

United States Senate  
WASHINGTON, DC 20510

April 18, 2016

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Mr. Dodaro:

Since the issuance of GAO's 2011 report on person-to-person lending (the 2011 Report),<sup>1</sup> financial technology firms (often called fintech) have expanded their presence and lending to consumers and small businesses. This emerging trend has the potential to fill critical credit gaps experienced in communities across the United States. As growth in this area continues, we believe it is critical for federal regulators and Congress to understand the marketplace and ensure that consumers and small businesses are protected.

The 2011 Report was mandated by Section 989F of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Wall Street Reform). The 2011 Report identified two primary options for regulating person-to-person (P2P) lending: "(1) continuing with the current bifurcated federal system—that is, protecting lenders through securities regulators and borrowers primarily through financial services regulators, which will include the newly formed CFPB—or (2) consolidating borrower and lender protection under a single federal regulator, such as CFPB." The report also noted that "regardless of the option selected, new regulatory challenges could emerge as the industry continues to evolve or if it were to grow dramatically, particularly if that growth was primarily due to the increased participation of institutional versus individual investors."

While your 2011 Report looked at consumer lending only by P2P lenders, the marketplace has changed dramatically and evolved beyond consumer lending. Additionally, P2P lending, now generally called marketplace lending, is not the only form of fintech that has developed over the last several years.

A number of new companies are offering a diverse range of products and services. These include alternative payment services, mobile payments, marketplace loans or cash advance products. These companies can also be structured very differently from each other in terms of holding risk on their own balance sheet, partnering with financial institutions, or connecting capital from institutional investors to borrowers.

Observers have questioned what the appropriate role of federal regulators should be in supervising fintech companies that provide small business capital and consumer lending. We

---

<sup>1</sup> United States, Government Accountability Office, "Person-to-Person Lending." GAO-11-613, July 2011. Accessed September 14, 2015. Available at: <http://www.gao.gov/new.items/d11613.pdf>.

note that government agencies such as the federal financial regulators, Small Business Administration, or the Federal Trade Commission may have a role to play, as well as state regulators. However, it is possible that the current online marketplace for small business loans falls between the cracks for federal regulators. As we saw during the crisis, gaps in understanding and regulation of emerging financial products may result in predatory lending, consumer abuse, or systemic issues.

We are very interested in ensuring that fintech provides credit to small businesses and consumers in a way that prevents abusive practices while expanding economic opportunity. To that end, we are requesting that GAO provide information on the following questions:

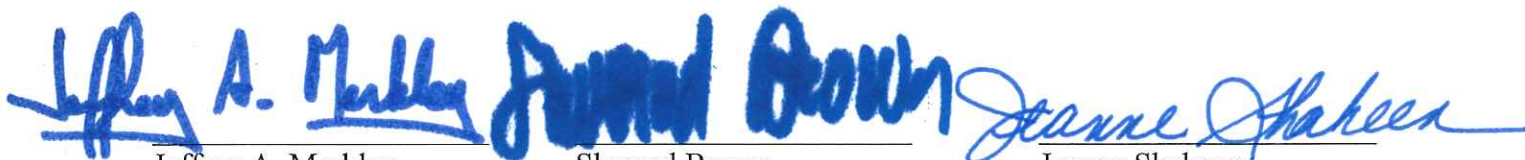
- Since many fintech companies are privately held, information about the size of their portfolios is often not transparent. Please detail the current size and structure of fintech lending. What has been the evolution and growth of online marketplace lenders since the 2011 Report, including in both consumer and small business lending?
- The 2011 Report noted that risks could grow as the investor base shifts from individual investors to institutional investors. Can you determine whether the risks you identified in 2011 related to institutional investors has grown as anticipated?
- What changes, if any, have occurred in the oversight structure of fintech, including but not limited to marketplace lending, since the 2011 Report? Could you also update your findings as it relates to the regulatory structure?
- Some fintech lenders have relationships with financial institutions, which are regulated by the federal and state financial regulators. How do these relationships impact the broader financial system and regulatory framework?
- What is the authority of federal agencies to supervise and examine companies offering consumer and online small business loans? Specifically, how do regulators account for risk and treat these assets on the balance sheets of financial institutions?
- What requirements must fintech companies follow when offering loans or advances to small businesses and consumers? How are the protections applicable to small business owners different from the protections applicable to consumer loans?
- What are the requirements for disclosing terms to small business owners and ensuring that they are presented transparent fees and interest rates?
- What requirements apply to fintech companies related to anti-money laundering, data security, and privacy?

- Many fintech companies use non-traditional data to underwrite loans, such as social media information or search engine history. What implications are there from the use of non-traditional data? What impact might fintech have on enforcement of the Fair Credit Reporting Act and the Fair Debt Collection Practices Act? More generally, what obligations do fintech companies have to comply with fair lending laws?
- What recommendations do you have to modernize consumer protection laws in response to the growth of fintech?

Section 989F of Wall Street Reform required the GAO to examine the regulatory structure of person-to-person (P2P) lending with focus on the application of the Securities Act of 1933 to P2P lending; the posting of consumer loan information on the EDGAR database of the SEC; the treatment of privately held P2P lending platforms as public companies; the state and other federal regulators responsible for the oversight and regulation of P2P lending markets; the uses of P2P lending; and consumer privacy and data protections, minimum credit standards, anti-money laundering and risk management in the regulatory structure of P2P lending and whether additional or alternative safeguards are needed. Please provide an update on the findings that were required by section 989F of Wall Street Reform.

We recognize that completing these analyses may require multiple approaches and products and our staff are glad to work with you as you identify potential approaches to best address the many issues. Thank you for your assistance, and please do not hesitate to contact Ms. Lauren Oppenheimer, Minority Staff Director of the Subcommittee on Financial Institutions and Consumer Protection, at (202) 224-3753, Ms. Jeanette Quick, Senior Counsel of the Senate Banking Committee, at (202) 224-1569, or Mr. Chris Neary, Policy Director of the Senate Small Business & Entrepreneurship Committee, at (202) 224-7091 if you have any questions.

Sincerely,



Jeffrey A. Merkley  
United States Senator

Sherrod Brown  
United States Senator

Jeanne Shaheen  
United States Senator