UNITED STATES OF AMERICA

FEDERAL RESERVE SYSTEM

CONSUMER FINANCIAL PROTECTION BUREAU

UPSTART NETWORK, INC.	)	In re November 30, 2020 No-Action Letter

ORDER TO TERMINATE NO-ACTION LETTER

On September 14, 2017, the CFPB granted a No-Action Letter ("NAL") to Upstart Network, Inc. ("Upstart") relating to the Equal Credit Opportunity Act ("ECOA") and its loan underwriting and pricing model. That NAL expired, but a new 36-month NAL was issued on November 30, 2020. On April 13, 2022, Upstart notified the CFPB that it intended to add a significant number of new variables to its underwriting and pricing model. The terms and conditions of the NAL require such notification to the CFPB and provide the agency with a time period to review the variables and object to their implementation. Given the substantial implications of adding a significant number of new variables to a model, including relating to potential discrimination, CFPB staff requested more time to review.

On May 27, 2022, Upstart submitted an application to modify the NAL to shorten the term to 18 months (with an expiration of May 30, 2022). In its application to modify, Upstart cited a need to be able to respond to the rapid pace of change in credit markets by making model changes promptly, and it noted that it was likely to make additional time-sensitive model revisions in light of ongoing volatility in the credit markets.

In submitting an application to modify a NAL to shorten the term to expire immediately, Upstart has effectively requested to terminate the NAL. The CFPB's current NAL Policy provides that the CFPB intends to notify recipients of possible grounds for termination before terminating a NAL; however, given that the recipient in this case requested termination, and that the recipient has expressed an interest in expeditiously terminating the NAL, the CFPB is issuing this order without further process.

Upstart has requested termination because it would like to make time-sensitive model changes that are not possible if the CFPB were to conduct the appropriate level of monitoring and review. The CFPB has never endorsed Upstart's model, but there is a risk that the public could misconstrue the NAL to suggest that the CFPB concluded Upstart's model complies with the ECOA. At least one published study assumed that the CFPB assisted in developing the counter-factual model used to test Upstart's model.[1] None of this is true—the CFPB has not endorsed Upstart's model, and has not performed the analysis necessary to conclude whether Upstart's model does or does not violate the ECOA. In light of the risk that the NAL is misconstrued as an endorsement, the CFPB would need to perform more rigorous monitoring and assessment of Upstart's model and any changes to the model in order to responsibly sustain the NAL, which would take more time and resources consistent with CFPB staff's request for more time to review Upstart's proposed changes to the model. Upstart has correctly identified that this review would prevent them from making quick business decisions with regard to its model.

[1] MARCO DI MAGGIO, DIMUTHU RATNADIWAKARA, & DON CARMICHAEL, INVISIBLE PRIMES: FINTECH LENDING WITH ALTERNATIVE DATA, 3 (HARVARD BUSINESS SCHOOL, 2021), https://www.hbs.edu/ris/Publication%20Files/22-024_80dc9115-69cc-4564-99c6-3a937f275d31.pdf.

For the foregoing reasons, the CFPB is TERMINATING the No-Action Letter granted to Upstart on November 30, 2020.

IT IS SO ORDERED.

Dated: June 8, 2022

Rohit Chopra
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Rohit Chopra
Director