

**Comments by the U.S. Public Interest Research Group (USPIRG) and the Center for Digital Democracy (CDD) on “Expanding Access to Credit through Online Marketplace Lending.” U.S. Department of the Treasury RFI. [FR Doc. 2015–17644 Billing code 4810–25–P4810-25-P Docket #RFI, TREAS-DO-2015-0007-0001.] September 30, 2015**

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U.S. Public Interest Research Group (USPIRG) and the Center for Digital Democracy (CDD) are pleased to submit these responses to the RFI issued by the Department of the Treasury. Our two organizations have been closely analyzing the online consumer financial services marketplace for several years.<sup>1</sup>

**Introduction**

The emergence of digital platforms that provide new or expanded forms of financial services, including for lending and credit, is an important development. Consumers and small businesses now have additional options when seeking loans, where the promise of cost savings and greater efficiency because of their primarily online platform-based operations can be an important source of capital for the public.<sup>2</sup> USPIRG and CDD believe, however, that the “technology-enabled credit provisioning” marketplace should not be uncritically viewed as a panacea, especially for financially underserved and economically at-risk Americans.<sup>3</sup>

We strongly advise against granting new entrants any “safe harbors” or other special treatment from fair lending or credit laws. Any marketplace efficiencies they obtain should not be at the expense of treating consumers fairly. USPIRG and CDD call on the Department of the Treasury to work with other agencies to propose or implement rules that integrate the online lending sector within the financial services regulatory sector.

We also concur with the excellent comments from our colleagues at Americans for Financial Reform and several of its member organizations. AFR is the leading civil society coalition comprised of consumer, labor, civil rights, senior, community and other organizations seeking to protect consumers in the financial marketplace. While our comments focus on describing the complexity of the digital financial system and making that point that the new online entrants are not special, we note the following highlights of our colleagues’ comments.

- Americans for Financial Reform explains concerns about “skin in the game.”
- Center for Responsible Lending emphasizes consumer protection, including the need for online lenders to comply with state laws.
- National Consumer Law Center emphasizes consumer protection, including concerns about shoddy underwriting and about the mandatory or default use of preauthorized electronic payments, in violation of the letter or spirit of the Electronic Fund Transfer Act.
- The Woodstock Institute also emphasizes a variety of consumer protection and fair lending issues, including the need for government to protect small businesses from unfair lending practices.

The online lending marketplace, including so-called “peer-to-peer” services, is undergoing a key transformation, raising important policy and consumer-protection concerns that require regulatory action. The distinctions commonly discussed to contrast so-called marketplace lending with the legacy financial lending sector are not the correct framework to address the role that the impact of digital technologies have had on both credit services companies and consumer or small-business applicants. As a Morgan Stanley report recently explained, the term “peer-to-peer is a misnomer. Conventional wisdom underestimates the importance of institutional funding, which is turbocharging originations and broadening the target market.”<sup>4</sup> Traditional financial players are contributing a significant source of lending capital for the online loan industry as well as providing analytic solutions for credit assessment and underwriting.<sup>5</sup> Online lending is also still a very small part of the overall consumer and small-business loan marketplace, with merely a 1.1 percent of total 2014 U.S. consumer unsecured loan originations and 2.1 percent of U.S. small business loans.<sup>6</sup> Two online lenders—Lending Club and Prosper—provide 80 percent of the unsecured consumer loans.<sup>7</sup>

Nor is there concrete evidence that the Internet-based business model (such as “6 clicks”) is the key reason why borrowers may prefer to use online lenders.<sup>8</sup> Many of the digital technologies and processes embraced by online lenders, and often seen as exclusive to that sub-sector of the industry, are being adopted across the financial marketplace.<sup>9</sup> The growth of online lending has, in part, been due to consumer anger and distrust over the way they were treated by the mainstream financial institutions that led to the recent economic crisis. As a recent report on peer-to-peer lending explained, “[T]he collapse of the financial system starting in 2008 shattered public confidence in the traditional intermediaries of the financial system—the regulated banks.”<sup>10</sup> The need for greater regulatory accountability demanded by the public as a result of the recent financial crisis, and regulations enacted to protect the public (such as those implemented by the CFPB and on higher capital requirements for large banks under Dodd-Frank) have enabled non-bank marketplace lenders—who do not have to comply with these safeguards—to find a profitable niche making loans to consumers who seek to address high credit-card balances.<sup>11</sup>

As for claims of being a new source that can support the needs of low-income or underbanked consumers, we note that the majority of loans are going to consumers who already have “prime” ratings.<sup>12</sup> Rather than a significant source of new funds for those Americans who seek greater credit opportunities, such as those considered near-prime and underbanked, online lending has primarily served consumers with high credit card balances seeking to refinance their loans.<sup>13</sup> As Treasury knows, support to offer credit to “near prime” and “underbanked consumers is growing across the industry overall because it is now recognized as a very lucrative market that generates much sought-after growth by many financial services companies.<sup>14</sup>

### **Need to Protect Consumer and Small Business Privacy**

Among the most challenging issues confronting consumers and other borrowers are new threats to their privacy and the ability to control how data are collected and used by online financial services companies. Online lenders and other financial services

companies use an array of “Big Data”-driven digital applications, including lead generation, credit modeling, and decision tools to “tap into the explosive growth of online, social and internal data to make better customer decisions.”<sup>15</sup> A wide and growing range of data sources is being used, including information related to a consumer’s social media and mobile device use, for example.<sup>16</sup> Data sources used for identity verification and fraud can be combined with far-reaching data profiling and targeting capabilities by online lenders and others.<sup>17</sup> Online marketing and underwriting decision processes can operate in a non-transparent manner, using so-called “Black Box” structured and unstructured data sets and algorithmic techniques that require safeguards.<sup>18</sup> There is an unfortunate irony that many of the online lenders tout the role that the Internet plays in providing advantages for prospective borrowers, but fail to provide details on how they gather and use data for identifying prospects and for the credit-approval process. Given the lack of privacy protections online for American consumers, with their data freely gathered across devices by databrokers and many others, and the increasing expenditure of the financial services industry to use this information for “actionable” purposes, a key challenge for the Treasury Department is to propose a national consumer and small-business framework to protect privacy related to the online lending and related credit and lending sectors.<sup>19</sup>

### **Regulators Should Examine Use of Automatic Withdrawal and Other Practices in Online Lending**

We also recommend that regulators look at emerging consumer-protection problems and issues in the online marketplace, especially those related to automated clearinghouse transactions and payment processing:

- A recent *New York Times* story on online lending pointed to how peer-to-peer lenders may take advantage of the benefits to them of automatic electronic withdrawals and may not clearly and transparently offer consumers the alternate choice of paying by check.<sup>20</sup>
- According to its website, one firm, Lending Club, charges \$15 for each of up-to-three attempts to make an automatic withdrawal while having insufficient funds; it also charges \$7 for each check payment.<sup>21</sup>
- A recent report by the Pew Trusts, “Fraud and Abuse Online: Harmful Practices in Internet Payday Lending,” documents a variety of actions by small-dollar online lenders and cited by state regulators, but which may also be prevalent in larger loans.<sup>22</sup>
- In August, the Consumer Financial Protection Bureau fined a unit of Lending Club \$700,000 “in relief to victims of deceptive credit enrollment tactics. . . . In some cases, dental office staff told consumers that the deferred-interest product was a ‘no-interest’ loan and failed to mention they would have to pay 22.98 percent interest on the loan if they didn’t pay it off in full by the end of the promotional period.”<sup>23</sup>

USPIRG and CDD urge the Treasury Department to work with regulators from CFPB, FTC and other relevant federal agencies to help it identify the appropriate regulatory framework that empowers consumers and small-business borrowers, ensuring fair

marketing practices, transparency, and accountability.<sup>24</sup> A full public accounting on the use of “alternative data” sources and how they are analyzed to make credit decisions is also required. Such alternative data practices have already been criticized by experts for the potential to negatively impact a fair evaluation of credit.<sup>25</sup> Both the industry and the public need to be assured of regulatory certainty.

## **USPIRG and CDD offer responses to the following questions posed in Treasury’s RFI.**

### **1. Concerning online lending marketplace models:**

Rather than examine the online lending industry as a distinct sector, it is important to acknowledge that the entirety of the financial services industry, including credit and lending, increasingly operates digitally. Consumers are engaging with their banks and lenders via the Internet, especially using mobile devices.<sup>26</sup> Financial services companies, including online lenders, are investing and relying on “cloud-based” services to manage operations, acquiring back- and front-end technologies and adjusting their business models for today’s “always-on” digital customer.<sup>27</sup> Advances in propensity and risk modeling, for example, are being used across the financial services sector.<sup>28</sup> Lenders recognize that they must continuously connect with consumers, including current clients and potential customers, through the use of sophisticated insight-driven “Data Management Platforms” that operate across all channels of communication.<sup>29</sup> Last year, Chase acquired “56% of their credit card customers through digital channels.” On the other hand, so-called online lenders are using “offline” tactics—such as direct mail—as they consciously compete for customers with “traditional lenders.”<sup>30</sup> There are a number of banking and marketplace lender alliances and partnerships, which also illustrate the growing relationships within the finance sector.<sup>31</sup>

While new entrants to online lending have a number of economic advantages over legacy incumbents, such as the cost efficiencies associated with operating solely as a digital platform, we suggest that the distinctions are less significant. The cost efficiencies often claimed as a differentiating attribute of the online lending industry are challenged by the fixed and ever-growing costs for customer-acquisition-related marketing.<sup>32</sup> As we will discuss, consumers are identified as prospects and can be serviced online using the same basic “formulas” that are the foundation of the digital commercial sector.<sup>33</sup> Information on consumers is gathered, increasingly via a consolidating databroker sector, to engage in cross-device and offline and online targeting.<sup>34</sup> Forms of online lead generation are used to identify potential customers and their interest in a product or service.<sup>35</sup> Consumers are tracked online, to assess them as prospects, relying on similar technologies and with the involvement of major online marketing platforms.<sup>36</sup> Investments must be made for in-house or cloud-based data-processing services.<sup>37</sup>

In addition to significant investments for improving in-house digital capabilities, the U.S. financial services industry overall is increasing spending for digital marketing—and is now the second-largest category (after retail). eMarketer reports a 14.5 percent increase for spending for 2015, totaling \$7.19 billion, and predicts an annual 11.7 percent growth

rate until 2019. For example, \$3.40 billion alone is being spent on search marketing to identify customers in-market for loans or credit cards. Nearly the same amount is being used to run mobile device ads promoting financial products and services. Significantly, financial services companies are now spending the majority of their online display ad budgets (\$3.02 billion) via consumer-data-profile-driven intelligent targeting, known as “programmatic.”<sup>38</sup> We believe that the data-gathering and analytical practices conducted by various parts of the overall financial services industry, from legacy banks to online lenders, will coalesce into a set of market-wide practices. That’s why it’s important for Treasury to develop a holistic analysis on the operations of the digital-lending landscape.

## **2. Electronic data sources and online lending:**

Online lenders use traditional data sources, such as FICO, as well as many other sources, including online.<sup>39</sup> For example, Morgan Stanley recently noted in its online lending report that “marketplace lenders are using online data from sources such as Facebook, Google, and shopping trends on various websites.” Companies providing automated loan underwriting “engines” enable the integration of social media and other non-traditional data, including from Yelp and Linked-In.<sup>40</sup> Traditional databrokers for the financial industry, which have literally unlimited sources of both online and offline data on consumers, now provide decision-making tools for the online lending industry.<sup>41</sup> The availability of continuous, analyzed, and optimized offline and online data about individuals, including their use of multiple digital devices, is a major factor in customer acquisition.<sup>42</sup> How such data are used and what their relationship to consumer loan underwriting is are questions that both require greater scrutiny.

As noted by the Data & Society Institute in its primer on peer-to-peer lending,

“little research exists on the fairness and potential perils of the ... industry. ... [T]his model for lending ... has changed drastically in the last few years as more intermediaries become involved in the loan funding process. As a result, there are more unknowns with regards to how peer-to-peer lending operates. ... Little is known, for example, about the demographics of borrowers or individual lenders.”<sup>43</sup>

We urge Treasury to work with other financial regulators to request that online lenders identify all the sources of data used for both marketing and underwriting, the processes used to analyze them, and how they are applied for specific products and services.

We do not believe that “black-box” data sources and algorithms should have a role in the consumer financial marketplace—there must be transparency, access to information, and the ability to correct and other fair practices assured.<sup>44</sup> Oversight and regulation are required to ensure that online lenders are complying with the Fair Credit Reporting Act, the Equal Credit Opportunity Act, and other important laws designed to prevent discrimination and foster accountability.<sup>45</sup>

### **3. Online marketplace lending models:**

Online lenders offer a range of consumer products, from potentially more affordable credit and loan terms to those that can incorporate high interest and/or fees.<sup>46</sup> Online lending is expanding into other markets, such as for autos, mortgages, and student loans. As with traditional banking, we believe that overall business models for differentiated loan products are broadly similar, relying on a variety of traditional direct mail and Internet-centric practices such as search engine optimization, lead generation, social media, content, and affiliate marketing.<sup>47</sup>

We urge Treasury and other regulators to expressly address lending practices where there is evidence of “price discrimination,” denying worthy applicants the opportunity to seek affordable credit terms. We are especially concerned about the college loan market. Social Finance (SoFi), for example, which is identified as the “#1 provider of student loan financing” outside of the government, “uses an aggressive social media strategy that specifically targets students at top schools.” Such an approach is said to provide the company with “more creditworthy (individuals) than the average student borrower.”<sup>48</sup> How SoFi and others may cherry-pick borrowers based on whether they are assessed as potential high-earning individuals raises questions about fairness and the credit scoring process used to determine who will receive funding.

### **4. Is marketplace lending expanding access to credit to historically underserved market segments:**

We believe additional research is required to answer this question. There has been a movement by the financial sector to take advantage of the revenues that can be generated serving “emerging” or underbanked consumers.<sup>49</sup> Online lending tends to favor consumers who have access to credit, making it more difficult for those with “thin files” to be successful in pursuit of loans.<sup>50</sup>

As Experian noted, the interest in targeting the underbanked and near-prime consumers is connected to the financial industry’s “growth objectives in the new credit environment.” Intense competition to serve the prime market, responses to new laws designed to empower consumers, and demographic shifts have fostered interest in serving consumers in the “lower score ranges.”<sup>51</sup> There are also some alliances among traditional and online lending services to provide additional credit opportunities for low-income consumers.<sup>52</sup> It is too early to say whether the underwriting models created by the online lending sector will expand credit to those who need it most.

### **5. Describe the customer acquisition process for online marketplace lenders:**

While additional lines of credit are being offered to American consumers, the online financial sector often operates in ways that few consumers know about or can easily understand. The marketplace brings together three very powerful forces that are relatively new to the financial services area:

- First is the role of “Big Data” and other information analytic practices to identify an individual’s interests, background, online and offline behaviors, geo-location, social network connections, etc., which can be used to “score” and assess a person’s suitability for various financial products.
- Second is the rapid adoption of digital devices, especially “smart” phones, which allow both buyers and sellers to engage in “anytime, anywhere” transactions via multichannel media.
- Third is the leveraging of predictive and other forms of data and the interactive nature of digital communications to create a host of sophisticated online marketing formats offering personalized, ubiquitous, and often purposely “immersive” applications used by the financial services industry.<sup>53</sup>

As we have previously discussed, online lenders are relying on traditional online and offline channels to identify new customers. As one industry observer explained, “marketplace lenders, like banks before them, are exploring every available channel and generally spending more to find borrowers than ever before,” using “paid search placement and agencies” to identify and target prospects. As with mainstream banks, a number of marketplace lenders “have teams of people” to manage the search marketing process. They are using “third party sites” to find leads as well, through forms of affiliate and lead-generation marketing.<sup>54</sup> Affiliate marketing by the online lending industry, including for loans for education and autos, should be further analyzed by Treasury and other regulators to address issues of fairness, transparency, and privacy.<sup>55</sup>

Companies such as SoFi rely on “multi-touch email campaigns to drive acquisition, cross sell and engagement.” Various digital strategies are used by SoFi and others to help “nurture” applicants as they interact with their websites and social media content.<sup>56</sup> Another educational lender—CommonBond—relies on paid search, search engine optimization, affiliate marketing, online display ads, and direct mail to acquire its “target audience of grad school alums of specific programs and current graduate school students.”<sup>57</sup>

Lenders utilize databrokers to profile prospects, including conducting a “household analysis” to determine what kind of banking products could be offered.<sup>58</sup> Prosper uses direct mail and online marketing techniques that include “audience optimization and data analytics.”<sup>59</sup> Online lenders work with digital marketing agencies, some of which specialize in serving that market, to develop lead-generation capabilities, social-media outreach, and measurement analytics.<sup>60</sup> For example, peer-to-peer lender Prosper’s affiliate program enables third-party sites to sign up to get “high payouts for leads with tiered bonuses” ranging from \$100-\$150 for a borrower to a \$50 payment if they secure a “lender lead.” Prosper provides “over 75 banner and text ads” that affiliates can run, which are linked to “different landing pages geared toward specific loan purposes.” Affiliates are sites that offer advertising and can be a blog, email services, etc., and are provided a “unique tracking link” so that a consumer is identified as being referred by a particular affiliate.<sup>61</sup> Prosper’s digital strategies include using marketing analytics to “identify new audiences and segments” and engaging in “cross-channel creative testing” related to segmentation targeting.<sup>62</sup> Prosper works with digital marketing company

Impact Radius on its affiliate program, which engages in a wide range of data analytics that illustrate how the privacy and consumer protection issues are raised by the use of digital marketing.<sup>63</sup> Other online lenders also have affiliate programs.<sup>64</sup>

Avant Credit Corporation, which “focuses on middle income consumer lending” (and which was co-founded by the former head of payday lender Enova), uses search-engine marketing, social-media advertising, and a broad range of digital analytics and optimization strategies to “drive high quality conversions” as part of its acquisition initiatives. Email, mobile apps, and direct mail are also used.<sup>65</sup> Mortgage online lender Realty Mogul acquires new customers via “online, print advertising, PR, and content/email marketing to generate leads,” as well as search-engine marketing utilizing “page keyword analysis efforts, identification and sourcing of key influencer(s) . . . .”<sup>66</sup>

USPIRG and CDD have previously written on the ways firms are replacing leads derived from the Fair Credit Reporting Act’s regulated pre-screening mechanism with a purportedly unregulated web-enabled targeting system characterized by databrokers, lead generators, and e-scorers.<sup>67</sup> Regulators need to examine the practices carefully to ensure compliance with laws. Even if the practices are nominally compliant, moving from a system, under FCRA, where the sharing and uses of financial profiles are strictly limited, to one where financial information is just one more element—although the core element—in a system of “secret-sauce” decision-making means consumers have fewer protections. The changes diminish transparency and other consumer protections that have historically accrued to financial information for decision-making, and thus deserve strict scrutiny.

## **6. How are borrowers assessed for their creditworthiness and repayment ability?**

We worry about the inclusion of racial and ethnic information and inferences that can be made that may discriminate against potential borrowers.<sup>68</sup> As we stated in the last paragraph of our response to Question 5, firms are replacing leads derived from the Fair Credit Reporting Act’s regulated pre-screening mechanism with an unregulated web-enabled targeting system characterized by databrokers, lead generators, and e-scorers. The changes diminish transparency and other consumer protections in the use of financial information for decision-making and deserve strict scrutiny. If underwriting is also based on these same, largely unregulated targeting techniques used to find leads, there would be real questions raised. Treasury needs to look at the “secret sauce” of the firms’ black-box algorithms to ensure that creditworthiness and ability to repay are based on appropriate, legal models, not alternative scoring systems that may not treat consumers fairly, or may serve as proxies for prohibited practices that threaten discrimination for protected classes.

## **9. What role should the Federal Government play in prudential and securities regulation?**

Online lenders require a coherent and effective form of regulation. Given their growing role providing financing in the areas that are critical to consumer welfare—such as education, autos, and home mortgages—online lenders need the same analysis and

oversight required of the traditional lending industry. The cost advantages that online lenders now enjoy because they do not have to demonstrate the range of regulatory compliance as their competitors is far outweighed by the need for Treasury and other financial regulators to protect the public from practices that could harm their economic security.

Treasury should work with other regulators and propose a new privacy framework to govern online financial services. Consumers require that their data be truly safe, and that they are able to make decisions about who can access or use that information. The roles that privacy policies play for online lenders are generally inadequate forms of protection. For example, online college loan lender Earnest says on its “how it works” webpage that “We do not sell your information. To complete your loan requests we may need to share information provided by you with our partners so that they can perform the requested services, but your information is never for sale. For more details, please see our [Privacy Policy](#).” Few consumers, of course, ever actually read or can understand privacy policies, as research demonstrates.<sup>69</sup> In the case of Earnest, if one clicks on the privacy policy link one will learn that the company has relationships with third parties such as advertisers that can gather a consumer’s data—and that the process for an individual to learn about—let alone stop—such a practices is both arcane and cumbersome. At the privacy page visitors will learn that:

*Earnest may allow third-party advertisers to use cookies on the Earnest site to collect the same type of information for the same purposes as Earnest does for itself. They may be able to associate the information they collect with other information they have about you from other sources. We do not necessarily have access to or control over the cookies they use, but you may be able to opt out of some of their practices by visiting the following links: [Network Advertising Initiative](#), [Omniure](#), [Aperture](#), [Digital Advertising Alliance](#), and [PrivacyChoice](#). Opting out does not prevent the display of advertisements to you. Earnest may also use certain remarketing services to advertise on third-party websites to previous visitors to our site. This means that we may advertise to previous visitors who haven’t completed a task on our site (like completing a loan application). This could be in the form of an advertisement on a search results page, or a site in the network of our remarketing partners... We may also outsource some of Earnest’s functions to third-party providers, such as data storage providers, platform administrators, credit bureaus, collection agencies, loan servicers, payment processing functions, and/or other services. We may share information from or about you with these third-party providers so that they can perform the requested services or complete your requests.*<sup>70</sup>

Other lenders and those providing online financial services also engage in data practices that require transparency and regulation. For example, many consumers use Paypal, which is both a lender and also a payment network.<sup>71</sup> But consumers are unlikely to know that PayPal also operates a “Media Network” where they can be targeted “across mobile, online and offline properties,” including when using PayPal’s own services—or that it partners with leading databrokers such as Axciom.<sup>72</sup> Online lenders, such as eLoan, are using state-of-the art online data-targeting applications—called programmatic advertising.<sup>73</sup>

These are merely a few examples of data-gathering and use practices from the online lending sector that illustrate why protecting consumer and applicant privacy for digitally based financial services should be a priority for Treasury and other regulators.

#### **10—Should lenders have “skin-in-the-game”?**

We concur with the detailed comment of Americans for Financial Reform in this docket. Excerpt:

“Those marketplace lenders who are funded through their own balance sheets and significant amounts of their own capital do of course have ‘skin-in-the-game’ and have incentives to properly monitor borrower ability to pay. However, potentially serious prudential concerns exist with regard to online platforms which are funded through lender purchase of pass-through notes intermediated by the platform, lines of credit from external financial institutions, loan sales, or other arrangements in which the final investor may find it difficult to properly monitor underwriting. In addition, even those marketplace lenders with balance sheet capital do not face minimum capital requirements applied to banks.”

#### **14. What are other key trends and issues that policymakers should be monitoring as this market continues to develop?**

Data security is a critical issue for both online lenders and their consumer and small-business borrowers. As Treasury knows, the massive amounts of data gathered daily on Americans—including highly personal and sensitive data—are increasingly vulnerable to cyber threats. While no means a unique issue for online lenders and other financial services companies, the capability of online lenders to robustly protect consumer and other borrower data must be ensured.<sup>74</sup> “Cloud” computing services and the safeguards used by online lenders and their vendors is an area that requires review. Treasury should work with other regulators to review the data-security practices of the online-lending sector and publicly report whether its practices are sufficiently robust.<sup>75</sup>

Online lenders, as well as the wider financial services industry, are rapidly developing their platforms for mobile devices. As the key digital communications platform, mobile phones are becoming the place where consumers and other borrowers seek and apply for loans and credit. Mobile platforms are purposely designed and tested to take advantage of their smaller screen size in order to facilitate business goals—such as encouraging a person to provide personal data or submit an application. The limitations of the mobile screen’s ability to provide easy-to-read and accessible information on terms and conditions, combined with a purposeful UX interface design strategy to generate applications, is an important “digital trust” issue that Treasury should address.<sup>76</sup>

## ENDNOTES

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<sup>1</sup> See, for example. <http://suffolklawreview.org/selling-consumers-not-lists/>

<sup>2</sup> [http://www.pwccn.com/home/eng/peer\\_to\\_peer\\_feb2015.html](http://www.pwccn.com/home/eng/peer_to_peer_feb2015.html). As noted by Morgan Stanley, “a key reason marketplace lenders are able to operate with a smaller spread is due to technology-driven cost advantages vs. banks, including a purpose-built platform online only application process, data-driven automated underwriting, scalable origination and servicing platforms, and lack of overhead related to a branch infrastructure.” It notes one advantage that raises questions on the need for regulation, the lack of “capital reserve requirements that “raise operating costs for banks.” Morgan Stanley, “Global Marketplace Lending: Disruptive Innovation in Financials,” 2015, <http://www.morganstanley.com/ideas/p2p-marketplace-lending/>.

<sup>3</sup> [http://www.nytimes.com/2015/09/14/business/dealbook/pitfalls-for-the-unwary-borrower-out-on-the-frontiers-of-banking.html?\\_r=0](http://www.nytimes.com/2015/09/14/business/dealbook/pitfalls-for-the-unwary-borrower-out-on-the-frontiers-of-banking.html?_r=0); <http://www.pymnts.com/in-depth/2015/is-the-bloom-off-the-alt-lending-rose/>; <http://www.thenation.com/article/how-companies-turn-your-facebook-activity-credit-score/>

<sup>4</sup> Morgan Stanley, “Global Marketplace Lending.”

<sup>5</sup> As reported by The Information, “according to one study, in 2014, nearly 60 percent of loans on Lending Club’s platform were originated by larger financial institutions. Prosper has a similar approach: 66 percent of loans handled on its service originated with such institutions.”

<https://www.theinformation.com/Investors-Cool-On-Online-Lenders>;  
<https://www.theinformation.com/How-Long-will-the-online-lending-boom-last>;  
[http://www.americanbanker.com/issues/179\\_194/banks-heat-up-bidding-for-peer-to-peer-loans-1070401-1.html](http://www.americanbanker.com/issues/179_194/banks-heat-up-bidding-for-peer-to-peer-loans-1070401-1.html); <http://www.investopedia.com/articles/personal-finance/070815/goldman-sachss-entry-online-lending.asp>; <http://www.lendacademy.com/lending-clubs-major-platform-investors-ipo/>; <http://www.experian.com/decision-analytics/baker-hill/loan-origination-software-system.html>

<sup>6</sup> [http://www.pwccn.com/home/eng/peer\\_to\\_peer\\_feb2015.html](http://www.pwccn.com/home/eng/peer_to_peer_feb2015.html); Morgan Stanley, “Global Marketplace Lending.”

<sup>7</sup> Morgan Stanley, “Global Marketplace Lending.”

<sup>8</sup> <http://cloudlendinginc.com/online-lending-leasing-solutions/>

<sup>9</sup> For example, SunTrust: <https://www.lightstream.com/meet-lightstream>; also: <http://www.cNBC.com/2015/07/01/santander-strikes-deal-with-monitise-to-invest-in-fintech.html>; <https://cloud.oracle.com/financials-cloud>

<sup>10</sup> <http://bdes.datasociety.net/>

<sup>11</sup> Morgan Stanley, “Global Marketplace Lending.”

<sup>12</sup> <http://bankinnovation.net/2015/04/marketplace-lenders-share-a-major-concern-with-banks-finding-borrowers/>

<sup>13</sup> For an analysis of the market in the U.S., see Morgan Stanley, “Global Marketplace Lending”; note the focus on “superprime” consumer applicants here: <https://www.lightstream.com/press-kit>

<sup>14</sup> <http://www.cfsinnovation.com/Find-your-topic/Consumer-and-Market-Analysis>;  
<http://www.experian.com/consumer-information/unbanked.html>

<sup>15</sup> Demyst Data. <https://www.accion.org/content/venture-lab-portfolio>

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<sup>16</sup> In addition to investigating the role of lead generation in online lending, Treasury should review the role that other lead generation companies play in that marketplace, such as Credit Karma. <http://www.sfgate.com/business/networth/article/Is-Credit-Karma-valuation-too-high-compared-with-5815603.php>

<sup>17</sup> <https://www.neustar.biz/industries/financial-services>; <https://www.neustar.biz/marketing-solutions>.

<sup>18</sup> <https://www.accion.org/content/venture-lab-portfolio>; <http://demyst.com/configurations/>. Both Lending Club and OnDeck are clients of Demyst. <http://demyst.com/about/>; <http://www.fico.com/en/blogs/marketing-customer-engagement/alternative-lenders-ready-credit-boot-camp/>

<sup>19</sup> <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-recommends-congress-require-data-broker-industry-be-more>; <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-whitehouse-and-franken-introduce-legislation-to-ensure-transparency-and-accountability-in-data-broker-industry>. Treasury should also work with other financial regulators to recommend significant improvements for the operations of the online payment infrastructure, so they will provide efficient services in a consumer protected manner, such as the Automated Clearing House.

<sup>20</sup> Michael Corkery, 14 September 2015, The New York Times, Page A1, “Pitfalls for the Unwary Borrower Out on the Frontiers of Banking,” also available at <http://www.nytimes.com/2015/09/14/business/dealbook/pitfalls-for-the-unwary-borrower-out-on-the-frontiers-of-banking.html>

<sup>21</sup> <https://www.lendingclub.com/public/borrower-rates-and-fees.action>

<sup>22</sup> Nick Bourke et al, “Fraud and Abuse Online: Harmful Practices in Internet Payday Lending,” 2 October 2014, The Pew Charitable Trusts, available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2014/10/fraud-and-abuse-online-harmful-practices-in-internet-payday-lending>

<sup>23</sup> News release, Aug 19 2015, “CFPB Takes Action Against Springstone Financial for Deceptive Health-Care Credit Enrollment Tactics,” available at <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-springstone-financial-for-deceptive-health-care-credit-enrollment-tactics/>

<sup>24</sup> While we support effective safeguards to protect online lending to small businesses, our comments primarily address the online financial marketplace and its relationship to consumers.

<sup>25</sup> <http://www.americanbanker.com/bankthink/proceed-with-caution-on-credit-scoring-with-alternative-data-1074824-1.html>

<sup>26</sup> <http://www.americanbanker.com/news/bank-technology/how-banks-are-allocating-their-tech-budgets-for-2015-1071546-1.html>; “Consumers and Mobile Financial Services 2015. Federal Reserve Board. March 2015; “The Rise of the Mobivore: Serving the Mobile-only User.” Fiserve. 2015; “Assessing the Economic Inclusion Potential of Mobile Financial Devices.” Division of Depositor and Consumer Protection. FDIC. June 2014; <http://www.forbes.com/sites/avidan/2015/03/31/how-citibank-is-transforming-itself-by-partnering-with-apple-watch/>

<sup>27</sup> For example, <http://cloudlendinginc.com/online-lending-leasing-solutions/>; [http://www.lendkey.com/lending-as-a-service-platform/?utm\\_referrer=https%3A%2F%2Fwww.google.com](http://www.lendkey.com/lending-as-a-service-platform/?utm_referrer=https%3A%2F%2Fwww.google.com); <http://www.wsj.com/articles/bank-of-america-follows-internet-companies-into-the-cloud-1425676214>;

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[http://www.americanbanker.com/issues/179\\_47/banks-pushed-toward-cloud-computing-by-cost-pressures-1066124-1.html](http://www.americanbanker.com/issues/179_47/banks-pushed-toward-cloud-computing-by-cost-pressures-1066124-1.html)

<sup>28</sup> See, for example: <http://info.inbound-bis.com/blog/blogs/business-credit/2015/02/09/make-campaigns-predictable-propensity-modeling/>; <http://info.inbound-bis.com/blog/blogs/business-credit/2015/02/09/make-campaigns-predictable-propensity-modeling/>; [https://www.transunion.com/corporate/business/solutions/financialservices/bank\\_acq\\_risk-score-model.page](https://www.transunion.com/corporate/business/solutions/financialservices/bank_acq_risk-score-model.page)

<sup>29</sup> <http://www.merkleinc.com/what-we-do/marketing-technology/merkle-data-management-cloud/connected-recognition#.VgFipHsZcbE>; <http://www.merkleinc.com/industry-solutions/financial-services#.VgFivnsZcbE>; <http://thefinancialbrand.com/52458/digital-banking-report-guide-to-multichannel-marketing/>

<sup>30</sup> <https://conferencetrackerblog.wordpress.com/2015/05/14/direct-mail-digital-players/>

<sup>31</sup> <http://www.prnewswire.com/news-releases/lending-club-and-citi-team-up-on-community-lending-300065289.html>

<sup>32</sup> <https://www.theinformation.com/online-lenders-facing-marketing-war>

<sup>33</sup> <https://www.thinkwithgoogle.com/industries/financial-services.html>

<sup>34</sup> <http://www.oracle.com/us/corporate/acquisitions/bluekai/index.html>; <http://www.nielsen.com/us/en/press-room/2015/nielsen-acquires-exelate.html>; <http://www.conversantmedia.com/press-release/alliance-data-completes-acquisition-conversant>; <https://www.neustar.biz/industries/financial-services>; <http://www.experian.com/decision-analytics/identity-and-fraud/identity-verification-screening.html>

<sup>35</sup> <https://www.ftc.gov/news-events/press-releases/2015/07/ftc-announces-workshop-examine-online-lead-generation>; <http://www.democraticmedia.org/blog/us-public-interest-group-and-center-digital-democracy-urge-ftc-protect-consumers-unfair-lead>; <https://www.governor.ny.gov/news/cuomo-administration-expands-investigation-illegal-online-payday-lending-and-related-consumer>

<sup>36</sup> <https://www.thinkwithgoogle.com/case-studies/transunion-drives-ad-performance-with-ga-audience-insights.html>; <https://advertising.yahoo.com/yahoo-sites/Finance/>; [https://www.facebook.com/business/success/?categories\[0\]=financial](https://www.facebook.com/business/success/?categories[0]=financial)

<sup>37</sup> <http://digiday.com/platforms/what-is-a-dmp-data-management-platform/>; <http://blogs.adobe.com/digitalmarketing/digital-marketing/data-driven-marketing-financial-services/>; <http://www.merkleinc.com/what-we-do/marketing-technology/merkle-data-management-cloud#.VgFy5HsZcbE>

<sup>38</sup> “The US Financial Services Industry 2015: Digital Ad Spending Forecasts and Trends.” May 2015. eMarketer. Personal copy

<sup>39</sup> <http://tsys.com/ngenuity-journal/why-nonbank-online-lenders-are-gaining-critical-mass.cfm>; <https://www.clarityservices.com/news/why-word-is-out-about-alternative-data/>; <https://www.equalfuture.us/2014/10/29/knowing-the-score/>

<sup>40</sup> See Morgan Stanley, “Global Marketplace Lending”; <http://www.paretopulse.com/online-lending-software/>; <http://www.fico.com/en/blogs/marketing-customer-engagement/online-lenders-greater-regulatory-scrutiny-just-matter-time/>; <http://www.wsj.com/articles/SB10001424052702304773104579266423512930050>;

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<http://www.americanbanker.com/news/technology/are-online-lending-platforms-beating-banks-at-big-data-1071070-1.html>

<sup>41</sup> See for example: <http://www.experian.com/decision-analytics/baker-hill/loan-origination-software-system.html>; <http://www.zootweb.com/press/052312-Zoot-Axiom-Partnership-Delivers-Realtime-Online-Credit-Offers.html>; <http://www.axiom.com/partner-spotlight-zoot/>; <http://www.axiom.com/liveramp-connect/>;  
[http://www.nytimes.com/2015/01/19/technology/banking-start-ups-adopt-new-tools-for-lending.html?\\_r=0](http://www.nytimes.com/2015/01/19/technology/banking-start-ups-adopt-new-tools-for-lending.html?_r=0)

<sup>42</sup> See, for example the capabilities of either Oracle or Adobe. <http://www.adobe.com/marketing-cloud.html>; <https://www.oracle.com/marketingcloud/index.html>

<sup>43</sup> <http://www.datasociety.net/output/featured/peer-to-peer-lending/>

<sup>44</sup> <http://www.datasociety.net/output/featured/peer-to-peer-lending/>

<sup>45</sup> <http://www.datasociety.net/output/featured/peer-to-peer-lending/>

<sup>46</sup> <http://defendyourdollars.org/posts/2941-lendup-a-better-payday-loan>

<sup>47</sup> See, for example, duties for OnDeck’s Director of Digital Marketing: <https://boards.greenhouse.io/ondeck/jobs/84482#.VgLK33sZcbE>.

<sup>48</sup> <https://openforum.hbs.org/challenge/understand-digital-transformation-of-business/business-model/credit-scoring-and-sofi-s-effective-price-discrimination-model>;  
<https://www.crunchbase.com/organization/social-finance>;

<sup>49</sup> <http://www.cfsinnovation.com/Document-Library/2013-Financially-Underserved-Market-Size>

<sup>50</sup> <http://bankinnovation.net/2015/04/marketplace-lenders-share-a-major-concern-with-banks-finding-borrowers/>

<sup>51</sup> See “Expanding the marketable universe.” Experian. <http://www.experian.com/consumer-information/credit-marketing-white-paper-download.html>

<sup>52</sup> <http://www.prnewswire.com/news-releases/lending-club-and-citi-team-up-on-community-lending-300065289.html>

<sup>53</sup> <http://www.emarketer.com/Article/Financial-Firms-Breaking-Down-Marketing-Silos-Achieve-Full-Funnel-Approach/1011757>; <http://www.emarketer.com/Article/US-Digital-Ad-Spending-Will-Approach-60-Billion-This-Year-with-Retailers-Leading-Way/1012497>

<http://www.midasawards.com/winners/2014/>;

[http://industry.shortyawards.com/category/7th\\_annual/financial-services](http://industry.shortyawards.com/category/7th_annual/financial-services);

<http://www.salesforce.com/customers/stories/wells-fargo.jsp>;

<http://www.teradata.com/Resources/Videos/Wells-Fargo-Driven-by-Customer-Data-and-Insights/?LangType=1033&LangSelect=true>;

“The US Financial Services Industry 2015: Digital Ad Spending Forecasts and Trends.” May 2015. eMarketer. Personal copy

<sup>54</sup> <http://bankinnovation.net/2015/04/marketplace-lenders-share-a-major-concern-with-banks-finding-borrowers/>

<sup>55</sup> see for example of affiliate programs:

[http://www.lendkey.com/affiliates/?utm\\_referrer=https%3A%2F%2Fwww.google.com](http://www.lendkey.com/affiliates/?utm_referrer=https%3A%2F%2Fwww.google.com);

<https://www.prosper.com/about/affiliates-partner-programs>;

<http://www.quickenloans.com/about/affiliate-program>; <https://roadloans.com/about-us/affiliate-program>

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<http://webcache.googleusercontent.com/search?q=cache:Nk0Dgn2h5j4J:www.ventureloop.com/ventureloop/jobdetail.php%3Fjobid%3D405594+%&cd=6&hl=en&ct=clnk&gl=us;>

<sup>57</sup> [https://commonbond.co/careers?gh\\_jid=86303](https://commonbond.co/careers?gh_jid=86303)

<sup>58</sup> <http://pro.whitepages.com/blog/millennials-underinsured-generation-happened/>

<sup>59</sup> [https://www.linkedin.com/jobs2/view/72808165?trk=jserp\\_job\\_details\\_text](https://www.linkedin.com/jobs2/view/72808165?trk=jserp_job_details_text)

<sup>60</sup> <http://loftopia.com/portfolio/you-prosper/>; <http://loftopia.com/>

<sup>61</sup> <https://www.prosper.com/prm/affiliate.html>; see Prosper Affiliate Program Overview.

<sup>62</sup> <https://www.linkedin.com/in/colinmitchell1>

<sup>63</sup> <http://www.impactradius.com/affiliate-solutions>.

<sup>64</sup> <http://www.flexoffers.com/affiliate-programs/lending-club/>

<sup>65</sup> see Digital Marketing Manager and related: <https://www.avant.com/jobs>; Morgan Stanley, “Global Marketplace Lending.”

<sup>66</sup> <http://realtymogul.theresumator.com/apply/xqarlz/Senior-Marketing-Manager>

<sup>67</sup> <http://suffolkawreview.org/selling-consumers-not-lists/>

<sup>68</sup> see, for example, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2208240](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2208240)

<sup>69</sup> [https://www.cylab.cmu.edu/news\\_events/news/2008/privacy\\_policy.html](https://www.cylab.cmu.edu/news_events/news/2008/privacy_policy.html)

<sup>70</sup> <https://www.meetearnest.com/privacy>

<sup>71</sup> <https://www.paypal.com/us/webapps/workingcapital/>;

<https://www.paypal.com/webapps/mpp/paypal-credit>; <https://www.paypal.com/home>

<sup>72</sup> <http://www.acxiom.com/partner-spotlight-paypal-media-network/>;

<http://www.acxiom.com/partners/>; <http://www.placed.com/blog/placed-collaborating-with-paypal-media-network-for-attribution-and-targeting/>; <http://adage.com/article/datadriven-marketing/paypal-connect-mobile-ads-store-visits/292275/>; PayPal Media Network one-sheet. Personal copy.

<sup>73</sup> <http://www.mediamath.com/performance-reimagined/>

<sup>74</sup> <https://blogs.microsoft.com/cybertrust/2014/04/29/security-trends-in-cloud-computing-part-1-financial-services/>; <https://www.skyhighnetworks.com/cloud-security-blog/csa-survey-security-of-cloud-data-now-a-board-level-concern/>

<sup>75</sup> <http://www.americanbanker.com/gallery/top-5-security-threats-banks-will-face-in-2015-1071763-1.html>

<sup>76</sup> Note the use of mobile for the online loan application process: <http://www.paretopulse.com/online-lending-software/>