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Submitted Electronically via http://www.regulations.gov

Ms. Laura Temel
Marketplace Lending RFI
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W., Room 1325
Washington, D.C. 20220

**Re: Expanding Access to Credit Through Online Marketplace Lending RFI
Treas-DO-2015-0007-0001**

Dear Ms. Temel:

The Electronic Transactions Association ("ETA") hereby submits this information in response to the Treasury Department's Request For Information ("RFI") on online marketplace lending. ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services, including financial institutions, transaction processors, payments networks and others. ETA has members that are engaged in online marketplace lending for commercial enterprises, primarily small businesses, either directly or in partnership with other lenders, and is pleased to have this opportunity to provide feedback to the Department on its requests for information. Although marketplace lenders facilitate the extension of many different types of credit, including loans to consumers, loans to small businesses, merchant cash advances and payday loans, ETA's comments are limited to online marketplace lending in the small business/commercial context.

Background

Small businesses are the backbone of the American economy and critical to economic growth in the U.S. They create more than 60 percent of net new jobs and employ approximately half of the workforce in the private sector.[1] Unfortunately, as the Department noted in its RFI,

[1] Federal Reserve Banks of New York, Atlanta, Cleveland and Philadelphia, *Joint Small Business Credit Survey Report, 2014* at 4 (released February 2015) (*Joint Small Business Credit Survey Report)*; Karen Gordon Mills, Brayden McCarthy, The State of Small Business Lending: Credit Access During the Recovery and How Technology May Change the Game, Harvard

many small businesses are unable to access traditional credit for purposes of maintaining and expanding their businesses due in part to the high search, transaction and underwriting costs relative to potential revenue.[2] More than 50 percent of the small business credit applicants surveyed in a 2014 Federal Reserve Bank study sought loans of $100,000 or less.[3] It is reported that the transaction costs to process a $100,000 loan are comparable to those to process a $1 million loan, but the profit is much less, making loans to small businesses less appealing to traditional lenders.[4] As traditional lenders have responded to increased regulation by tightening lending standards and the availability of credit to small businesses, loans to small businesses on the "balance sheets of banks are down about 20 percent since the financial crisis."[5] Over half of the small businesses with revenues under $1 million received less than 50 percent of the credit for which they applied in the first half of 2014, which limited their ability to expand and hire new employees.[6]

Fortunately for small businesses, new and innovative technology platforms are expanding access to credit and offering attractive alternatives to traditional loans.[7] Significantly, online marketplace lenders are willing to provide small businesses with smaller loans (typically less than $250,000) and shorter terms[8] that are often better suited to their day to day operating needs or short-term use cases. These lenders also allow small businesses to apply for credit online in a fraction of the time it takes to apply for credit from a traditional lender.[9] Using sophisticated,

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Business School Working Paper 15-004 (July 22, 2014) at 3 ("State of Small Business Lending").

[2] 80 FedReg. 42866, 42867 (July 20, 2015).

[3] *Joint Small Business Credit Survey Report* at 4.

[4] 80 FedReg. 42866, 42867 (July 20, 2015); State of Small Business Lending at 6, 11, 12, 28 (for most banks, making loans of less than $250,000 to small businesses is costly, risky and less profitable); Morgan Stanley Blue Paper, Global Marketplace Lending at 6 (May 19, 2015) ("Global Marketplace Lending").

[5] State of Small Business Lending at 4, 24.

[6] *Joint Small Business Credit Survey Report* at 14, 16.

[7] In 2014, almost 20 percent of small business applicants sought credit from an online lender. 80 FedReg 42867.

[8] 80 FedReg. 42867.

[9] *Joint Small Business Credit Survey Report* at 4, 6 (reporting that survey respondents spent an average of 24 hours researching and completing credit applications).

data-driven algorithms to screen the creditworthiness of potential borrowers, they are able to reach funding decisions quickly and efficiently, and provide access to capital to approved borrowers expeditiously,[10] in some cases within 24 hours. With the potential borrower's consent, the data can also be used to prepopulate applications, saving even more time for small business owners in the application process. Taking advantage of these technology platforms has allowed small businesses to focus more of their time and effort on growing their businesses, hiring workers and positively impacting the economy. A study conducted by the Analysis Group in 2014 estimated that the first $1 billion in loans made by one of the largest online marketplace small business lenders generated $3.42 billion in economic impact through industry, supply chain and job creation gains and that 22,000 jobs were created as a result of small business owners having capital to grow their businesses.[11]

The online marketplace lending industry is responding to a demand for access to credit by small businesses and filling a need for technology-based credit solutions. Unlike consumers seeking loans, small businesses seek access to capital to pursue growth opportunities (*e.g.,* to purchase inventory, upgrade or expand facilities or develop new products and services), to hire new workers or to secure stable working capital funding. As the Department evaluates the responses it receives to the RFI, it must recognize these differences and appreciate the benefits that expanded access to credit contributes to the growth of the small business market, the creation of jobs and the economy as a whole.

1. **There are many different models for online marketplace lending including platform lenders (also referred to as "peer-to-peer"), balance sheet lenders, and bank-affiliated lenders. In what ways should policymakers be thinking about market segmentation and in what ways do different models raise different policy or regulatory concerns?**

Online marketplace lenders are a diverse, nimble and innovative group. The many different models for online marketplace lending are the products of the creativity and resourcefulness made possible by the use of financial technology (FinTech) to expand access to credit for small businesses, improve the borrower experience, and bring technology-based efficiencies to the market. Marketplace lenders have measurably increased the supply of capital available to consumers and small businesses as evidenced by loan volumes that reached $12

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[10] State of Small Business Lending at 6-7; Scott Shane, Why Small Businesses Are Turning To Online Lenders (April 15, 2015), available at http://www.entrepreneur.com/article/245075.

[11] See https://www.ondeck.com/company/in-the-news/press-releases/ondeck-generates-estimated-3b-economic-impact-22000-jobs-nationwide/

billion in 2014.[12] Policymakers must appreciate that the broad range and diverse nature of various credit products that are now available to serve small businesses may not fit neatly into the market segmentation categories used in traditional lending.

Lending models vary based on the nature of the borrower – consumer or business – and the mechanisms used to fund the loans, whether through retail investor participation, private market investor participation, balance sheets, bank partners, and/or hybrid combinations. For example, U.S. peer-to-peer lending – which we would define primarily as the matching of retail investors (although institutional investors may play a large role) with individual borrowers through the SEC registration of a security -- has singularly developed within the consumer lending space. We are not aware of this model being deployed for small business/commercial loans.

Some marketplace lenders operate exclusively in private marketplaces that may permit accredited investors or qualified institutional buyers ("QIBs") to fund or purchase consumer or small business loans. These platforms may either fractionalize their loans or sell only whole loans.

Other marketplace lenders may fund their loans using a combination of private marketplaces, securitization and balance sheet financing.

Balance sheet lenders retain the loans they make on their own books even when they originate loans through partnerships with banks. These partnerships can involve a sharing of the credit risk, or the balance sheet lender may assume the entire credit risk. As a result, the success of the balance sheet lender is fully aligned with the success of the small business borrower.

Finally, there are "matching" platforms -- platforms that enable consumers or small businesses to access a variety of lenders based on their specific needs and that transfer the potential borrower's data to the lenders in an application package. It is important to note that pure "matching" platforms do not lend directly.

The varied and evolving marketplace lending models create a rich diversity of platforms and products that offer new credit opportunities to consumers and small businesses. ETA submits that it would be premature to box-in a particular model or product structure through regulation at this point or to try and fit this dynamic and evolving marketplace into regulatory frameworks designed more than a half century ago for traditional lending practices. Instead, policymakers and regulators should continue to monitor the development of this new marketplace in order to promote further innovation and data-driven policy making.

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[12] Global Marketplace Lending at 6.

2. According to a survey by the National Small Business Association, 85 percent of small businesses purchase supplies online, 83 percent manage bank accounts on line, 82 percent maintain their own Web site, 72 percent pay bills on line, and 41 percent use tablets for their businesses. Small businesses are also increasingly using online bookkeeping and operations management tools. As such, there is now an unprecedented amount of online data available on the activities of these small businesses. What role are electronic data sources playing in enabling marketplace lending? For instance, how do they affect traditionally manual processes or evaluation of identity, fraud and credit risk for lenders? Are there new opportunities or risks arising from these data-based processes relative to those used in traditional lending?

Just as a significant majority of small businesses are using an increasing number of online services to transact business, many are also finding it convenient and cost-effective to apply for credit online. Online technology simplifies and expedites the loan application process for small businesses.

Electronic data sources play a vital role in enabling marketplace lending. FinTech platforms are using big data and cutting-edge analytics to unlock access to capital for small businesses and enhance fraud detection and prevention. Historically, traditional lenders often relied on a small business owner's personal credit and FICO scores[13] or somewhat stale financial data (such as prior years' tax returns) and business plans in assessing the feasibility of a small business loan,[14] thereby potentially excluding many healthy businesses from accessing credit.[15] Many of today's online marketplace lenders are looking at small business financial and operational data, including accounting data, sales data and business financials; cash flows;

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[13] *See,* Benjamin Wills, How Banks Evaluate Small Business Creditworthiness, Dun and Bradstreet (Jan. 30, 2012) available at https://www.dandb.com/smallbusiness/how-banks-evaluate-small-business-creditworthiness/

[14] *See*, State of Small Business Lending at 12; Oliver Wyman, Financing Small Businesses, How "New Form Lending" Will Reshape Banks' Small Business Strategies at 3, available at http://www.oliverwyman.com/content/dam/oliverwyman/global/en/files/archive/2013/Financing-Small-Businesses-How -New Form Lending-Will Reshape-Banks-Small-Business-Strategies.pdf

[15] *See* State of Small Business Lending at 45; Oliver Wyman, Financing Small Businesses, How "New Form Lending" Will Reshape Banks' Small Business Strategies at 2-3, available at http://www.oliverwyman.com/content/dam/oliverwyman/global/en/files/archive/2013/Financing-Small-Businesses-How -New Form Lending-Will Reshape-Banks-Small-Business-Strategies.pdf; Global Marketplace Lending at 70 (marketplace lenders typically utilize more data points in their credit scoring algorithms which may allow them to approve loans that traditional lenders are not able to underwrite).

business performance data (*e.g.,* employee growth); behavioral data, including experiential data where there is a pre-existing relationship between the platform and the loan applicant; publicly available records; and social media data to verify business identities and facilitate fraud detection. The use of such information has enabled an increase in the number and types of small businesses able to access credit, especially those unserved or underserved by traditional lenders The FinTech platforms are able to analyze data sets through automated systems that significantly reduce the paperwork, average time spent applying for credit,[16] average time spent processing a loan request[17] and often obviate the need for traditional collateral requirements.

The FinTech data-based processes are creating new opportunities for borrowers and lenders. The platforms are agile, nimble and scalable and can work in tandem with related financial service offerings. For example, online marketplace lending programs can be synced with payment platforms not only to assist in making underwriting decisions in nearly real-time, but also to provide convenient repayment options for small businesses. FinTech platforms have also been used by Community Development Financial Institutions ("CDFIs") and other non-profit community lenders and development organizations to help increase efficiency in the lending process and identify creditworthy small businesses.[18]

3. **How are online marketplace lenders designing their business models and products for different borrower segments, such as: small business and consumer borrowers; subprime borrowers; borrowers who are "unscoreable" or have no or thin files; depending on borrower needs (*e.g.,* new small businesses, mature small businesses, consumers seeking to consolidate existing debt, consumers seeking to take out new credit) and other segmentations?**

As noted above, ETA's members that are engaged in online marketplace lending focus on providing credit to small business/commercial borrowers. Their business models are innovative and many of them look at sales, cash flow and operating data to assess a potential borrower's

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[16] *Joint Small Business Credit Survey Report* at 4, 6 (reporting that survey respondents spent an average of 24 hours researching and completing credit applications).

[17] Indeed, some online marketplace lenders are able to provide credit decisions to small business applicants within hours. State of Small Business Lending at 45-46. The simplicity of the application process and the quick turn-around time are viewed very favorably by small businesses many of which believe that "time, not money, is their most precious resource." See Scott Shane, "Why Small Businesses Are Turning To Online Lenders," Entrepreneur (April 15, 2015, available at http://www.entrepreneur.com/article/245075.

[18] See the AEO's Tilt Forward initiative as an example, http://www.tiltforward.com/our-partners/

ability to repay a loan.[19] While a small business owner credit applicant may not have a strong personal FICO score – especially given prior reliance on personal credit to help start a business -- a marketplace lender may find that same applicant to be creditworthy based on an analysis of cash flow, sales, revenue and other operating data.[20] Small businesses appreciate the simplicity and transparency of the technology-based approach to lending when compared to that available from traditional financial institutions.

4. Is marketplace lending expanding access to credit to historically underserved market segments?

Yes. The high cost of loan originations and servicing loans at traditional lending institutions has exacerbated a capital access problem for small businesses since the 2008 financial crisis.[21] The online marketplace lending industry has created innovative credit models and products that expand access to credit for those small businesses that have not been well served by traditional lending institutions.

As the Department acknowledged, more than half of small businesses that applied for credit in 2014 sought under $100,000 and many reported that they were unable to access credit needed to grow their businesses.[22] Online marketplace lenders are willing to provide small businesses smaller loans quickly and often offer flexible repayment options. Models that rely on daily or weekly payback can help a small business smooth its monthly cash flow and avoid a large loan payment at the end of each month.[23] Indeed, Oliver Wyman has noted that "the use of a daily remittance model helps smooth the cash flow impact of the new loan for the [small

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[19] According to the Federal Reserve's Small Business Credit Survey Report, the top reason given for denying credit to those small businesses surveyed was a low credit score. *Joint Small Business Credit Survey Report* at 6.

[20] *See e.g.,* Amanda Augustine, The Changing Landscape of Small Business Lending, BBVA Research (Sept. 10, 2015, available at https://www.bbvaresearch.com/en/publicaciones/u-s-the-changing-landscape-of-small-business-lending/.

[21] State of Small Business Lending at 37-39, 44.

[22] 80 Fed. Reg. 42867.

[23] See Scott Shane, "Why Small Businesses Are Turning To Online Lenders," Entrepreneur ("Small business owners are turning to online lenders because the new creditors offer loan products that better fit their financing needs," including the need for relatively small amounts of money to manage cash flow emergencies) (Apr. 15, 2015), available at http://www.entrepreneur.com/article/245075

business]; after all, monthly remittance introduces yet another source of cash flow 'lumpiness....'"[24]

For example, under the PayPal Working Capital ("PPWC") program, the maximum loan amount is 15 percent of the sales the small business processed through PayPal in the previous 12 months and the loan is repaid automatically as sales are processed through PayPal.[25] As another example, OnDeck offers small businesses lines of credit up to $25,000 and loans from $5,000 to $250,000 with repayment terms commonly ranging from 6 to 24 months. OnDeck deducts a fixed payment from the borrower's business account on a daily or weekly basis until the line of credit or loan is paid off. [26]

5. Describe the customer acquisition process for online marketplace lenders. What kind of marketing channels are used to reach new customers? What kinds of partnerships do online marketplace lenders have with traditional financial institutions, community development financial institutions (CDFIs) or other types of businesses to reach new customers?

Online marketplace lenders use a variety of techniques to acquire new customers, including direct mail, online advertising, email, strategic partnerships with technology companies, banks, payment processors and small business service providers, referrals from third party financial advisors/brokers and television and radio advertising.[27] Moreover, through partnerships and existing business relationships, online marketplace lenders are able to market to existing customers that may be candidates for their loan products. Such targeted marketing efforts benefit the potential borrowers who are alerted to a loan product for which they are more likely to qualify and which they can obtain through a service they are already using to run their small businesses.

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[24] Oliver Wyman, Financing Small Businesses, How "New Form Lending" Will Reshape Banks' Small Business Strategies at 5, available at http://www.olverwyman.com/content/dam/oliverwyman/global/en/files/archive/2013/Financing-Small-Businesses-How -New Form Lending-Will Reshape-Banks-Small-Business-Strategies.pdf

[25] See PayPal Working Capital Frequently Asked Questions, available at https://www.paypal.com/us/webapps/workingcapital/

[26] See https://www.ondeck.com/

[27] State of Small Business Lending at 47-48.

6. How are borrowers assessed for their creditworthiness and repayment ability? How accurate are these models in predicting credit risk? How does the assessment of small business borrowers differ from consumer borrowers? Does the borrower's stated use of proceeds affect underwriting for the loan?

As noted in response to RFI No. 2, online marketplace lenders to small businesses evaluate potential borrowers' creditworthiness and repayment ability using sophisticated algorithms, advanced analytics and operational data, including accounting data, sales and business financials; cash flows; business performance data (*e.g.,* employee growth); behavioral data, including experiential data where there is a pre-existing relationship between the platform and the loan applicant;[28] publicly available records; and social media data to verify business identities and facilitate fraud detection. Credit risk is assessed using these and other data sources. Borrowers are also typically held to certain minimum standards with respect to length of time in business and annual revenues. Because the success of marketplace lenders is dependent upon the ability to prudently manage credit risk, credit is only extended to businesses if there is a high expectation of repayment. Unlike models built on charging borrowers late fees and penalties, online marketplace lenders have a fully-aligned interest in the success of their small business customers.

7. Describe whether and how marketplace lending relies on services or relationships provided by traditional lending institutions or insured depository institutions. What steps have been taken toward regulatory compliance with the new lending model by the various industry participants throughout the lending process? What issues are raised with online marketplace lending across state lines?

Online marketplace lenders are already subject to an existing and rigorous regulatory framework. They currently abide by a wide range of federal banking laws, including the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Bank Secrecy Act, Anti-Money Laundering statutes and regulations, Unfair or Deceptive Acts or Practices regulations and Office of Foreign Assets Control regulations. States also regulate commercial lending and lending brokers.[29]

Many technology-based marketplace lenders are also partnering with traditional banks and institutions which may fund the loans. When they partner with traditional banks and institutions, the marketplace lenders implement and comply with bank level compliance plans,

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[28] The ability to draw insights from an ongoing customer relationship can often facilitate smart loans with low delinquency rates.

[29] See Government Accountability Office, "Person-To-Person Lending," GAO-11-613 at 3-5 (July 2011).

including the Know Your Customer and Anti-Money Laundering regulations. Moreover, the prudential regulators of traditional banks that partner with marketplace lenders have supervisory and regulatory authority over the loans made by the banks.

State commercial lending laws are generally designed to govern traditional, state-based lending practices. Such a regulatory structure may not be well suited to online marketplace lending models that leverage the Internet and are willing and able to make access to capital available across state lines. Efficient development of these models will serve the public interest. Compliance with state-based regulations requires a complicated compliance structure and may limit the ability of marketplace lenders to serve borrowers in certain states or to offer consistent products and terms to borrowers nationwide.

8. Describe how marketplace lenders manage operational practices such as loan servicing, fraud detection, credit reporting, and collections. How are these practices handled differently than by traditional lending institutions? What, if anything, do marketplace lenders outsource to third party service providers? Are there provisions for backup services?

As stated earlier, online marketplace lenders are a diverse group and manage operational practices in different ways, making it difficult to generalize. Under the PayPal Working Capital program, for example, loan servicing is integrated with the PayPal payment processing platform that the small business borrower already uses. PayPal has world class fraud detection procedures built through its payment processing business and has expanded those to the Working Capital arena.

OnDeck similarly focuses heavily on fraud detection and prevention. The company also services the lines of credit and loans it originates and repayment is handled through fixed daily or weekly automatic deductions from the borrower's business account.[30] As previously noted, this model can help a small business owner manage and smooth cash flows. OnDeck retains servicing rights on loans that it sells to third party institutional buyers through its Marketplace.[31]

OnDeck reports small business loan performance to commercial credit bureaus in order to help its borrowers build their credit history. Where a borrower faces financial hardship or

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[30] See https://www.ondeck.com/faqs/

[31] On Deck Capital, Inc., Form 10-Q for the quarterly period ending June 30, 2015 at 9, available at http://d1lge852tjjqow.cloudfront.net/CIK-0001420811/7c6b8a4e-8e56-4baf-8b18-d308d9230265.pdf?noexit=true

difficulties, OnDeck attempts to work with the small business with the goal of placing it back on sound financial footing and giving it the opportunity to manage its outstanding commitments.[32]

9. What roles, if any, can the federal government play to facilitate positive innovation in lending, such as making it easier for borrowers to share their own government-held data with lenders? What are the competitive advantages and, if any, disadvantages for non-banks and banks to participate in and grow in this market segment? How can policymakers address any disadvantages for each? How might changes in the credit environment affect online marketplace lenders?

It is important that federal policymakers support marketplace lending models that are predicated on the success of the small business, rather than those built on failure and debt cycles. Responsible lenders partner with their borrowers and succeed when the borrower succeeds. They do not build their models on late fees and penalties and do not roll over delinquent borrowers.

As discussed, online marketplace lenders use electronic data to assess a potential borrower's creditworthiness and likelihood of repayment. Subject to appropriate and stringent privacy and security protections and with the borrower's consent, allowing marketplace lending platforms to access directly government-held data of borrowers, including tax returns, would provide additional valuable information for lenders to review and analyze in determining whether to make a loan or to prevent fraud. Providing such information through web APIs (Application Programming Interfaces) would enable efficient and effective utilization of the data to improve the lending process.

To facilitate positive innovation in lending, policymakers should also (1) encourage non-bank lender participation in federal programs, such as the loan guarantee programs of the Small Business Administration, and (2) encourage traditional lending institutions to refer small business customers whose loan applications they have declined to marketplace lenders.[33]

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[32] See OnDeck Core Principles, available at https://www.ondeck.com/ondeck-core-principles.

[33] The United Kingdom has adopted rules requiring banks to refer small businesses rejected for loans to marketplace lenders. Matt Scuffman, UK Scheme to promote alternative lenders to be running by 2016 available at http://www.reuters.com/article/2015/03/24/banks-lending-idUSL6N0WP1JB20150324; Money Insider: Peer-to-Peer Lenders Come Into Their Own as Marketplace Lending Evolves, available at http://www.independent.co.uk/money/loans-credit/money-insider-peertopeer-lenders-come-into-their-own-as-marketplace-lending-evolves-10076400.html.

For non-bank lenders and their small business borrowers, there are real advantages to the online lending ecosystem. As evidenced by the results of the Federal Reserve Banks' survey of small businesses, many small businesses are unable to access credit from traditional lending institutions, especially in amounts less than $100,000,[34] and online marketplace lenders have been able to step in and fill the void. Online marketplace lenders are able to connect small business borrowers with funding that satisfies key business needs and use-cases, such as matching shorter-term credit products with business opportunities that yield short-terms returns on investment (*e.g.,* inventory purchase or timely marketing campaigns).

The Department should be sensitive to the prospect that enhanced federal or state regulation of non-bank lenders may limit creativity and innovation in the development of credit offerings at the expense of the small businesses that are currently benefitting from these products. Indeed, small businesses benefit from a rich lending landscape that can provide a range of credit offerings, and it is important for policymakers to fully understand the characteristics and benefits of these products before proposing new rules or policies.[35] The Department should also avoid applying legacy regulations that were written for banks to non-bank marketplace lenders.

It is worth noting that there are also several advantages for banks to participate in and help grow marketplace lending to small businesses. Due to their underwriting requirements and higher overhead expenses, it is often not profitable for traditional lending institutions to extend small amount, short term loans to small businesses. Rather than turn customers seeking loans that do not meet their underwriting criteria away altogether, traditional banks could refer them to online lenders. Where the small business customer is able to secure a loan based on such a referral or joint-origination effort, the bank is able to maintain a good relationship with the customer as well as promote access to necessary capital from an alternative source.

Banks can also take advantage of the efficiencies and user-experience advantages inherent in the marketplace lending model by entering into partnerships with marketplace lenders. A marketplace lender could make its technology platform available in the name of a partner bank. The marketplace lender would underwrite and service loans to small businesses and the partner bank would be able to originate the loan from its balance sheet.

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[34] *Joint Small Business Credit Survey Report.*

[35] For example, in the context of pricing disclosures, traditional reliance on annualized interest rates largely stems from familiarity with long-term loan products, but such pricing metrics may generate confusion on shorter-term loans. Indeed, a short-term higher annual percentage rate ("APR") loan may have a lower total cost to a borrower than a long-term, lower APR loan.

10. Under the different models of marketplace lending, to what extent, if any, should platform or "peer-to-peer" lenders be required to have "skin in the game" for the loans they originate or underwrite in order to align interests with investors who have acquired debt of the marketplace lenders through the platforms? Under the different models, is there pooling of loans that raises issues of alignment with investors in the lenders' debt obligations? How would the concept of risk retention apply in a non-securitization context for the different entities in the distribution chain, including those in which there is no pooling of loans? Should this concept of "risk retention" be the same for other types of syndicated or participated loans?

Key factors driving the value proposition for marketplace lending include trust, business reputation, product ease and transparency, and underwriting credibility. Prudent underwriting and strong loan performance are critical to the success of marketplace lenders. These factors are sufficient to align the interests of marketplace lenders and investors and the federal government should not impose risk retention rules on marketplace lenders for the loans they originate or underwrite.

Unlike the case with the residential mortgage market, a government agency does not guarantee repayment of marketplace loans to small businesses and government sponsored enterprises do not purchase the debt. Many marketplace lending platforms deal only in whole loans, rather than securities, and the loans are not fractionalized and sold to multiple retail parties. Investors are able to choose to fund loans that match their tolerance for risk and desire for returns. Investors can mitigate the risk that particular loans might default by funding a broad portfolio of loans.[36] In the context of loans to small businesses, investors are generally sophisticated QIBs and marketplace loans comprise only a very small portion of their portfolios.

The securitization market for small business loans is comparatively small.[37] To date, the securitization market has been largely limited to Small Business Administration ("SBA") loans

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[36] Chapman & Cutler, LLP, The Regulation of Marketplace Lending: A Summary of the Principal Issues (2015 Update) at 3 ("available performance data indicate that the risk-adjusted returns on a well-diversified portfolio of Platform Notes can substantially exceed the returns available through alternative investment vehicles, such as money market funds or certificates of deposit").

[37] See "OnDeck Achieves Direct Non-SBA Lending Industry's First Securitization of Small Business Loans," available at https://www.ondeck.com/company/in-the-news/press-releases/ondeck-achieves-direct-non-sba-lending-industrys-first-securitization-small-business-loans/

where repayment is government-guaranteed.[38] Where loans are pooled and securitized, the Dodd-Frank risk retention rules would likely apply.

Balance sheet lenders, of course, retain the credit risk on loans they originate or underwrite and thereby succeed when their small business borrowers succeed.

11. Marketplace lending potentially offers significant benefits and value to borrowers, but what harms might online marketplace lending also present to consumers and small businesses? What privacy consideration, cybersecurity threats, consumer protection concerns, and other related risks might arise out of online marketplace lending? Do existing statutory and regulatory regimes adequately address these issues in the context of online market lending?

Data security is of paramount importance for the use of FinTech platforms in marketplace lending. Small business users must be able to trust that their data will be secure and that their private information will be protected when they turn to online marketplace lenders for access to credit. Cybersecurity *threats* are pervasive in today's digital world, but there is no basis to assume that the risk of a cybersecurity breach is any greater for online marketplace lenders than it is for other businesses with access to customer personal and financial data.

Borrowers must also be given complete truthful and transparent information about what personal information will be collected from them, how that information will be used and with whom it might be shared so that they can make fully informed decisions about whether and how to proceed with the loan application process. A decision to move forward signifies borrower consent to the use of their personal information in the manner described.

Industry leaders are also working hard to thoughtfully understand and establish best practices and standards focused on ensuring that small businesses have access to fair, efficient and transparent credit products. The on-line and readily accessible nature of the marketplace lending models should be predicated on clear disclosure and transparency.

It is important to underscore that there are many responsible lenders and credit products that help serve small businesses at different stages of their development and that address different needs. Small business owners must be given accurate information to clearly understand the credit product and assess whether it is a proper fit for their business need or use-case. As previously noted, policymakers should resist overly-simplistic calls for regulation that may favor particular lending models or products, and instead should appreciate that the availability of a broad range of credit options benefits American small businesses.

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[38] *See*, State of Small Business Lending at 41.

12. What factors do investors consider when (i) investing in notes funding loans being made through online marketplace lenders, (ii) doing business with particular entities, or (iii) determining the characteristics of the notes investors are willing to purchase? What are the operational arrangements? What are the various methods through which investors may finance online platform assets, including purchase of securities, and what are the advantages and disadvantages of using them? Who are the end investors? How prevalent is the use of financial leverage for investors? How is leverage typically obtained and deployed?

It is reasonable to assume that the QIBs and accredited investors that invest in notes funding small business marketplace loans consider the same type of factors that they consider before making any other investment, including the degree of risk that they are willing to undertake and the rate of return they are hoping to realize.[39] As noted in response to RFI No. 10, key factors driving the value proposition for marketplace lending are trust, business reputation, product ease and transparency, standardization and underwriting credibility. Prudent underwriting and strong loan performance are critical to the success of marketplace lenders. A pragmatic investor is likely to consider all of these factors.

13. What is the current availability of secondary liquidity for loan assets originated in this manner? What are the advantages and disadvantages of an active secondary market? Describe the efforts to develop such a market, including any hurdles (regulatory or otherwise). Is this market likely to grow and what advantages and disadvantages might a larger securitization market, including derivatives and benchmarks, present?

Most marketplace loans to small businesses are hold-to-maturity investments without a liquid secondary market for trading. This is especially true for shorter-duration loans.

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

Policymakers and regulators must recognize that FinTech innovation is still in the early stages of development. While it is important to monitor ongoing market developments, the government should avoid preemptive regulatory efforts that may stifle innovation and box in technology or certain products just as they are evolving. Such an outcome would harm small

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[39] See, John Kador, An Advisor's Guide To Peer-to-Peer Investing (June 25, 2014), available at http://wealthmanagement.com/alternative-investments/advisor-s-guide-peer-peer-investing; see also Amy Feldman, The Latest Sign of Alternative Lending's Popularity: Jeb Bush Has Invested In Lending Club Notes, Forbes (August 12, 2015), available at http://www.forbes.com/sites/amyfeldman/2015/08/12/jeb-bush-has-invested-in-lending-club-notes/

businesses by limiting access to capital and curtailing the options available to them. Prescriptive rules and requirements should be avoided in favor of a data-based and outcomes-focused approach.

Respectfully submitted,

/s/

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