

1 LANE C. POWELL, MI Bar No. P79432  
2 Phone: 415-844-9784  
3 Email: lane.powell@cfpb.gov  
4 MAXWELL S. PELETZ, CA Bar No. 183662  
5 Phone: 415-633-1328  
6 Email: maxwell.peltz@cfpb.gov  
7 Consumer Financial Protection Bureau  
8 1700 G Street, NW  
9 Washington, DC 20552  
10 Fax: 703-642-4585

11 Attorneys for Plaintiff  
12 Consumer Financial Protection Bureau

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 Consumer Financial Protection Bureau,

17 Plaintiff,

18 v.

19 LendUp Loans, LLC,

20 Defendant.

Case No. 3:21-cv-6945

21 COMPLAINT

22 The Consumer Financial Protection Bureau files this Complaint against LendUp  
23 Loans, LLC (LendUp) and alleges as follows.

24 **Introduction**

25 1. LendUp claimed to offer larger loans at lower rates to repeat borrowers who  
26 ascend its “LendUp Ladder.” But many borrowers who reached higher LendUp Ladder  
27 levels did not, in fact, receive these promised benefits.

28 2. LendUp made these unfulfilled marketing claims despite a 2016 Bureau  
Consent Order prohibiting it from making misrepresentations about the benefits of  
borrowing from LendUp.

Complaint  
Case No. 3:21-cv-6945

3. The Bureau brings this action under § 1054 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5564, to address LendUp’s deceptive acts and practices as well as its consent-order violations in connection with its marketing of the LendUp Ladder and associated claims regarding the benefits of repeat borrowing. *See* 12 U.S.C. §§ 5531, 5536(a).

4. The Bureau also brings this action to address LendUp’s failure to provide timely and accurate adverse-action notifications to loan applicants, in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691–1691f, and Regulation B, 12 C.F.R. § 1002.9(a)–(b).

## Jurisdiction and Venue

5. The Bureau brings this action under §§ 1031, 1036, and 1054 of the CFFA, 12 U.S.C. §§ 5531, 5536, 5564, and ECOA, 15 U.S.C. §§ 1691–1691f, and Regulation B, 12 C.F.R. § 1002.9(a)–(b).

6. This Court has subject-matter jurisdiction over this action because it is brought under “Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

7. This Court has personal jurisdiction over LendUp and venue is proper in this district because LendUp is located, resides, and does business in this district. 12 U.S.C. § 5564(f).

## Intradistrict Assignment

8. Under the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California, this action arises in the County of Alameda because a substantial part of the events or omissions giving rise to the claims occurred there. *See* Civil L.R. 3-2(c). Accordingly, this action should be assigned to the San Francisco or the Oakland Division of this Court. *See* Civil L.R. 3-2(d).

**Complaint**  
Case No. 3:21-cv-6945

## Parties

9. The Bureau is an agency of the United States created by the CFPA and charged with regulating the offering and providing of consumer-financial products and services under federal consumer-financial laws. 12 U.S.C. § 5491(a). The Bureau has independent litigating authority and may initiate civil actions in federal district court to address violations of “Federal consumer financial law.” 12 U.S.C. § 5564(a)–(b).

10. LendUp is a limited-liability company headquartered in Oakland, California. LendUp offers and provides loans online to consumers primarily for personal, family, or household purposes. LendUp’s loans are “consumer financial product[s] or service[s],” and LendUp is a “covered person” under the CFPAs. 12 U.S.C. § 5481(5)(A), (6)(A), (15)(A)(i).

## Facts

11. Central to LendUp's marketing and brand identity is the so-called "LendUp Ladder." LendUp's website explained: "Traditionally, payday lenders treat all their customers the same: Repeat borrowers with perfect repayment records are charged the same interest and fees as unproven first-time borrowers. We think that's wrong. So we built the LendUp Ladder to incentivize responsible actions and enable borrowers to earn access to apply for larger loans at lower interest rates over time."

12. According to LendUp’s marketing, borrowers who repaid loans on time and took free courses offered through LendUp’s website would earn “points” that would allow them to “climb” to higher Ladder levels, where they could access lower interest rates and larger loan amounts. Under the tagline “Climb to a brighter financial future,” LendUp stated on its website, “Over time, you can earn points to climb the LendUp Ladder to apply for larger loans at lower rates. . . . Earning points is as simple as making on-time loan payments and taking our free financial education courses.”

13. In fact, many repeat borrowers who ascended to higher Ladder levels did not receive lower interest rates; they received the same or higher rates compared to their previous loans.

Complaint  
Case No. 3:21-cv-6945

(a) Between October 2016 and January 2020, LendUp extended over 340,000 single-payment loans to over 80,000 borrowers where LendUp charged the same interest rate as it had charged the borrower for an identical loan at a lower Ladder level.

(b) Between October 2016 and January 2020, LendUp extended over 30,000 single-payment loans to over 15,000 borrowers where LendUp charged the same interest rate on a larger loan compared to a loan of the same duration that it had extended to the borrower at a lower Ladder level.

(c) Between October 2016 and January 2020, LendUp extended about 150,000 single-payment loans to over 30,000 borrowers where LendUp charged a higher interest rate than it had charged the borrower for an otherwise identical loan at a lower Ladder level.

(d) Between October 2016 and January 2020, LendUp extended over 30,000 single-payment loans to over 15,000 borrowers where LendUp charged a higher interest rate on a larger loan compared to a loan of the same duration that it had extended to the borrower at a lower Ladder level.

14. And many borrowers did not in fact gain access to larger loans as they moved up the LendUp Ladder. LendUp offered “Silver,” “Gold,” “Platinum,” and “Prime” Ladder levels. (It did not, however, offer all Ladder levels in every state.) In some states, LendUp offered the same maximum-available loan amount at both the Silver and Gold Levels; a borrower who ascended from Silver to Gold could not access a larger loan. And in some states, Silver and Gold were the only available Ladder levels.

15. In some instances, LendUp unilaterally reduced the maximum loan amount available to borrowers who had maintained their Ladder level. Between October 2016 and January 2020, over 10,000 repeat borrowers saw their maximum available loan amount decrease, despite having continued to accrue Ladder points. Many of these affected borrowers had reached the highest Ladder level, Prime.

16. On September 27, 2016, the Bureau issued an administrative consent order against LendUp under the caption *Flurish, Inc. d/b/a LendUp*, 2016-CFPB-0023 (the 2016 Consent Order). The 2016 Consent Order went into effect on its issuance date and remains in effect. The 2016 Consent Order prohibited LendUp from “misrepresent[ing] . . . expressly or impliedly[,] [t]he benefits of borrowing from [LendUp], including access to and availability of loan products.”

17. Since October 2016, LendUp has failed to provide timely and accurate adverse-action notices after declining credit applications. In over 7,400 instances, LendUp failed to provide adverse-action notices within 30 days after receiving a completed application. And in over 71,800 instances, LendUp's adverse-action notices misstated the principle reasons why it declined the credit application.

## Count I

## *Violation of the CFPA*

## *(Deceiving Consumers Regarding Benefits of Repeat Borrowing)*

18. The Bureau realleges and incorporates by reference paragraphs 1–16.

19. Section 1036(a)(1)(B) of the CFPB prohibits covered persons, such as LendUp, from engaging in deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. Information is material to consumers if it is likely to affect a consumer's conduct regarding the product or service.

20. LendUp misrepresented the benefits of repeat borrowing from LendUp, including by claiming that borrowers who ascended the LendUp Ladder would gain access to larger loans at lower rates when, in fact, that was not true for tens of thousands of consumers. LendUp's claims were likely to mislead consumers acting reasonably under the circumstances about the benefits of LendUp's Ladder program to returning borrowers. And LendUp's claims were material because they were likely to affect consumers' decisions to borrow from LendUp in the first instance, take out subsequent loans from LendUp, and repay the loans.

**Complaint**  
Case No. 3:21-cv-6945

1 21. LendUp therefore engaged in deceptive acts or practices that violated §§ 1031(a) and  
2 1036(a)(1)(B) of the CFPAs. 12 U.S.C. §§ 5531(a); 5536(a)(1)(B).

3 **Count II**

4 ***Violation of the CFPAs***

5 ***(Making Misrepresentations Prohibited by the 2016 Consent Order)***

6 22. The Bureau realleges and incorporates by reference paragraphs 1–16.

7 23. Under § 1036(a)(1)(A) of the CFPAs, it is unlawful for covered persons, such as  
8 LendUp, to “commit any act or omission in violation of a Federal consumer financial law.”  
9 12 U.S.C. § 5536(a)(1)(A).

10 24. The 2016 Consent Order is an “order prescribed by the Bureau” and is therefore a  
11 “Federal consumer financial law.” 12 U.S.C. § 5481(14).

12 25. The 2016 Consent Order prohibits LendUp from expressly or impliedly  
13 misrepresenting the benefits of borrowing from LendUp, including access to and availability  
14 of its loan products.

15 26. Since the 2016 Consent Order took effect, LendUp has misrepresented the benefits of  
16 borrowing from LendUp, including by claiming that returning borrowers who climb the  
17 LendUp Ladder gain access to larger loans at lower interest rates when, in many instances,  
18 such claims were not true.

19 27. LendUp’s misrepresentations violated the 2016 Consent Order and thereby violated a  
20 Federal consumer financial law. Accordingly, LendUp violated § 1036(a)(1)(A) of the CFPAs.  
21 12 U.S.C. § 5536(a)(1)(A).

22 **Count III**

23 ***Violation of ECOA and Regulation B***

24 ***(Failing to Provide Timely and Accurate Adverse-Action Notifications)***

25 28. The Bureau realleges and incorporates by reference paragraphs 1–17.

26 29. When a consumer applies for and is denied credit, ECOA and its implementing  
27 regulation, Regulation B, require creditors, such as LendUp, to explain the principal reasons

28 Complaint

Case No. 3:21-cv-6945

1 why adverse action was taken, providing transparency about the underwriting process and  
 2 helping to protect against potential credit discrimination. *See* 15 U.S.C. §§ 1691–1691f; 12  
 3 C.F.R. § 1002.9(a)–(b).

4 30. ECOA and Regulation B require a creditor to notify an applicant of the action taken  
 5 on the credit application within 30 days after receiving a completed application. 12 C.F.R.  
 6 § 1002.9(a)(1).

7 31. Since October 2016, LendUp has failed to provide notice of adverse action taken  
 8 within 30 days of receiving a completed application on over 7,400 applications.

9 32. ECOA and Regulation B also specify the content of an adverse-action notice. The  
 10 creditor must provide either a statement of the specific reasons for the action taken or a  
 11 disclosure of the applicant’s right to request a statement of specific reasons. 12 C.F.R.  
 12 § 1002.9(a)(2)(i), (ii). Where the creditor provides a statement of the specific reasons for the  
 13 action taken, those reasons “must be specific and indicate the principal reason(s) for the  
 14 adverse action.” 12 C.F.R. § 1002.9(b)(2).

15 33. Since October 2016, LendUp has issued over 71,800 adverse-action notices to credit  
 16 applicants that failed to accurately describe the principal reasons why LendUp denied the  
 17 application.

18 34. LendUp thereby violated ECOA and Regulation B. 15 U.S.C. §§ 1691–1691f; 12  
 19 C.F.R. § 1002.9(a)–(b).

## 20 Count IV

### 21 *Violation of the CFPA*

#### 22 *(Violating Federal Consumer Financial Law)*

23 35. The Bureau realleges and incorporates by reference paragraphs 1–17.

24 36. Under § 1036(a)(1)(A) of the CFPA, it is unlawful for covered persons, such as  
 25 LendUp, to “commit any act or omission in violation of a Federal consumer financial law.”  
 26 12 U.S.C. § 5536(a)(1)(A).

1 37. ECOA and Regulation B are “Federal consumer financial laws.” 12 U.S.C.  
2 § 5481(12)(D), (14).

3 38. LendUp’s ECOA and Regulation B violations, described above in Count III,  
4 constitute violations of § 1036(a)(1)(A) of the CFPB. 12 U.S.C. § 5536(a)(1)(A).

5 **Demand for Relief**

6 The Bureau requests that the Court:

- 7 a. permanently enjoin LendUp from committing future violations of the CFPB,  
8 the Bureau’s 2016 Consent Order, ECOA, or any provision of “Federal  
9 consumer financial law,” as defined by 12 U.S.C. § 5481(14);  
10 b. grant additional injunctive relief as the Court deems just and proper;  
11 c. order LendUp to pay damages, restitution, and other monetary relief to  
12 consumers;  
13 d. order LendUp to pay disgorgement or compensation for unjust enrichment;  
14 e. impose on LendUp a civil money penalty;  
15 f. award costs against LendUp; and  
16 g. award additional relief as the Court deems just and proper.

17 Respectfully submitted,

18 Cara M. Petersen  
19 *Acting Enforcement Director*  
20 Jeffrey Paul Ehrlich  
21 *Deputy Enforcement Director*  
22 Kara K. Miller  
23 *Assistant Deputy Enforcement Director*

24 /s/ Lane C. Powell  
25 Lane C. Powell (MI Bar No. P79432)  
26 Maxwell S. Peltz (CA Bar No. 183662)  
27 Enforcement Attorneys  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

28 Complaint  
Case No. 3:21-cv-6945

1 Telephone (Powell): 415-844-9784  
2 Telephone (Peltz): 415-633-1328  
3 Fax: 703-642-4585  
4 lane.powell@cfpb.gov  
maxwell.peltz@cfpb.gov

5 *Attorneys for the Consumer Financial Protection Bureau*