



January 12, 2024

Submitted online at <https://www.regulations.gov/document/FDIC-2023-0076-0001>

Ann E. Misback  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street & Constitution Avenue, NW  
Washington, DC 20551

James P. Sheesley  
Assistant Executive Secretary  
Federal Deposit Insurance Corporation  
550 17th St. NW  
Washington, DC 20429

Chief Counsel's Office  
Attn: Comment Processing  
Office of the Comptroller of the Currency  
400 7th St. SW Washington, DC 20219

**Re: Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity – Docket No. R-1813/RIN 7100-AG64; FDIC RIN 3064-AF29; Docket ID OCC-2023-0008**

Dear Madam and Sir,

Upstart Network, Inc. (“Upstart”) is the leading AI lending marketplace, connecting millions of consumers to 100 banks and credit unions that leverage Upstart’s AI to deliver superior credit products. With Upstart AI, lenders can approve more borrowers at lower rates across races, ages, and genders, while delivering the exceptional digital-first experience customers demand. More than 80% of borrowers are approved instantly, with zero documentation to upload. We sponsor an unsecured consumer loan securitization program known as the Upstart Securitization Trust (“UPST”) ABS program.

Upstart is a member of the Structured Finance Association (“SFA”) and has participated in the SFA’s task force regarding the Proposed Rule. We are writing to express our concern about the Proposed Rule, particularly as it affects the role of banks in securitization transactions. Upstart regularly works with several banks to help us efficiently finance our network of lenders’ consumer lending activities, including through the use of securitization lending facilities provided by banks. Our banks’ support is critical to our ability to provide low and moderate income consumers with affordable access to credit. Our 2022 annual access to credit report shows that by using our AI models, lenders can approve 35% more Black borrowers with APRs that are 29% lower than traditional approaches.<sup>1</sup>

As we have become more familiar with the Proposed Rule, we have grown increasingly concerned about its treatment of securitization exposures. We are convinced that if the Proposed Rule is implemented, it will directly and significantly increase our cost of funds, and will negatively impact both cost and availability of credit for consumers. We also believe that many other consumer lenders, and their customers, will be similarly affected. Consumers are already burdened by the ongoing high interest rate environment, and the Proposed Rule would make this burden even heavier.

In this letter, we would like to emphasize two points that are particularly important to Upstart and our customers.

---

<sup>1</sup> <https://www.upstart.com/lenders/regulatory-compliance/access-to-credit-report/>

First, in order to support the flow of credit to communities, we obtain warehouse financing from banks. Each of our warehouse facilities is a securitization exposure, which results from the transfer of the applicable loans to a securitization special purpose entity (“SPE”) that borrows the funds from one or more banks to purchase those loans. Each bank’s financing is a securitization exposure against which the bank must hold regulatory capital. Because of its higher p-factor, the proposed SEC-SA calculation method would require our banks to hold significantly more capital against their warehouse securitization exposures than they do now. This is generally true even when the risk weight of the underlying exposures under the Proposed Rule is *lower* than the risk weight under the current capital rule. If the Proposed Rule is implemented, our warehouse financing interest rates will likely be materially higher than they are now.

Second, banks act as market makers and investors in our term asset-backed securities (“Term ABS”) program. The Proposed Rule, including SEC-SA, would apply regardless of whether a bank holds our Term ABS in its trading book or in its banking book. The Proposed Rule’s significantly higher capital charge for these positions will compel banks to demand a higher return on the Term ABS that they hold and/or reduce their participation in our securitization program.<sup>2</sup> Higher interest rates, decreased liquidity, and a smaller investor base for our Term ABS will all result in more expensive and less available credit for American consumers.

We are aware of no public policy objective that justifies the Proposed Rule’s costs and burdens. Indeed, as the SFA letter points out, statements from the Banking Regulators consistently point to the success of current regulatory capital rules, stress tests, and enhanced supervisory programs in ensuring that U.S. banks are well-capitalized.

As daily participants in the securitization market, we see no economic evidence suggesting that securitization has become more risky or volatile since the current regulatory capital rules were implemented. Indeed, many securitization-related regulatory changes have gone into effect in recent years, including risk retention, extensive rating agency reform, loan-level asset disclosure, and stringent requirements for underlying asset review. The rulemaking process is still ongoing including the SEC’s rulemaking on conflicts of interest in securitization.

Unfortunately, the Proposed Rule lacks data or sufficient explanation that would justify the proposed significant increases in risk weights for securitization exposures. As a result, we are unable to fully understand and respond to the Banking Regulators’ reasoning. However, the negative implications of the Proposed Rule are clear to us, and we hope that this letter will prompt the Banking Regulators to reconsider their approach.

We urge the Banking Regulators to either withdraw the Proposed Rule.

Thank you for the opportunity to provide these comments. Please feel free to contact Nat Hoopes at [nat.hoopes@upstart.com](mailto:nat.hoopes@upstart.com) if you have any questions or if you would like to discuss our comments further.

Sincerely,

Nat Hoopes  
Head of Government & Regulatory Affairs, Upstart Network, Inc.

---

<sup>2</sup> Our banks also earn fee and commission income when they act as underwriters of our Term ABS. The proposed operational risk capital requirement would impose a new capital requirement on such fees and commissions, which could lead our banks to charge higher fees and commissions, thus increasing our issuance costs. As the SFA’s comment letter points out, the resulting costs are not outweighed by any benefit. The Federal Reserve’s own study shows that such fee and commission income does not bear a statistically significant relationship to a bank’s operational risks.