United States Senate

WASHINGTON, DC 20510

February 13, 2020

Angela Ceresnie
CEO
Climb Credit
133 W. 19th St., 4th floor
New York, NY 10011

Dear Ms. Ceresnie:

We write to express concern about a recent report that found lenders' use of educational data to make credit determinations could have a disparate impact on borrowers of color. While we encourage lenders to innovate to improve access to credit—particularly for marginalized borrowers who have been shut out of the credit system—all lenders must ensure that their underwriting practices comply with fair lending laws.

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction.[1] Under the statute, lenders can be liable if they treat applicants differently based on a prohibited basis, such as race or national origin.[2] In addition, lenders can also be liable if their practices have a disproportionate impact on a protected class.[3]

For years, regulators have raised concerns that lenders' use of educational data to make credit decisions could result in discrimination against minority borrowers.[4] In 2007, then New York Attorney General Andrew Cuomo criticized private student lenders' consideration of a student's school in determining creditworthiness and described the practice as "educational redlining."[5] In

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[1] *See* 15 U.S.C. § 1691(a)(1) (prohibiting discrimination on the basis of race, color, religion, national origin, sex or marital status, age, because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act).

[2] 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1; 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1. "Disparate treatment" may be "overt" (when the creditor openly discriminates on a prohibited basis) or it may be found by comparing the treatment of applicants who receive different treatment for no discernable reason other than a prohibited basis. In the latter case, it is not necessary that the creditor act with any specific intent to discriminate.

[3] *See* 12 C.F.R. pt. 1002, Supp. 1, § 1002.6, ¶ 6(a)-2.

[4] In addition, according to a recent article, private student lenders that are members of the Consumer Bankers Association do not use alternative underwriting standards due to the risk of discriminating against borrowers. *See* https://www.marketwatch.com/story/consumer-advocates-worry-your-college-major-could-affect-your-ability-to-get-a-loan-2019-07-24.

[5] *See* https://www.nytimes.com/2007/06/19/us/19loans.html?_r=1&oref=slogin. He also specifically criticized one lender that "divided colleges into groups based on how their alumni repaid federally subsidized loans . . . ." *Id.*

a 2012 report, the Consumer Financial Protection Bureau (Bureau) investigated private student lenders' use of a "cohort default rate" (CDR)—which measures the rate at which students at a given institution default on their student loans—when determining creditworthiness.[6] The Bureau found that the "[u]se of CDR to determine loan eligibility, underwriting, and pricing may have a disparate impact on minority students by reducing their access to credit and requiring those minority students . . . to pay higher rates than are otherwise available to similarly creditworthy non-Hispanic White students at schools with lower CDRs."[7] And in 2014, the FDIC brought an enforcement action against Sallie Mae Bank and Navient Solutions Inc., which found that use of CDR in their credit-scoring model for the pricing of private student loans violated ECOA.[8]

On February 5, 2020, the Student Borrower Protection Center issued a report finding that Upstart Network Inc.'s (Upstart) use of educational data resulted in borrowers who had graduated from Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs) paying more in interest and fees than similarly situated borrowers who graduated from non-minority serving institutions.[9] For example, the report found that a graduate of Howard University, an HBCU, would be charged $3,499 more over the life of five-year loan than a similarly situated graduate of New York University. Based on the racial demographics at these schools,[10] these findings raise serious concerns that Upstart's use of educational data may have a disparate impact on borrowers of color.

Upstart has stated that it does not consider the specific school that a student attended when determining creditworthiness.[11] But the company has acknowledged that its underwriting model considers "groups of schools that have similar economic outcomes and educational characteristics."[12] In other words, Upstart appears to be assessing creditworthiness based on non-individualized factors, which the CFPB, FDIC, and New York Attorney General have found raise fair lending concerns.

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[8] *In re Sallie Mae Bank*, Consent Order, No. FDIC-13-0366b, FDIC-13-0367k (filed May 13, 2014), available at https://www.fdic.gov/news/news/press/2014/salliemae.pdf.
[9] https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf.
[10] According to the Student Borrower Protection Center data from the U.S. Department of Education, 89 percent of students at Howard University are African American, while African Americans and Latinos the comprise less than 20 percent of the students at NYU. *See* https://protectborrowers.org/new-report-finds-educational-redlining-penalizes-borrowers-who-attended-community-colleges-and-minority-serving-institutions-perpetuates-systemic-disparities/.
[11] *See* https://www.upstart.com/blog/upstarts-commitment-to-fair-lending.
[12] *Id.*

So that we can better understand if and how Climb Credit has used educational data to make credit determinations, as well as how your company tests for and demonstrates compliance with fair lending laws, we request that Climb Credit provide responses to the following questions by February 28, 2020:

1. Describe how Climb Credit tests whether its credit determinations have a disparate impact on borrowers of a protected class under ECOA, and the results of any such testing.
2. Describe how your company uses educational data as part of its loan underwriting model, including:
    a. A description of how the underwriting model considers an applicant's specific institution of higher education;
    b. A description of how the underwriting model considers an applicant's institution of higher education as part of a group of institutions of higher education; or
    c. Identify any describe how the underwriting model considers any other non-individualized data points.
3. If your company's underwriting model considers the applicant's institution of higher education as part of a group of institutions of higher education, please provide a chart identifying each grouping and the institutions of higher education within each grouping.
4. If your company uses educational data in its loan underwriting model, please provide the following information[13]:
    a. State your company's loan approval and denial rates for loans made using non-individualized education data in the underwriting process;
    b. State your company's loan approval and denial rates where the applicant indicates they attended a higher education institution enrolling populations with significant percentages of minority students[14];
    c. State your company's loan approval and denial rates where the applicant indicates they attended a higher education institution other than one that does not enrolling populations with significant percentages of minority students;
    d. State your company's loan approval and denial rate where an applicant indicates that they attended community college;
    e. State your company's loan approval and denial rates where an applicant indicates that they attended an institution of higher education other than a community college;
    f. Your company's interest rate spread (25th percentile, median, 75th percentile) for loans made using individualized education data (*e.g.*, school, school grouping, major) in the underwriting process; and

[13] Please provide the loan approval and denial rate data in both dollars lent and borrowers served.
[14] *See* U.S. Department of Education Lists of Postsecondary Institutions Enrolling Populations with Significant Percentages of Undergraduate Minority Students, U.S. Dep't of Educ., *available at* https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.

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j. Your company's interest rate spread (25th percentile, median, 75th percentile) where an applicant indicates that they attended an institution of higher education other than a community college.

5. State whether your company licenses its underwriting model that considers educational data to other lenders, and if so, identify each such lender.

Thank you for your attention to this important matter. Please contact Jan Singelmann, Counsel for the Senate Committee on Banking, Housing, and Urban Affairs, at Jan_Singelmann@banking.senate.gov with any questions or concerns.

Sincerely,

Sherrod Brown
U.S. Senator

Elizabeth Warren
U.S. Senator

Robert Menendez
U.S. Senator

Cory Booker
U.S. Senator

Kamala D. Harris
U.S. Senator

February 13, 2020

Joseph DePaulo
CEO
College Ave Student Loans
234 1st Street
San Francisco, CA 94105

Dear Mr. DePaulo:

We write to express concern about a recent report that found lenders' use of educational data to make credit determinations could have a disparate impact on borrowers of color. While we encourage lenders to innovate to improve access to credit—particularly for marginalized borrowers who have been shut out of the credit system—all lenders must ensure that their underwriting practices comply with fair lending laws.

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction.[1] Under the statute, lenders can be liable if they treat applicants differently based on a prohibited basis, such as race or national origin.[2] In addition, lenders can also be liable if their practices have a disproportionate impact on a protected class.[3]

For years, regulators have raised concerns that lenders' use of educational data to make credit decisions could result in discrimination against minority borrowers.[4] In 2007, then New York Attorney General Andrew Cuomo criticized private student lenders' consideration of a student's school in determining creditworthiness and described the practice as "educational redlining."[5] In

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a 2012 report, the Consumer Financial Protection Bureau (Bureau) investigated private student lenders' use of a "cohort default rate" (CDR)—which measures the rate at which students at a given institution default on their student loans—when determining creditworthiness.[6] The Bureau found that the "[u]se of CDR to determine loan eligibility, underwriting, and pricing may have a disparate impact on minority students by reducing their access to credit and requiring those minority students . . . to pay higher rates than are otherwise available to similarly creditworthy non-Hispanic White students at schools with lower CDRs."[7] And in 2014, the FDIC brought an enforcement action against Sallie Mae Bank and Navient Solutions Inc., which found that use of CDR in their credit-scoring model for the pricing of private student loans violated ECOA.[8]

On February 5, 2020, the Student Borrower Protection Center issued a report finding that Upstart Network Inc.'s (Upstart) use of educational data resulted in borrowers who had graduated from Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs) paying more in interest and fees than similarly situated borrowers who graduated from non-minority serving institutions.[9] For example, the report found that a graduate of Howard University, an HBCU, would be charged $3,499 more over the life of five-year loan than a similarly situated graduate of New York University. Based on the racial demographics at these schools,[10] these findings raise serious concerns that Upstart's use of educational data may have a disparate impact on borrowers of color.

Upstart has stated that it does not consider the specific school that a student attended when determining creditworthiness.[11] But the company has acknowledged that its underwriting model considers "groups of schools that have similar economic outcomes and educational characteristics."[12] In other words, Upstart appears to be assessing creditworthiness based on non-individualized factors, which the CFPB, FDIC, and New York Attorney General have found raise fair lending concerns.

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[11] *See* https://www.upstart.com/blog/upstarts-commitment-to-fair-lending.
[12] *Id.*

So that we can better understand if and how College Ave Student Loans (College Ave) has used educational data to make credit determinations, as well as how your company tests for and demonstrates compliance with fair lending laws, we request that College Ave provide responses to the following questions by February 28, 2020:

1. Describe how College Ave tests whether its credit determinations have a disparate impact on borrowers of a protected class under ECOA, and the results of any such testing.
2. Describe how your company uses educational data as part of its loan underwriting model, including:
    a. A description of how the underwriting model considers an applicant's specific institution of higher education;
    b. A description of how the underwriting model considers an applicant's institution of higher education as part of a group of institutions of higher education; or
    c. Identify any describe how the underwriting model considers any other non-individualized data points.
3. If your company's underwriting model considers the applicant's institution of higher education as part of a group of institutions of higher education, please provide a chart identifying each grouping and the institutions of higher education within each grouping.
4. If your company uses educational data in its loan underwriting model, please provide the following information[13]:
    a. State your company's loan approval and denial rates for loans made using non-individualized education data in the underwriting process;
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    c. State your company's loan approval and denial rates where the applicant indicates they attended a higher education institution other than one that does not enrolling populations with significant percentages of minority students;
    d. State your company's loan approval and denial rate where an applicant indicates that they attended community college;
    e. State your company's loan approval and denial rates where an applicant indicates that they attended an institution of higher education other than a community college;
    f. Your company's interest rate spread (25th percentile, median, 75th percentile) for loans made using individualized education data (*e.g.*, school, school grouping, major) in the underwriting process; and

[13] Please provide the loan approval and denial rate data in both dollars lent and borrowers served.
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5. State whether your company licenses its underwriting model that considers educational data to other lenders, and if so, identify each such lender.

Thank you for your attention to this important matter. Please contact Jan Singelmann, Counsel for the Senate Committee on Banking, Housing, and Urban Affairs, at Jan_Singelmann@banking.senate.gov with any questions or concerns.

Sincerely,

Sherrod Brown
U.S. Senator

Elizabeth Warren
U.S. Senator

Robert Menendez
U.S. Senator

Cory Booker
U.S. Senator

Kamala D. Harris
U.S. Senator

United States Senate
WASHINGTON, DC 20510

February 13, 2020

Anthony Noto
CEO
Social Finance, Inc.
234 1st Street
San Francisco, CA 94105

Dear Mr. Noto:

We write to express concern about a recent report that found lenders' use of educational data to make credit determinations could have a disparate impact on borrowers of color. While we encourage lenders to innovate to improve access to credit—particularly for marginalized borrowers who have been shut out of the credit system—all lenders must ensure that their underwriting practices comply with fair lending laws.

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[11] *See* https://www.upstart.com/blog/upstarts-commitment-to-fair-lending.
[12] *Id.*

So that we can better understand if and how Social Finance, Inc. (SoFi) has used educational data to make credit determinations, as well as how your company tests for and demonstrates compliance with fair lending laws, we request that SoFi provide responses to the following questions by February 28, 2020:

1. Describe how SoFi tests whether its credit determinations have a disparate impact on borrowers of a protected class under ECOA, and the results of any such testing.
2. Describe how your company uses educational data as part of its loan underwriting model, including:
    a. A description of how the underwriting model considers an applicant's specific institution of higher education;
    b. A description of how the underwriting model considers an applicant's institution of higher education as part of a group of institutions of higher education; or
    c. Identify any describe how the underwriting model considers any other non-individualized data points.
3. If your company's underwriting model considers the applicant's institution of higher education as part of a group of institutions of higher education, please provide a chart identifying each grouping and the institutions of higher education within each grouping.
4. If your company uses educational data in its loan underwriting model, please provide the following information[13]:
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5. State whether your company licenses its underwriting model that considers educational data to other lenders, and if so, identify each such lender.

Thank you for your attention to this important matter. Please contact Jan Singelmann, Counsel for the Senate Committee on Banking, Housing, and Urban Affairs, at Jan_Singelmann@banking.senate.gov with any questions or concerns.

Sincerely,

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U.S. Senator

Elizabeth Warren
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Robert Menendez
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Cory Booker
U.S. Senator

Kamala D. Harris
U.S. Senator

February 13, 2020

Susan Ehrlich
CEO
Earnest Inc.
303 2nd Street, Suite 401N
San Francisco, CA 94107

Dear Ms. Ehrlich:

We write to express concern about a recent report that found lenders' use of educational data to make credit determinations could have a disparate impact on borrowers of color. While we encourage lenders to innovate to improve access to credit—particularly for marginalized borrowers who have been shut out of the credit system—all lenders must ensure that their underwriting practices comply with fair lending laws.

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Upstart has stated that it does not consider the specific school that a student attended when determining creditworthiness.[11] But the company has acknowledged that its underwriting model considers "groups of schools that have similar economic outcomes and educational characteristics."[12] In other words, Upstart appears to be assessing creditworthiness based on non-

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[5] *See* https://www.nytimes.com/2007/06/19/us/19loans.html?_r=1&oref=slogin. He also specifically criticized one lender that "divided colleges into groups based on how their alumni repaid federally subsidized loans . . . ." *Id.*
[6] CFPB Report: Private Student Loans (Aug. 29, 2012) at 79-80, *available at* https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.
[7] *Id.* at 80.
[8] *In re Sallie Mae Bank*, Consent Order, No. FDIC-13-0366b, FDIC-13-0367k (filed May 13, 2014), available at https://www.fdic.gov/news/news/press/2014/salliemae.pdf.
[9] https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf.
[10] According to the Student Borrower Protection Center data from the U.S. Department of Education, 89 percent of students at Howard University are African American, while African Americans and Latinos the comprise less than 20 percent of the students at NYU. *See* https://protectborrowers.org/new-report-finds-educational-redlining-penalizes-borrowers-who-attended-community-colleges-and-minority-serving-institutions-perpetuates-systemic-disparities/.
[11] *See* https://www.upstart.com/blog/upstarts-commitment-to-fair-lending.
[12] *Id.*

individualized factors, which the CFPB, FDIC, and New York Attorney General have found raise fair lending concerns.

So that we can better understand if and how Earnest Inc. (Earnest) has used educational data to make credit determinations, as well as how your company tests for and demonstrates compliance with fair lending laws, we request that Earnest provide responses to the following questions by February 28, 2020:

1. Describe how Earnest tests whether its credit determinations have a disparate impact on borrowers of a protected class under ECOA, and the results of any such testing.
2. Describe how your company uses educational data as part of its loan underwriting model, including:
    a. A description of how the underwriting model considers an applicant's specific institution of higher education;
    b. A description of how the underwriting model considers an applicant's institution of higher education as part of a group of institutions of higher education; or
    c. Identify any describe how the underwriting model considers any other non-individualized data points.
3. If your company's underwriting model considers the applicant's institution of higher education as part of a group of institutions of higher education, please provide a chart identifying each grouping and the institutions of higher education within each grouping.
4. If your company uses educational data in its loan underwriting model, please provide the following information[13]:
    a. State your company's loan approval and denial rates for loans made using non-individualized education data in the underwriting process;
    b. State your company's loan approval and denial rates where the applicant indicates they attended a higher education institution enrolling populations with significant percentages of minority students[14];
    c. State your company's loan approval and denial rates where the applicant indicates they attended a higher education institution other than one that does not enrolling populations with significant percentages of minority students;
    d. State your company's loan approval and denial rate where an applicant indicates that they attended community college;
    e. State your company's loan approval and denial rates where an applicant indicates that they attended an institution of higher education other than a community college;

[13] Please provide the loan approval and denial rate data in both dollars lent and borrowers served.
[14] *See* U.S. Department of Education Lists of Postsecondary Institutions Enrolling Populations with Significant Percentages of Undergraduate Minority Students, U.S. Dep't of Educ., *available at* https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.

f. Your company's interest rate spread (25th percentile, median, 75th percentile) for loans made using individualized education data (*e.g.*, school, school grouping, major) in the underwriting process; and

g. Your company's interest rate spread (25th percentile, median, 75th percentile) where an applicant indicates that he or she attended an institution of higher education enrolling populations with significant percentages of undergraduate minority students.

h. Your company's interest rate spread (25th percentile, median, 75th percentile) where an applicant indicates that they attended an institution of higher education other than one enrolling populations with significant percentages of undergraduate minority students.

i. Your company's interest rate spread (25th percentile, median, 75th percentile) where an applicant indicates that they attended a community college; and

j. Your company's interest rate spread (25th percentile, median, 75th percentile) where an applicant indicates that they attended an institution of higher education other than a community college.

5. State whether your company licenses its underwriting model that considers educational data to other lenders, and if so, identify each such lender.

Thank you for your attention to this important matter. Please contact Jan Singelmann, Counsel for the Senate Committee on Banking, Housing, and Urban Affairs, at Jan_Singelmann@banking.senate.gov with any questions or concerns.

Sincerely,

Sherrod Brown
U.S. Senator

Elizabeth Warren
U.S. Senator

Robert Menendez
U.S. Senator

Cory Booker
U.S. Senator

Kamala D. Harris
U.S. Senator