

Literature Review of Internet Finance Supervision in China

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ABSTRACT

The marriage of internet and finance gave birth to online lending, whose purpose is to solve the capital needs of small and micro businesses and individuals and open up growth opportunities for them. However, the lack of clear regulatory mechanisms has caused online lending to stray away from its intentions. Bad actors have taken advantage of loopholes to fund-raise illegally, with some cases leading to serious consequences such as on-campus death. It has deeply disrupted how the financial market operates. Although regulatory authorities have implemented regulations such as “*Interim Measures for Managing Business Activities of Online Lending Intermediaries*” in 2016, which has solved some of the chaos, there is still much room for improvement and relevant research would provide great value. Under such context, this paper summarizes and reviews literature on the regulations of internet finance.

Keywords: *Internet Finance Regulations, Student Campus Loans, Internet Loan Ads, Internet Finance Collection Services, Internet Loans Late Fees/Liquidated Damages*

1. INTRODUCTION

In recent years, some small loan companies have issued online personal loans for college students, also known as “student campus loans”, luring many college students into excessive spending, getting them quickly drowned in heavy debts, and causing many bad social consequences. In addition, to acquire more customers, some online platforms incentivize excessive spending through promoting various online shopping platforms, over-marketing of financial products such as personal loans or credit card advances; they then take improper actions to collect debts or charge high overdue fines for those who are unable to repay. Therefore, in order to standardize internet financing, align regulations and business operations, the academic community has conducted detailed research. This paper summarizes the recent literature on China’s regulations around internet financing, provides commentary on the consensus reached by scholars in this field, and remaining problems.

2. PROBLEMS IN STUDENT CAMPUS LOAN REGULATIONS

2.1 Summary of Existing Literature

Shemza Exmet (2021) argues that legal issues in

student campus loans include its operating procedures and the protection of rights and interests of college students. The former mainly refers to the lack of vetting procedures - which currently focuses only on processing the loan, and not on the borrower’s (student’s) economic ability to repay the loan - as well as the transparency and openness of loan amount, interest, repayment schedule, etc. The latter include existing problems in the protection of the “right to know” and “personal rights”. Therefore, he proposed the improvement of student campus loans regulations, including tighter supervision, establishing a mechanism for dispute resolution, and increasing the threshold for market access ^[1]. Tan Heping (2019) believes that the main problem of student campus loans is legal risk. The legal liability of campus loans includes both civil and criminal liability - civil liability includes civil tort and contract breach, and criminal liability includes loan fraud, breach of personal privacy, etc. He believes regulations of student campus loans should standardize existing online loan platforms to reduce risks borrowers face ^[2]. Dai Jun (2020) states that the legal predicaments of student campus loans happen when legal rules are inapplicable and there are conflicting judicial decisions. The “inapplicability of legal rules” is caused by the lack of legal definitions of the criminality or non-criminality of the situation, and the “conflicting judicial decisions” is caused by confusing student campus loans

with private lending. He suggested focusing efforts on college students, raising their awareness of online security, and helping college students develop a more responsible spending behavior ^[3]. Li Liwei (2020) suspects that coercion, fraud, extortion and other legal issues are involved in student campus loans. He suggests relevant laws and regulations restrict loan institutions and protect the legitimate rights and interests of students while providing loan services for students ^[4]. Zheng Xiaoying (2020) believes that student campus loans have caused a myriad of social problems with false advertising, predatory lending, illegal debt collection, etc. Zheng argues that credit card business should not be allowed to target underage students and urges the establishment and implementation of relevant legislation to provide oversight of legal and market risks ^[5].

2.2 Review of Existing Literature

As can be seen from above, the consensus reached by scholars at present includes: first, there exists certain legal issues with student campus loans, such as legal risks and violation of rights and interests, violence involved in debt collection that threaten personal safety. Second, there are solutions that would allow businesses to provide the loan students need while also protecting them at the same time, such as: clarifying the legal person, their responsibilities and rights in student campus loan cases, accelerating the development of legal supervision, and increasing the threshold for small loan companies.

The above research put forward targeted solutions from the legal perspective. I think there are still some areas worthy of further research: providing education to students to help shape the correct values and political views, getting rid of bad spending habits such as vanity, excessive consumption, and stopping the problems at the source. Further in-depth analysis on this topic can be discussed from four angles: society, school, family and students themselves, to help cultivate sound legal awareness amongst college students.

3. ADVERTISING REGULATIONS FOR INTERNET FINANCING

3.1 Summary of Existing Literature

Feng Hui and Jin Yanyan (2021) believe that online p2p lending has many urgent problems that need to be addressed, such as advertisers using deceitful taglines (e.g., “zero collateral, zero interest rate, zero wait time”) to attract customers, deliberately avoiding mentioning risks associated with inability to repay, late fees/liquidated damages and illegal debt collection. Therefore, it is necessary to establish possible mechanisms for legal supervision, clarify the responsibility of loan platforms, limit loan advertisements, and make sure the borrower is aware of

any risk associated with the loans ^[6]. Zhou Jun (2018) believes that the biggest challenge of proper supervision over internet financing advertising lies in the loopholes in the current supervision system on financing ads. It is, therefore, necessary to develop a management system, create a joint task force for supervision over internet finance advertising, and strengthen the protection of financial consumers rights and interests ^[7]. Di Jing (2019) believes that problems in China’s management of financial advertising through online channels include: an imperfect supervision system, undefined legal entity, lagging means of supervision, etc. She suggested establishing laws and regulations and a governance system focusing on financial advertising via online channels, strengthening the management and monitoring of financial advertising content online, and creative thinking on supervision mechanisms of illegal internet financing advertising activities ^[8]. Zhang Jihong (2019) believes that financial institutions are guilty of over-exaggerating returns and covering up risks when promoting loan products. She proposed that advertising activities, in a broad sense, should be in-scope for regulatory oversight; crafting clearer guidelines and negative lists for financial advertising, and designing a content review mechanism beforehand, are some suggested solutions on making the internet a more regulated space for online financing activities ^[9]. Cao Hui (2020) believes that non-performing student campus loans were caused by predatory advertising from online financing companies that led to excessive spending; plus, the use of violence in debt collection has violated students’ right to know, privacy, and right to life and health. As such, it is necessary to strengthen the scrutiny and review of advertisement content; all students who are potentially interested in borrowing will have full transparency into the contract, interest rates, repayment schedule and credit risk ^[10].

3.2 Review of Existing Literature

From the above, we can gather that consensus reached among scholars, such as online loan advertisements are not innocent from false, selective/one-sided advertising, over-exaggerating returns while not doing enough in making hidden risks aware. Such malpractices have greatly hindered borrowers’ ability to make good judgments. Therefore, it is critical to enforce more oversight of the content and delivery of advertisements, making sure that the borrower is made fully aware of the product itself, including interest, repayment schedule, and credit risks.

Previous studies revolved around two aspects: regulating and reviewing advertising content to prevent false advertising. I believe there are still areas that warrant a deeper-dive: currently, students are recruited as part-time ambassadors to promote campus loans. Colleges and universities should clearly stop such

activities. Once caught, penalties can include expulsion from school, delayed graduation and others. Colleges and universities should also beef up general education in law, finance, safety, etc., set up student subsidy programs or provide alternative financial support from low-income families. For example, one possible solution could be delayed issuance of graduation certificates - allowing them to study and graduate first, and only issuing the certificate if tuition fees are paid within the specified period of time. Such programs will help alleviate financial burdens and eliminate the need for online lending.

4. REGULATORY SUPERVISION OF ONLINE LENDING DEBT COLLECTION

4.1 Summary of Existing Literature

Feng Hui and Yang Mei (2021) stated that many online lending platforms employ third parties to collect loans that currently are not subject to any threshold for entry and have no basis for regulation, which will, inevitably, lead to violence acts while collecting debts. Therefore, they suggested increasing the threshold of collection companies and strengthening the day-to-day supervision of such collection companies^[11]. Xie Wenzhe (2014) believes that collection institutions that have budded from online loan collection services have developed into a profession, which has both pros and cons - pro is solving some private loan disputes through business operations outside of judicial litigation; con is violence is highly prevalent while collecting, greatly affecting the normal lives of borrowers. He suggested fully leveraging the benefits of debt collection as a profession, while avoiding the downsides to solve problems in online lending^[12]. Zhang Xudong (2017) believes that debt collection is normal, but several factors have led to problems such as the limited standardization of the object, the passivity of the subject, and the disorderliness of debt collection. He suggested strict standardization of the subject of debt collection, refining the code of conduct, and forming a comprehensive multi-level dispute resolution system, so as to safeguard the interests of creditors^[13]. Liu Zhiwei (2019) believes that it is important to shape a rights-oriented financial supervision legal system, expand the object of financial supervision to both the supply, demand and third parties in the industry, safeguard their respective rights while allowing people enjoy financial services through government supervision^[14]. Tan Man (2019) believes that at present, the disorderliness of debt collection activities in China, such as phone-bombing, violent threats and intimidation, harassment of borrowers' relatives and friends, etc., needs to be regulated by legislation. He believes that it is necessary to formulate a code of conduct based on the principles of fairness, legality and good faith, such as making oneself known to the borrower and on whose behalf they are acting on.

Debt collection should not be allowed after 10 p.m. and before 9 a.m. Violence, abuse and harassment are strictly prohibited in the collection process^[15].

4.2 Review of Existing Literature

From the above literature, the consensus reached by scholars is that the disorderliness of debt collection practices - phone harassment, abuse, insult, violence and intimidation - is the number one problem to tackle. To some extent, collection agencies play a positive role, because there exist some borrowers who do not repay their debts on purpose. Collection agencies are entrusted by lenders to collect money, which will be simpler than going through judicial procedures. But at the same time, scholars also believe that it is necessary to legislate and regulate collection institutions, including clarifying standard procedure, the rights that collection institutions can exercise in the process, and collection methods that are acceptable.

All of the above research has focused their discussions from the point of view of the disorderliness of the industry and possibilities for regulations. I believe there is still much more worthwhile research. For example, some illegal collection practices include posing as a lawyer to intimidate the borrower, without providing adequate proof of identification. I believe that legislation and oversight should also start from here: standardizing and vetting eligible individuals for debt collections, which not only protects the professionalism of lawyers, but also discourages debt collectors posing as lawyers to defraud money.

5. REGULATIONS OF INTERNET FINANCE LATE FEES / LIQUIDATED DAMAGES

5.1 Summary of Existing Literature

Feng Hui (2018) argues that although replacing liquidated damages with late fees emphasizes the equality between cardholders and banks, it does not solve the conflict that arose from high fees. He believes that it is necessary to improve the legal regulation of credit cards late fees^[16]. Yan Hongye and Ma Yong (2012) believe that the legal nature of credit card late fees should be liquidated damages. The bank should not have been allowed to charge late fees, and the late fees exceeding principal is unreasonably. They suggested that cardholders should try to pay in-full instead of the minimum amount or partial payment to make sure the "decimal leftovers" would not rack up what they owe due to "interest calculated based on the total bill of a month"^[17]. Ping Yi (2012) believed the improving the legal regulations and supervision for credit card should come first, clarifying banks' obligations to inform cardholders, avoid using jargons when informing to make it easy to

understand, maintain the openness and transparency of various fees, inform cardholders in a timely manner of any overdues^[18]. Xu Wu (2009) believes that the late fees are punitive damages for overdue payment, which can be mandatory, statutory and punitive^[19]. Ma Songlin (2016) believes that the late fees are punitive as well. When the cardholder is charged by the bank for breach of contract, the late fee should be proportionate - not too low, otherwise it will not be enough to deter late payments, but also not too high, which might push the defaulter into further debt^[20].

5.2 Review of Existing Literature

As can be seen from the above literature, consensus reached by scholars at present includes: first, the nature of late fees and liquidated damages of credit cards. In the legal definition, liquidated damages are late fees. Late fees are punitive and mandatory in nature - when the cardholder fails to pay back within the time limit, the bank has the right to collect late fees; second, late fees should be proportionate to the principal, cardholders should be made aware of penalties from overdue non-payment and their ability to pay back should not be further hindered by such fees; third, establish the relevant laws and supervision over overdue fees, regulate the behavior, safeguard the rights and interests of both banks and cardholders, and truly achieve the popular saying "pay what you owe, and it won't be hard to borrow again".

Above studies focused their discussions around the nature and appropriate amount of credit card late fees and liquidated damages. I think there are still some problems worthy of follow-up research: first, whether the liquidated damages / late fees of online lending are legal - that needs to be looked at case-by-case; second, there are some loopholes regarding liquidated damages / late fees in the stipulations of online lending, which requires the regulatory authorities to carefully review conditions where liquidated damages are required; last, we should also educate the general public on credit and personal finances. Only by strengthening government supervision while empowering consumers to be more vigilant, can we effectively protect the legitimate rights and interests of cardholders.

6. CONCLUSION

Internet Financing, an emerging industry, is here to stay. In order to fully leverage its power in providing financial assistance to businesses and individuals, we should improve legal supervision in tandem. Existing research has set an important foundation and serves as "cornerstones" for future research. Future research may include providing guidance to college students develop healthy relationships with money, discouraging vanity and excessive consumption, providing education on financial and legal knowledge, standardizing procedures

on online lending and debt collection behaviors, and making product information available and providing post-loan supervision. Research and solutions to these problems will help to stabilize the online lending industry, encourage "Inclusive Digital Finance", effectively solve the capital needs of some, and enrich the financial offerings available to the public to a certain extent.

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