February 23, 2024

The Honorable Zack Stephenson
Chairman
Committee on Commerce Finance and Policy
Minnesota House of Representatives
449 State Office Building
St. Paul, MN 55155

Re: Comments on HF3680

Dear Chairman Stephenson,

The Online Lenders Alliance (OLA) would like to provide the following comments to the Minnesota House Commerce Finance and Policy Committee regarding HF3680.

OLA represents the growing industry of innovative companies focused on credit inclusion and financial solutions for all Americans through a common goal: to serve hardworking Americans who deserve access to trustworthy credit. Consumer protection is OLA's top priority and members abide by a rigorous set of Best Practices to ensure consumers are fully informed and fairly treated.[1]

The cornerstone of financial inclusion is the opportunity and ability to access credit, which results in greater independence while affording borrowers more control over their own financial health. The reality, however, is that not everyone has equal access to credit, despite the fact that so many Americans need credit, oftentimes unexpectedly.

According to federal data, approximately 10 percent of Minnesotans are unbanked or underbanked.[2] Looking more closely at the underbanked data, the rate among Black, Native and Hispanic residents is nearly 40% for each. Furthermore, nearly 28 percent of Minnesota consumers are credit constrained, meaning that they are borrowers with limited credit history or poor/fair credit scores.[3]

OLA advocates for policy outcomes that create more credit options for consumers, and we support more banks providing these options in the marketplace. Banks have historically struggled to provide small dollar credit to consumers. In fact, the FDIC implemented the "Small-Dollar Loan Pilot Program" in 2008 and 2009, trying to encourage banks to offer small dollar

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[1] OLA Best Practices https://onlinelendersalliance.org/best-practices/
[2] https://www.fdic.gov/analysis/household-survey/2021appendix.pdf
[3] https://scorecard.prosperitynow.org/data-by-location#state/mn

credit. At the conclusion of the program, the FDIC stated that the interest and fees of these small dollar credit products were not sufficient in achieving "robust profitability."[4]

In 2022, the Government Accountability Office (GAO) issued a report on the affordability and availability of basic banking products.[5] The market participants they spoke to "on regulatory uncertainty around small-dollar loans told us banks are hesitant to offer such loans in part because of changes to related rules or guidance in recent years." Other commentators stated that "banks do not want to offer small-dollar products because they are expensive to develop, and the regulations or supervisory expectations may change."

In today's world, financial technology companies increasingly offer services that enable banks to expand the populations they serve and fill the gaps left in the market. These companies can help banks, especially community banks, to successfully lend to customers not previously reached. Banks that work with fintech companies can often offer underbanked consumers their first bank issued personal loan and put them on a path to mainstream credit.

In 1980, Congress passed Public Law 96-221, called the Depository Institutions Deregulation and Monetary Control Act ("DIDMCA"), which, in part, allowed federally insured state banks, state credit unions, and state savings institutions the ability to export the "interest" permitted under their home state laws to customers/borrowers in other states without regard to any "interest" limitations in the customer's/borrower's home or domiciled state. This put state-chartered banks on equal footing with national banks and federal credit unions, which already could lend across the nation at any interest rate allowed in their respective home states. DIDMCA, under Section 525, also permitted states to opt-out of allowing this kind of interest rate exportation. Virtually none of the advances in financial services technology were contemplated when DIDMCA was enacted, however this law allows more banks, regardless of size, to utilize technology and compete for customers in the marketplace.

If Minnesota opts-out of Section 525 of DIDMCA, residents will be left with fewer options and less competition - a dynamic that will likely disproportionately impact those with lower credit scores. Initially, Massachusetts, Maine, Nebraska North Carolina, Wisconsin, Colorado, Iowa, and Puerto Rico all opted-out. Subsequently, all but Iowa and Puerto Rico have rescinded their opt-outs. In recent times, only Colorado has passed legislation to once again, remove the state from Section 525 of DIDMCA, although the legislature deferred its implementation to allow for further evaluation of its impact. Academic researchers from National Economic Research Associates (NERA) submitted a report on the likely impact of the opt-out on Colorado, and Minnesota lawmakers should review its findings and conclusions before making any decisions.[6]

This opt-out legislation being considered obviously contemplates a problem in the credit market by exempting credit cards. However, consumers do not use credit cards as their only credit solution. They may use point-of-sale, installment loans, or other offerings from banks to best

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[4] https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2010-vol4-2/fdic-quarterly-vol4no2-smalldollar.pdf

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

[6] The Impact of Colorado Ending Equal Competition between State and National Banks by Howard Beales, Andrew Stivers :: SSRN

meet their financial needs. Furthermore, not all consumers qualify for credit cards, and they often come with significant fees. Other products such as auto loans will likely be impacted as well.

When a state opts-out of Section 525 of the DIDMCA, only state-chartered banks in Minnesota are impacted. Federally chartered banks would not be impacted, which gives them a competitive advantage and only serves to chip away at our nation's dual banking system. Federally chartered banks tend to be larger banks whose credit card offerings seemingly come with higher costs to consumers according to a recent report by the Consumer Financial Protection Bureau. [7]

The aim of a vibrant market system is to allow for competition which gives the consumer more offerings and the best deal regardless of where they are located. More competition in financial services would breed more innovation and provide more consumers with competitively priced products and services. By opting out of DIDMCA, the legislature would be limiting industry's competition and consumers' options in the marketplace. **OLA urges lawmakers to reject this blunt policy that creates an unlevel playing field, stimies competition, and creates barriers for those consumers who are already credit-challenged**. We welcome the opportunity to work with members of the Minnesota legislature to pursue meaningful alternatives.

Sincerely,

Andrew Duke,
CEO
Online Lenders Alliance

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[7] https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-large-banks-charge-higher-credit-card-interest-rates-than-small-banks-and-credit-unions/