October 30, 2024

Submitted via email and via regulations.gov

Re: Request for Information – Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses

Upstart Network, Inc. ("Upstart") is the leading AI lending marketplace, connecting millions of consumers to more than 100 banks and credit unions that have leveraged Upstart's AI models and cloud applications to deliver superior credit products. With Upstart AI, banks can approve more borrowers at lower rates, while delivering the exceptional digital-first experience that customers demand. More than 80% of borrowers are approved instantly, with zero documentation to upload. Founded in 2012, Upstart's platform includes unsecured and secured personal loans, automotive retail and refinance loans, home equity lines of credit, and small-dollar "relief" loans.

Given our expertise in participating in a large number of successful bank-fintech arrangements, Upstart appreciates this interagency request for information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses. Below you will find Upstart's response to some of the questions posed in the request for information most relevant to our business model.

Bank-Fintech Arrangement Descriptions

1. Do the descriptions and categorizations in this RFI adequately describe the types of bank-fintech arrangements in the industry and the companies involved? If not, why? Are the descriptions or categorizations overly broad or narrow, or are there any types of companies or categories of arrangements missing from the descriptions?

While the bank partnerships that drive the fintech lending industry can contain significant variation, the description included in the RFI relating to a lending arrangement generally covers the Upstart program. We would note that some fintech companies, including Upstart, have relationships with many bank lending partners, not merely a single bank or credit union. Furthermore, the descriptions in certain instances lack key details regarding the oversight and control that banks already have (and are required by law to have) over the programs with their nonbank partners.

For example, lenders that utilize Upstart's model and platform first define the basic credit parameters for their lending program to meet their business needs and goals. This includes maximum APRs, loan amount ranges, loan durations, maximum target loss rate, minimum credit score, maximum debt-to-income ratio, target returns, and fee structures. Only consumers who meet these pre-set characteristics are potentially eligible for their program. Banks take advantage of Upstart's ability to identify and service the customers that fit their own credit policies while harnessing Upstart's proprietary risk models to further refine risk and pricing assessments with the goal of hitting credit performance and risk-adjusted return targets. Results are influenced by macroeconomic cycles and a host of other factors.

2. Are there any benefits of bank-fintech arrangements that are not addressed by this RFI? What benefits do the bank or the fintech company receive by using an intermediate platform provider?

Although the RFI acknowledges that bank-fintech arrangements "may provide benefits," those benefits are not fully described or acknowledged. From core tech providers to cutting edge vendors, the modern banking system simply cannot function without effective partnerships between banks and non-bank fintech providers. There should be more recognition that non-banks have provided access to financial products and services for years both independently and in support of bank partners, and that non-banks enable banks to leverage newer technology and offer innovative products and services.

There are additional benefits to these relationships that should be considered. Notably, these programs not only provide access to credit, they can provide access to credit to consumers that would not qualify under most traditional bank models. Research from Harvard and LSU shows both that the Upstart expands access to borrowers who would not otherwise receive offers, and that borrowers who get an unsecured loan through the Upstart marketplace are more likely to be approved for mortgages and become homeowners.[1] Additionally, each year, Upstart evaluates the ability of our personal loan model to underwrite applicants in comparison to a more "traditional" model – i.e. a benchmark model including criteria like credit score or debt-to-income ratio. Our research showed that, in 2023, the Upstart model could approve more applicants, including Black and Hispanic applicants, at lower APRs than a more traditional underwriting model. In comparison to the traditional model, overall the Upstart model approved 101% more applicants and resulted in APRs that were 38% lower.[2] Further, the Upstart model approves 116% more Black applicants and results in APRs that are 34% lower. It also approves 123% more Hispanic applicants and results in APRs that are 37% lower.

[1] Invisible Primes: Fintech Lending with Alternative Data - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3937438
[2] 2023 Access to Credit Report - https://www.upstart.com/lenders/regulatory-compliance/access-to-credit-report/

Additional benefits of these programs include enabling banks to keep up with a fast-moving marketplace by facilitating a fully digital user experience, while harnessing alternative data and alternative underwriting methodologies to drive both credit performance and financial inclusion. In the vast majority of cases, financial institutions do not have the machine learning / data science personnel necessary to build this product functionality internally.

3. Describe the range of practices regarding banks' use of data to monitor risk, ensure compliance with regulatory responsibilities and obligations, or otherwise manage bank-fintech arrangements. What data and information do banks typically receive in bank-fintech arrangements, including in those involving intermediate platform providers? To what extent is this information different from the information banks would receive when interacting with end users independent of fintech companies? What challenges have banks experienced in bank-fintech arrangements—including those involving intermediate platform providers—related to the timely access to customer information, and what steps have the parties to bank-fintech arrangements taken to assess potential compliance issues associated with such challenges?

Upstart has been partnering with banks for over a decade, and has built a robust process that ensures each bank receives detailed reporting and information to properly oversee the partnership, as required by law. The below is an anecdotal look at Upstart practices that enable bank monitoring of risk to ensure compliance and effectively manage the partnership.

One of Upstart's core services for banks is our advanced risk modeling. We provide our bank partners with extensive documentation to enable them to successfully incorporate Upstart's various tools, including Upstart's Model Risk Management Program, into the banks' own third-party risk management and oversight practice. As a general rule, Upstart seeks to follow the same model risk management principles that Upstart's bank partners are subject to when managing and maintaining their own risk models. The Upstart Model Risk Management Program comprises a number of systematic and operational procedures designed to reduce risk by providing reasonable assurance the model is operating as intended, ensuring ongoing model improvements maintain effectiveness, and promoting effective ongoing oversight. For instance, the Upstart Personal Loan Underwriting Model Document outlines Upstart's model development, implementation, and use, including conceptual soundness, data management, and associated testing. The Upstart Personal Loan Underwriting Model Performance Document provides banks with an overview of Upstart's monthly model performance monitoring and benchmarking, which helps to ensure that Upstart's model continues to perform as expected and as documented. Any model enhancements are subject to the Upstart Underwriting Model Change Management Policy and Upstart's Procedures for Adding New Data Sources and Variables to Production Models while also subjecting to the Upstart Change Management Policy as it relates to bank communication. Finally, Upstart's AI model is designed to satisfy all regulatory requirements, including fair lending and adverse action notice (AAN) requirements by leveraging robust testing and model explainability methods as documented within Upstart's Procedure for Generating Explainable Adverse Action Notices. As a result, AANs are generated in a digestible, relevant, and actionable form that can be easily interpreted by Upstart's bank partners and consumers.

In addition to Upstart's internal model validation controls and processes, Upstart contracts with a third party, Kroll, to perform an annual, independent model validation of Upstart's personal loan underwriting model. Upstart's bank partners are provided with the opportunity to access Kroll's annual Upstart Personal Loan Model Validation report on an ongoing basis. The scope of Kroll's annual Upstart model validation includes:

- A review of the model and an evaluation of its conceptual soundness,
- An evaluation of the major assumptions made by Upstart and the inputs selected for use by the model,
- A review of model construction and training processes,
- An outcome benchmarking analysis that compares the performance of the model to the performance of three benchmarking models developed by Upstart,[3]
- An evaluation of the code implemented to construct the model and an assessment of the mathematical accuracy of the approaches, and
- Backtesting of model outcomes.

Upstart's bank partners are encouraged to incorporate this Upstart-provided third party model validation documentation into their own oversight and third-party risk management of Upstart, including the findings and conclusions of any such review. Overall, Upstart Model Risk Management Program documentation provides banks with a wealth of information on Upstart's execution of the Program, outlining the model governance and oversight framework, and all the related policies and procedures. Upstart's team works proactively one-on-one with bank partners to support them in sound model governance and third party model risk oversight practices, ensure safe model development, implementation, and use, with extensive internal and independent model validation completed on a regular cadence. Information is reported to banks on different frequencies, with some information being provided daily, other information on a weekly cadence, while other information/testing results may be summarized monthly, quarterly or annually. By sharing information with our banks in a transparent, digestible, timely and actionable manner, it enables banks to remain in full control of the program at all times.

This arrangement includes similar information that a bank would normally receive when interacting with end users independent of Upstart, such as typical loan application information

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[3] Upstart utilizes several benchmarking models that simulate traditional rule-based and FICO score-based underwriting models used by lenders.

and credit information used in connection with underwriting a loan. But, because of the additional model based underwriting used by Upstart on behalf of banks, there is additional information shared with a bank, to ensure oversight of that process. This sharing includes all key details of the model variables, and testing results, with reasonable steps taken to protect the integrity of the core IP of the Upstart model from malicious actors.

To address the question regarding challenges related to the timely access to customer information, there have not been any such challenges. Upstart provides each bank with daily loan files and funding requests, to ensure each bank is aware of applicants that are approved pursuant to each bank's program and credit policy. Each bank is also made aware of applicants that apply but are declined, to fulfill regulatory requirements on those applications.

4. How do the parties to bank-fintech arrangements determine the end user's status as a customer of the bank, the fintech company, or both, including for purposes of compliance with applicable laws and regulations, and each party's responsibility in complying with contractual requirements? What disputes or uncertainties regarding the status of end users have the parties experienced, and how have they sought to resolve them? How does the type of arrangement impact such determinations?

Consumers who are offered credit from a bank partner on the Upstart platform enter into a direct customer relationship with that bank partner. While Upstart facilitates an application for credit, the bank is the creditor who originates the loan, and Upstart often provides the loan servicing; this results in both entities having a relationship with the customer. Upstart, as well as each bank, is obligated to comply with all applicable laws in connection with their respective roles in the process and this shared responsibility is set forth in the contractual agreements between each bank and Upstart. In Upstart's experience this structure has not created disputes or uncertainties with consumers, as having a loan servicer separate from the bank has been common in the consumer lending industry for decades and the relationship of each is disclosed to consumers throughout the process.

7. Bank-fintech arrangements can involve significant up-front and ongoing costs and resources for the bank involved and may take some time to recoup these costs and resources. What type of up-front and ongoing costs and resources are associated with establishing bank-fintech arrangements? Describe the range of practices regarding how a bank factors such upfront costs and resources into its overall strategy and risk management strategy. Describe the range of practices regarding how revenues and costs resulting from these arrangements are allocated between the bank and fintech company.

While initial due diligence and review by each bank and fintech can take time and resources, Upstart seeks to set transparent pricing of services for its bank partners. Upstart works to minimize the costly up-front setup fees, generally receiving its compensation on a per-delivered loan basis. Upstart will be compensated by its bank partners for providing pricing/default prediction insight on borrowers that meet the banks' basic criteria who complete the funding process and for servicing those loans.

The ongoing costs and resources include monitoring by each party of the other to ensure there is adherence to the program requirements, as well as review of reporting and testing shared by the fintech to maintain proper oversight of the program. These are expected costs and resources associated with all third party service providers for banks, but we have not found these to be overly burdensome or prohibitive for a bank to participate in the program.

Risk and Risk Management

1. Describe the range of practices for maintaining safety and soundness, and compliance with applicable laws and regulations arising from bank-fintech arrangements. How do the practices differ between different categories of arrangements? Does the RFI adequately identify and describe the potential risks of bank-fintech arrangements?

While this RFI for the most part contemplates the potential risks associated with bank-fintech arrangements, we would note that these risks exist whenever a bank uses a third party technology service provider, which has been a prevalent practice in the market for decades. As the shape of those arrangements moves forward with technology advances, Upstart recognizes bank-fintech arrangements may present new risks that must be managed – via sound oversight, reporting, and communication.

Upstart has seen, over more than a decade spent enabling digital lending for more than 100 banks and credit unions, that banking organizations – and especially smaller institutions – must be empowered to rely on the regular documentation and reporting from their contracted third parties regarding ongoing program performance, including on any model updates and changes. Upstart and its bank partners track regulatory developments closely and work to adhere to the latest Interagency Guidance documents on Third-Party Relationships from OCC, FDIC, Federal Reserve, and NCUA. This is particularly relevant in how banks oversee their relationships with Upstart and ensure risk is adequately managed and applicable laws and regulations are followed. Some key steps include doing extensive diligence of Upstart in setting up the relationship initially, defining the parties obligations and expectations in the contract (including the requirement to comply with applicable laws), and implementing ongoing monitoring of the relationship. To support bank partners' oversight of Upstart, Upstart provides detailed reporting and information to its bank partners on their respective program– this gives them an ability to continuously oversee their lending activity within the Upstart program, monitor the operation of

Upstart's compliance management system, monitor issues or complaints, and review all audit and testing results.

2. Bank-fintech arrangements can present unique or heightened consumer protection risks, such as risks of discrimination, unfair or deceptive acts or practices under the Federal Trade Commission Act, or privacy concerns. Describe the range of practices for managing any heightened risks.

The same legal requirements that are applicable to banks apply to a fintech's activities performed on behalf of that bank. Upstart does not believe these are necessarily unique or heightened consumer protection risks; they simply involve a third party that is obligated to manage risks alongside the bank partner and play a constructive role in ensuring overall compliance. As a result, Upstart has established a compliance management system (CMS), similar to a bank's CMS, to identify, assess, manage, and monitor applicable compliance risks, including, but not limited to fair lending requirements, UDAAP requirements, and privacy requirements.

Furthermore, Upstart's compliance and risk management activities in areas of fair lending and UDAAP compliance are designed to meet or exceed the standard industry and regulatory expectations in these particular areas. For example, Upstart has long been aware that there may be increased fair lending risk in the use of alternative data in underwriting, so we have developed and deployed rigorous fair lending requirements and fair lending testing and less discriminatory alternative (LDA) search practices to manage this area of risk. We provide extensive data and reporting to bank partners to enable their oversight of these risks, and we engage third parties to provide periodic independent review and assurance that our risk management practices are operating effectively. Over its history, Upstart has proactively engaged with regulators (CFPB No-Action Letter) and independent experts (Kroll, Relman Colfax) to ensure that our practices are harnessing the latest technologies and best practices so that we can continue to set the highest possible bar in our compliance approach with bank partners.

It must be equally noted here that a failure to take advantage of new opportunities presented by technology, data and fintech partnerships may also lead to heightened risks in the same areas, including serious discrimination/fair lending risks. For example, the fair lending laws require that banks search out and implement LDAs that meet their business needs. Multiple studies have shown over nearly a decade that the use of AI models and alternative data can dramatically improve the fairness and inclusion of consumer lending programs; thus a failure, refusal, or delay in implementing these tools may leave traditional institutions at risk of non-compliance with ECOA, fair lending or fair housing laws.

3. Describe the range of practices parties to a bank-fintech arrangement may use in contractually allocating functions among themselves, including the advantages and

disadvantages of each such practice. For example, while the parties to such arrangements remain responsible for their own compliance with applicable laws and regulations, as a matter of contractual allocation, who performs which activities related to risk and compliance management, customer identification and due diligence, transaction monitoring, sanctions screening, fraud monitoring, end-user complaint management, dispute resolution, data protection, or credit underwriting, if applicable? Who develops and oversees marketing materials, develops and provides disclosures and account statements, addresses errors, receives and resolves disputes, and responds to complaints? How are contractual breaches and indemnifications typically addressed in these types of arrangements? Describe the range of practices for monitoring compliance with applicable laws and regulations, notwithstanding contractual allocations.

Existing law is already clear that when a fintech company operating in a bank partnership is consumer-facing, the fintech company must be in compliance with the applicable law governing the partnership when interacting with a consumer, and the bank must ensure that they remain in that state of compliance. A bank cannot disavow or ignore its compliance obligations by simply hiring a third party to perform a task. For example, in the Upstart program, when taking an application, Upstart performs customer identification and due diligence, sanctions screening, fraud monitoring and is responsible for ensuring that appropriate customer disclosures are provided. All of this activity, however, is subject to the direct oversight of lending partners. When servicing loans, Upstart is responsible for compliance with the various federal, state and local laws in accepting and collecting payments, providing customer service and managing complaints. Lending partners maintain the ability to review and approve key policies and procedures and Upstart is responsible for providing monitoring, reporting and escalations to these partners.

Contractually between the lending partners and fintechs, each party is generally responsible for breaches and indemnification of the other party, including remediation for any customer impact as a result of errors. It should be noted that Upstart has its own internal teams for Regulatory Legal, Compliance and Risk, which use trade associations, outside counsel and internal expertise to stay current on the legal and regulatory environment to remain compliant with all applicable laws. The Upstart teams are in continual communication with the lending partners and their teams to ensure the program evolves as the laws change. We believe this is a common approach, as fintechs recognize their role in these programs and do not look solely to the bank for compliance with applicable laws.

5. Describe the range of risk management strategies banks and fintech companies use to ensure that required disclosures in bank-fintech arrangements, including those relating to rates and fees associated with end-user banking products and services, are accurately and

plainly communicated, and comply with all relevant state and Federal laws and regulations.

As required by current law, a bank entering into a relationship with a fintech company to offer services relating to the extension of credit, must perform due diligence on that fintech company to ensure it has the appropriate resources, staffing and expertise to perform such services in a manner that complies with the law. Fintechs, including Upstart, generally have their own internal staffing, including employees in Legal, Compliance and Risk, to meet these obligations and must demonstrate that fact to any bank partner. The banks either assist in drafting the consumer facing disclosures, or at a minimum, are provided materials to review and/or approve in advance of launching any partnership program.

6. Describe the range of practices regarding disclosures (e.g., initial, annual, or ongoing) to end users about the involvement of bank-fintech arrangements in the delivery of banking products and service.

Upstart's digital platform, products, marketing and support functions are carefully designed to communicate clearly with the prospective borrower throughout the 'loan lifecycle.' Upstart is clearly identified as the platform, and the bank partner brand information is clearly shown as the lender at the point where that institution is matched with a borrower and throughout all communication thereafter in the application process. Upstart is properly identified as the loan servicer where applicable. There are regular compliance reviews, completed by Upstart and its bank partners, regarding all required disclosures to borrowers to ensure that they are up to date with regulatory guidance and expectations, and this includes the branding and marketing of the Upstart platform to prospective borrowers.

9. Describe the range of practices regarding planning for when a fintech company or intermediate platform provider exits an arrangement, faces a stress event, or experiences a significant operational disruption, such as a cyber-attack. Describe the range of practices regarding how arrangements are structured to minimize harm to end users, meet compliance requirements, and minimize liquidity risks and other risks in the event of such exits, stresses, or disruptions.

Cybersecurity, business continuity, and operational resilience are all addressed as part of the contract between Upstart and each bank partner, with the goal of meeting or exceeding the expectations of current Interagency Guidance on Third Party Risk. Bank partners are able to pause their programs to address any of the risk areas referenced above. Upstart maintains a business continuity and disaster recovery plan, an incident response program, an information security program and other tools to protect and prevent disruptions (or respond to them if they occur), and Upstart's bank partners explore all of these practices during the due diligence period.

There are clear expectations in the Upstart contract, and banks can conduct ongoing oversight through reporting that Upstart provides on a regular cadence. Upstart participates in industry cybersecurity working groups and works actively to identify and mitigate threats to the platform.

Trends and Financial Stability

1. What data would be helpful for the agencies in monitoring developments regarding bank-fintech arrangements? For example, this might include data to assist in monitoring developments and trends in bank-fintech arrangement structures and use cases, concentrations, and the number and types of bank-fintech arrangements in the financial services industry.

The agencies could benefit from more precise tracking and independent understanding of the unique characteristics of various consumer credit asset classes (small dollar loans, unsecured personal loans, credit cards, auto loans, auto refinance loans, HELOC, home equity loans, purchase mortgages, etc.), and the role of fintech partners in delivering these products to consumers on behalf of supervised entities. Some of this information is aggregated by entities such as dv01. The agencies would also benefit from a deeper review and understanding of the role that both their own prudential regulations and approaches to examinations and supervision may have on the structural choices of supervised institutions as the institutions select vendors, select product offerings, set parameters, manage their balance sheets and set internal expectations for providing access to their communities and financial inclusion.

2. In what ways do or can bank-fintech arrangements support increased access to financial products and services? Alternatively, in what ways do or can these arrangements disadvantage end users?

Bank-fintech arrangements have demonstrated they can significantly increase access to financial products and services through innovation and use of technology. Upstart has demonstrated this through more than a decade of bank-fintech partnership arrangements. These arrangements work for borrowers, for banks, and for Upstart, and they are well-supervised by prudential regulators and consumer protection regulations and licensing bodies at the state and federal level. Upstart's bank-fintech partnerships are increasing access to more affordable, responsible credit for consumers – often those who do not have a wealth of options. Each year, Upstart evaluates the ability of our personal loan model to underwrite applicants in comparison to a more "traditional" model – i.e. a benchmark model including criteria like credit score or debt-to-income ratio. Our research showed that, in 2023, the Upstart model could approve more applicants, including Black and Hispanic applicants, at lower APRs than a more traditional underwriting model. In comparison to the traditional model, overall the Upstart model approved 101% more applicants and resulted in APRs that were 38% lower.[4] Additionally, the Upstart model approves 116% more Black applicants and results in APRs that are 34% lower. It also approves 123% more Hispanic applicants and results in APRs that are 37% lower.

By providing this access, Upstart has become the leading AI lending marketplace, connecting millions of consumers to banks and credit unions that leverage Upstart's AI models and cloud applications to deliver superior credit products. By partnering with Upstart, lenders can approve more borrowers at lower rates across races, ages, and genders, while delivering the exceptional digital-first experience customers demand, something they could have not done on their own. More than 80% of borrowers are approved instantly, with zero additional documentation to upload.

Upstart's AI models are provided to bank partners within a consumer-facing cloud application that streamlines the end-to-end process of originating and servicing a loan. We have built a configurable, multi-tenant cloud application designed to integrate seamlessly into a bank's existing technology systems. Our highly configurable platform allows each bank partner to define its own credit policy and determine the significant parameters of its lending program. As a result, these models are trained by every Upstart-powered loan, and each bank partner benefits from participating in a shared AI lending platform.

4. What factors are important in determining whether bank-fintech arrangements support or hinder responsible innovation and a competitive and compliant financial services landscape?

In a world where experiences and interactions between consumers and institutions are increasingly digital, fintech partnership arrangements are critical in helping institutions succeed in actually serving the public. Upstart would therefore encourage regulators to regularly review the quality of various products or services from the standpoint of the end user's experience. Is the product being offered compliant with the governing applicable laws? Is the product, and customer's overall experience with a bank-fintech arrangement, meeting an obvious consumer need? Is the interaction transparent and does the partnership deliver the product to the consumer as promised? What do reviews and complaints reveal about the product / service?

Fintech partnerships are also likely the only way that the vast majority of small and mid-sized institutions will be able to overcome the barriers that stand in the way of a successful digital expansion and transformation of a traditional branch-based consumer lending program. It is simply too much to expect that any but the largest banks in the United States will be able to organically develop the software, methods and the associated technical expertise to manage, scale, and maintain a successful online consumer lending program that uses fair and inclusive AI

[4] 2023 Access to Credit Report - https://www.upstart.com/lenders/regulatory-compliance/access-to-credit-report/

risk modeling and techniques. Absent fintech partnerships, the U.S. market will see an evolution where consumer lending becomes the domain of either only the largest handful of banking institutions or non-banks.

Thank you for the opportunity to provide these comments. Please feel free to contact Nat Hoopes, Head of Government & Regulatory Affairs at nat.hoopes@upstart.com if you have any questions or if you would like to discuss our comments further.

Sincerely,

Nathaniel Hoopes
Head of Government & Regulatory Affairs, Upstart