Americans who rely on access to short-term, small-dollar credit products to make ends meet.

This includes legislation that would require banks to provide justification for denying services while penalizing those financial institutions that refuse to do business with legally compliant industries.

OLA also supports protective language that would prohibit a federal banking agency from even discouraging a depository institution from having a business relationship with a customer based on reputational risk.

OLA opposes government-imposed Environmental, Social and Governance (ESG) standards that would impact the regular flow of capital and credit to law-abiding industries and companies.

Additional Resources:

- American Banker: There's no downplaying the impact of Operation Choke Point (November 28, 2018)
- U.S. Congressmen: Luetkemeyer, McHenry Urge Regulators to Avoid Operation Choke Point 2.0 (March 1, 2022)

CFPB Reform

OLA Position: OLA supports clear laws and regulations that protect consumers in the marketplace and hold the companies that provide these goods and services accountable. OLA also supports the existence and application of adequate checks and balances to ensure accountability from the regulators who are charged with serving the public.

Background: The financial services industry is subject to applicable regulation at the federal and state level. At the federal level, fintech lenders are subject to 18 enumerated consumer laws and numerous regulations that stem from those laws.

The Consumer Financial Protection Bureau is the primary federal agency charged with developing regulations for the application of these laws, as well as their supervision and enforcement in the marketplace. The CFPB has unique autonomy that insulates it from the congressional oversight and accountability applied to other agencies.

No federal agency should be insulated from proper accountability and constitutional checks on its actions. To ensure this accountability, Congress should consider the following reforms: the CFPB’s funding should not be insulated from congressional authorization and/or appropriations; the CFPB should have its own dedicated Inspector General; and the CFPB's leadership should be in the form of a commission rather than a single director.

Lead Generation

OLA Position: Lead Generators allow consumers' sensitive information to be presented to multiple lenders in real time, maximizing the opportunity for these consumers to obtain a loan quickly, safely, conveniently, and in a private "faceless" environment—alleviating concerns of judgement or discrimination. OLA opposes efforts that would generally prohibit or restrict lead generators from providing their services to customers who want to use them.

Background: Lead generation is a long-established marketing and advertising method that is used throughout the American business landscape and has become increasingly critical in the age of internet commerce. Specifically, consumer-focused industries rely on third-party internet marketers ("lead generators") to reach specific audiences looking for goods and services. Lead generators accomplish this through independent marketing and advertising, creating marketplaces for consumers seeking goods and services.

Lead generators such as Zillow and Expedia have radically changed the way that consumers find products and services. Also referred to as "performance marketing," lead generation is a faster and more cost-effective way for lenders to maximize their marking resources. In turn, this benefits the consumer by limiting the exposure of their most sensitive data, saving hours (or even days) of frustrating searches and increasing the likelihood of finding the financial solution they need. Lead generators in the short-term consumer finance market do all this without charging consumers for their service.

A consumer voluntarily provides their information to a lead generator, who can then connect them with lenders who may be able and willing to work with that consumer, based on criteria established by the lenders. Lead generators and lenders transmit and receive the consumer's data through secure channels, reducing the risk of a devastating data breach while increasing the likelihood of meeting the consumer's needs.

Lead Generators in this industry have clear forms, disclosures, and policies that allow a consumer to understand exactly what information they are furnishing and how that data will be used.

Once a consumer has been connected with a lender, the future of that relationship and any loan offered or accepted is between the consumer and the lender. After being presented with a loan offer and its terms, the consumer remains in control about deciding whether or not to accept the loan based upon their need and the perceived benefits of the offer. It is no different than a consumer performing an online search for a product or service and, upon clicking on the ad, deciding whether or not they actually want to purchase the product or service at that particular moment in time.

Lead generation is advantageous for consumers, particularly those who are nonprime and underserved. Nonprime consumers already have a hard time finding credit while simultaneously needing it more quickly. For consumers who need emergency cash for a car repair or emergency dental work, this can save the consumer from having to wait days or weeks for funds to become available.

Artificial Intelligence and Machine Learning

OLA Position: OLA supports the continued exploration and development of Artificial Intelligence (AI) and Machine Learning (ML) technologies as ways to increase efficiencies, expand product offerings, and better manage risk in the financial services and lending system.

Background: Driven by advancements in computer science, the use of artificial intelligence and machine learning in fintech has grown dramatically and shows no sign of diminishing. AI and ML has the potential to improve efficiencies in banking procedures, allowing financial institutions to better understand customer needs, transform credit options, and help the underbanked gain more access to traditional financial services.

The role of AI and ML techniques has grown with increased availability of data. One unique aspect of these tools is that the value of data does not diminish when used and, in some cases, the value increases as more data is accumulated. These characteristics, coupled with the expanded availability of different types of data, have spurred the adoption of AI and ML in the financial services space, fueling growth and creating new products and services that are revolutionizing the marketplace.

Much of the focus on AI/ML centers around the role it can play in reducing fraud, lowering defaults, and improving overall efficiencies through enhancements in algorithms. These models can minimize human subjectivity and bias. Even more significant, though, are the ways in which these innovations have changed how consumers function in today's financial services environment. Consumers are now able to tailor the process to meet their needs in ways that were not possible a decade ago. The results—expanded credit markets, tailored product offerings, and greater financial inclusion—are a win-win for lenders and borrowers alike.

OLA opposes state or federal efforts that are duplicative to existing law and would impose unnecessary compliance burdens on lenders that use AI/ML, resulting in decreased credit access and higher cost loans. While data is essential to AI/ML, the issues of data privacy should not be conflated with the issues of when the data is used.

ENDNOTES

[1] "2019 FDIC National Survey of Unbanked and Underbanked Households," FDIC, November 2022. Available at: https://www.fdic.gov/analysis/household-survey/2021execsum.pdf

[2] https://www.fdic.gov/news/press-releases/2022/pr22075.html

[3] "Financially Underserved Market Size Study," Financial Health Network, 2019

[4] https://www.clarityservices.com/wp-content/uploads/2022/06/2022-AFS-Trends-Report.pdf

[5] https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf

[6] https://www.gao.gov/assets/gao-22-104468.pdf

[7] https://www.federalreserve.gov/econres/notes/feds-notes/the-cost-structure-of-consumer-finance-companies-and-its-implications-for-interest-rates-20200812.html

[8] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4315919

[9] https://onlinelendersalliance.org/illinois-open-records-request-exposes-the-truth-the-plpas-36-rate-cap-is-not-working-and-the-data-proves-it/

[10] https://onlinelendersalliance.org/wp-content/uploads/2023/01/Illinois-Report.pdf

[11] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3505440

[12] https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf