

United States Senate  
WASHINGTON, DC 20510

July 30, 2020

The Honorable Kathleen Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G St, NW  
Washington, DC 20552

Dear Director Kraninger:

We are writing to request that the Consumer Financial Protection Bureau (CFPB or Bureau) take immediate action—including issuing guidance, conducting supervisory examinations, and, as appropriate, opening enforcement investigations—to address potential violations of the Equal Credit Opportunity Act (ECOA) and Regulation B due to lenders’ use of educational data to make credit decisions.

In February 2020, we requested information from six companies regarding their use of educational data in making credit determinations. Five of the respondents are lenders—Upstart Network, Inc. (Upstart), Climb Credit, College Ave., Earnest, and Social Finance Inc. (SoFi)—and one respondent, Measure One, is a company that offers its proprietary credit scoring model to lenders or credits to make credit determinations. We are attaching to this letter a review that details our findings, recommendations, and the responses from each of the six companies.

As discussed in greater detail in the attached review, we identified two underwriting practices that create significant risk of unlawful discrimination in violation of federal fair lending laws. First, one of the respondents (Upstart) considers the school an applicant attended to determine creditworthiness. This is the same type of practice that the CFPB and other federal regulators have found can result in discrimination against minority borrowers.<sup>1</sup> Second, a different respondent (Climb Credit) uses the applicant’s anticipated income for their major or program to

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<sup>1</sup> See CFPB Report: Private Student Loans (Aug. 29, 2012) at 79-80 (assessing an applicant’s creditworthiness based on the cohort default rate (CDR) of the applicant’s school may have a disparate impact on minority borrowers), *available at* [https://files.consumerfinance.gov/f/201207\\_cfpb\\_Reports\\_Private-Student-Loans.pdf](https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf); *In re Sallie Mae Bank*, Consent Order, No. FDIC-13-0366b, FDIC-13-0367k (filed May 13, 2014) (FDIC found that use of CDR in credit-scoring model violated ECOA), *available at* <https://www.fdic.gov/news/news/press/2014/salliemae.pdf>.

determine creditworthiness. Several studies have found that this practice can result in discrimination against minority as well as women borrowers.<sup>2</sup>

While the CFPB should encourage financial institutions to increase access to financial services—particularly for the nonbanked or underbanked—the use of non-individualized data raises fair lending concerns. The risk of discrimination arises because the lender is not evaluating the applicant based on their own characteristics, but instead based on the characteristics of other students at their school or who were in the same major or program.

In addition, our review found significant differences in the programs the respondents have in place to ensure compliance with fair lending laws. For example, one respondent indicated that it did not conduct any testing to determine whether its underwriting practices have a disparate impact on applicants based on a protected class. Without an adequate fair lending compliance program in place—including written policies and procedures, training, and testing—companies are at increased risk of engaging in discriminatory lending practices and violating fair lending laws.

The attached review includes specific recommendations for action the CFPB should take to address each of these three fair lending risk areas. In particular, we want to highlight our recommendation that the CFPB should not issue “No Action” letters related to ECOA to any lender or company. We are highly skeptical that the CFPB should provide such prospective immunity from consumer protection laws to any company—and even more so under ECOA, where Black and brown borrowers unwillingly serve as the test subjects.

Finally, we renew our call for you to reverse your and Mr. Mulvaney’s decision to strip the CFPB’s Office of Fair Lending of its supervisory and enforcement duties. When Congress created the CFPB, we specifically charged the Director with creating an Office Of Fair Lending to “provid[e] oversight and enforcement” of Federal fair lending laws and required this Office to submit an annual report to Congress detailing the CFPB’s efforts to “fulfill its fair lending mandate.”<sup>3</sup> The findings of our review highlight how important it is that the CFPB have a dedicated office with the necessary resources and expertise to rooting out redlining and other forms of illegal discrimination.

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<sup>2</sup> See, e.g., See Dowse B. Rustin IV, Neil E. Grayson, Kiersty M. Degroote, *Pricing Without Discrimination, Alternative Student Loan Pricing, Income Share Agreements, and the Equal Credit Opportunity Act*, AEI (Feb. 2017), available at <https://www.aei.org/wp-content/uploads/2017/02/Pricing-Without-Discrimination.pdf>; see also Jonathan D. Glater. Law School, Debt, and Discrimination. *Journal of Legal Education*, Volume 68, Number 3. Spring 2019. <https://jle.aals.org/cgi/viewcontent.cgi?article=1632&context=home>; Jen Mishory. *Private ISA Student Loans Highlight Consumer Protection Challenges*. The Century Foundation. (Aug. 22, 2019), available at <https://tcf.org/content/commentary/private-isa-student-loans-highlight-consumer-protection-challenges/>.

<sup>3</sup> 12 U.S.C. § 5493(c).

Thank you in advance for your attention to the issues we have raised in this letter and in the attached review.

Sincerely,



Sherrod Brown  
United States Senator



Elizabeth Warren  
United States Senator



Kamala D. Harris  
United States Senator