



1700 G Street NW, Washington, D.C. 20552

November 30, 2020

Alison Nicoll
General Counsel, Upstart Network, Inc.
2950 S. Delaware St.
San Mateo, CA 94403

Dear Ms. Nicoll,

This letter is in response to an application for a No-Action Letter (Application), filed with the Consumer Financial Protection Bureau (Bureau) by Upstart Network, Inc. (Upstart), under the Bureau's Policy on No-Action Letters (Policy).¹

The Application describes Upstart's automated model for making underwriting and pricing decisions with respect to applications by consumers for unsecured, closed-end loans. The model is designed to assess the individual risk profile of applicants that meet the initial eligibility criteria of Upstart's lending partners and is responsible for assigning the maximum amount an applicant can borrow and the appropriate interest rate based on that risk assessment. An applicant is approved if the assigned interest rate falls within the parameters of a lending partner's loan program.² Upstart uses artificial intelligence (AI) techniques and alternative data in its model.

¹ 84 FR 48229 (Sept. 13, 2019).

² Upstart's model as described in this No-Action Letter excludes any initial eligibility requirements specified by a lending partner.

The Application further describes uncertainty that Upstart may face with regard to the application of certain provisions of the Equal Credit Opportunity Act³ and its implementing regulation, Regulation B,⁴ to Upstart’s AI-based model.

The Bureau has considered and grants the Application and accordingly issues this No-Action Letter pursuant to the Policy. This No-Action Letter expires 36 months after the date of this letter.

Unless this No-Action Letter is terminated by the Bureau (as described in section C.7 of the Policy), the Bureau will not make supervisory findings or bring a supervisory or enforcement action against Upstart under

- (a) section 701(a) of the Equal Credit Opportunity Act⁵ and §§ 1002.4(a) and (b) of Regulation B,⁶ or
- (b) its authority to prevent unfair, deceptive, or abusive acts or practices,⁷

concerning alleged discrimination on a prohibited basis arising from Upstart’s use of its model for making underwriting and pricing decisions on applications by consumers for unsecured, closed-end loans, as that model is described in the Application.

Upstart may reasonably rely on the preceding Bureau commitment.⁸

This No-Action Letter:

- (a) is limited to Upstart, and does not apply to any other persons or entities;
- (b) is limited to the described aspects of Upstart’s product or service as set forth in the Application, i.e., Upstart’s use of its model for making underwriting and pricing decisions on applications by consumers for unsecured, closed-end loans;

³ 15 U.S.C. 1691(a).

⁴ 12 CFR 1002.4(a) and (b).

⁵ 15 U.S.C. 1691(a).

⁶ 12 CFR 1002.4(a) and (b).

⁷ 12 U.S.C. 5531, 5536.

⁸ The Bureau maintains the authority to obtain information relating to the consumer financial product or service subject to a No-Action Letter under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to consumer financial products or services not subject to a No-Action Letter.

- (c) does not apply to (i) Upstart’s offering or providing different aspects of its product or service; or (ii) Upstart’s offering or providing any other product or service;
- (d) is based on the factual representations made in the Application;
- (e) does not purport to express any legal conclusions regarding the meaning or application of the Equal Credit Opportunity Act or its implementing regulation, Regulation B;
- (f) does not constitute the Bureau’s endorsement of the product or service that is the subject of this No-Action Letter or any other product or service offered or provided by Upstart; and
- (g) is conditioned on Upstart’s implementation of the Model Risk Assessment Plan (MRAP).⁹ The MRAP requires Upstart to, *inter alia*:
 - 1. Notify the Bureau of significant changes to Upstart’s model prior to implementation;
 - 2. Provide the Bureau with model documentation on a periodic basis, including a Technical Report (which describes certain aspects of each component of Upstart’s model) and Performance Monitoring Reports (which evaluate how Upstart’s customer population and model performance change over time);
 - 3. Test Upstart’s model and/or variables or groups of variables on a periodic basis for adverse impact and predictive accuracy by group, with results provided to the Bureau;
 - 4. Research approaches that may produce less discriminatory alternative models that meet legitimate business needs;
 - 5. In addition to fair lending testing, conduct periodic access-to-credit testing to determine how Upstart’s model compares to other credit models in enabling credit access, with results provided to the Bureau; and
 - 6. Provide the Bureau access to the software code that is used to implement the MRAP.

Upstart must apprise the Bureau of (a) material changes to information included in the Application; and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the Application.¹⁰

⁹ The MRAP contains confidential information that the Bureau is prohibited from disclosing. See Section G of the Policy and 12 CFR 1070.41. The following is a summary of the MRAP.

¹⁰ “Not performing as anticipated” includes the materialization of consumer risks identified in the Application, and the materialization of other consumer risks not identified in the Application.

The Bureau may terminate this No-Action Letter if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where Upstart fails to substantially comply in good faith with the terms and conditions of the No-Action Letter; the described aspects of the product or service do not perform as anticipated in the Application; or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by the letter.¹¹

Upon termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by this No-Action Letter, except where a failure to substantially comply in good faith with the terms and conditions of the No-Action Letter caused Dodd-Frank Act actionable substantial injury.¹²

This No-Action Letter and a copy of the Application will be published on the Bureau's website.

Sincerely,



Edward Blatnik
Acting Assistant Director, Office of Innovation
Consumer Financial Protection Bureau

¹¹ If a Circuit Court of Appeals decision clearly prohibits conduct covered by this No-Action Letter, the Bureau may consider modifying the letter so that it is inoperative within that Circuit.

¹² "Dodd-Frank Act actionable substantial injury" means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or competition. See 12 U.S.C. 5531(c); see also 12 U.S.C. 5536(a)(1)(B). Such a retroactive action would be particularly likely where conduct covered by the letter caused Dodd-Frank Act actionable substantial injury without the Bureau's knowledge due to the recipient's failure to substantially comply in good faith with the requirement under section C.4 of the Policy to inform the Bureau of (a) material changes to information included in the Application; and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the Application.