Congressional Research Service
Informing the legislative debate since 1914

Marketplace Lending: Fintech in Consumer and Small-Business Lending

name redacted
Analyst in Macroeconomic Policy

September 6, 2016

Congressional Research Service
7-....
www.crs.gov
R44614

Summary

Marketplace lending—also called peer-to-peer lending or online platform lending—is a nonbank lending industry that uses innovative financial technology (*Fintech*) to make loans to consumers and small businesses. Although marketplace lending is small compared with traditional lending, it has grown quickly in recent years. In general, marketplace lenders accept applications for small, unsecured loans online and determine applicants' creditworthiness using an automated algorithm. Often, the loans are then sold—whole or in pieces—to investors. More traditional lenders are more apt to use employees to make credit assessments and have a greater need for office and retail space. Traditional lenders may hold loans themselves or package many loans together into large securities (a process called *securitization*). Due to these differences and to marketplace lending's lack of industry track record, marketplace lending is facing uncertainty about its advantages, its risks, and how it should be treated by regulators.

Some observers assert that marketplace lending may pose an opportunity to expand the availability of credit to individuals and small businesses in a fair, safe, and efficient way. Marketplace lenders may have lower costs than traditional lenders, potentially allowing them to make more small loans than would be profitable for traditional lenders. In addition, some observers believe the accuracy of credit assessments will improve by using more data and advanced statistical modeling, as marketplace lenders do through their automated algorithms, leading to fewer delinquencies and write-offs. They argue that using more comprehensive data could also allow marketplace lenders to make credit assessments on potential borrowers with little or no traditional credit history.

Other observers warn about the uncertainty surrounding the industry and the potential risks marketplace lending poses to borrowers, loan investors, and the financial system. The industry only began to become prevalent during the current economic expansion and low-interest-rate environment, so little is known about how it will perform in other economic environments. Many marketplace lenders do not hold the loans they make themselves and earn much of their revenue through origination and servicing fees, which potentially creates incentives for weak underwriting standards. Finally, some observers argue that lack of oversight may allow marketplace lenders to engage in unsafe or unfair lending practices.

Marketplace lenders are subject to existing federal and state regulations related to lending and security issuance, and some observers assert that the existing system is appropriate for regulating this lending. However, because existing regulations were developed and implemented largely prior to the emergence of marketplace lending, some argue that regulatory gaps and weaknesses exist and should be addressed.

The evolution of the regulatory environment facing marketplace lenders is just one development that will likely occur in coming years. Traditional lenders will continue to adapt to the new technology, market entrants, and market conditions. Marketplace lending has not been through an entire economic cycle, and rising interest rates or the onset of a recession will reveal strengths and weaknesses of marketplace lending.

Congress may have to consider the issues surrounding marketplace lending, because as the industry grows and develops, it will likely require attention from policymakers, regulators, and financial institutions.

Contents

Figures

Tables

Appendixes

Contacts

Introduction

This report examines marketplace lending, a type of nonbank lending done by online companies that make loans to consumers and small businesses using innovative technology. The marketplace-lending industry has experienced rapid growth and, with that growth, an increase in scrutiny by regulators, the media, and the public. Marketplace lending could create both benefits and risks, and it raises several policy questions.

This report begins by providing an overview of the marketplace-lending industry. The report then analyzes the potential benefits and risks the industry creates. Next, it describes existing regulation relevant to marketplace lending before examining some regulatory issues surrounding the industry. The report concludes with an examination of possible future developments.

Overview of Marketplace Lending

Marketplace lending refers to certain online lending that relies on innovative financial technology, or *Fintech*.[1] The industry is rapidly growing and evolving, and companies are continually developing new variants of existing business models.[2] In addition, incumbent lenders—including banks and nonbanks—are using and increasingly adopting some of the technologies and practices of marketplace lending to varying degrees. For these reasons, it is difficult to construct a concise definition that neatly divides all lending into either *marketplace* or *not marketplace*. Instead, this report will examine certain characteristics central to the business model of marketplace lenders, compare and contrast the characteristics with those of more traditional lenders, and examine issues regarding future performance and regulation of the marketplace-lending industry.

Marketplace lending combines all of the following characteristics:

- Loans are made to individuals and small businesses.
- Marketplace lenders operate almost entirely online, with no physical retail space.
- Underwriting is almost entirely automated and algorithmic.
- Marketplace lenders are funded by issuing equity or selling loans to investors.

This report will treat marketplace lending as lending in which all of these characteristics are the basis for the lender's business model. Additionally, the following characteristics are common and important to an examination of the current state of the industry, although they are not universal across all marketplace lending:

[1] Two notes on terminology: The term *peer-to-peer lending* was widely used during the early development of the industry. *Marketplace lending* includes peer-to-peer lending but also refers to a wider range of lending activity. Peer-to-peer lending involves selling loans to individual people and used to be a very prevalent business model in the industry. However, large institutional investors and hedge funds play an increasingly prominent role in funding marketplace loans, making the term *peer* misleading.

Fintech is a broad and evolving term that generally refers to issues involving new, innovative technologies being used to change the way financial services are provided or the way the financial system operates. Marketplace lending is one example of a business practice that can be classified as Fintech.

[2] Freddie Mac, Office of the Chief Economist, *Marketplace Lending: The Final Frontier?* December 22, 2015.

- Loans are unsecured, small, and short term.
- Loans are sold whole or securitized into notes backed by a single loan.

These characteristics can be found across all types of lenders. For example, many banks and nonbank lenders may offer online and automated application processes. However, lending done by a bank will not be considered marketplace lending, because bank business models also involve physical retail locations, loan officers to underwrite loans, deposit-taking as a funding source, and a diverse menu of available financial services. Other forms of nonbank lending deviate from marketplace lending models in ways that include pooling many loans together into a single security.[3]

The distinction between marketplace lending and traditional forms of lending is becoming increasing blurred as marketplace lenders expand their activities and traditional lenders adopt the practices of marketplace lenders. Nevertheless, the characteristics listed above are pertinent to discussion of benefits, risks, regulatory issues, and possible future developments in consumer and small-business lending related to innovative financial technology and so will be the focus of this report.

Business Models

Marketplace lenders typically make relatively small and short-term loans that are unsecured by collateral.[4] Most companies focus on a certain type of loan, such as personal, small business, or student loans, and the borrowers are usually individuals or small businesses. Interest rates on loans made through marketplace lending vary depending on the assessed creditworthiness of the borrower, but unsecured loans generally have high interest rates regardless of the type of lender.[5]

Marketplace lenders rely solely on automated, online processes. A typical application process would require prospective borrowers to fill out online forms that provide information about themselves (such as employment status and income) and the size, term, and purpose of the loan they are seeking. Applicants also may be required to give permission to the lender to access other information, such as credit scores. An algorithm uses this information and perhaps other publicly available information to assess the creditworthiness of the potential borrowers. Borrowers are then quoted a rate, and, if borrowers accept, they can have the money within a few days. Many think the process is shorter and more convenient than traditional loan applications.[6]

Marketplace lenders may hold loans once they have been originated or sell the loans to investors. *Direct lenders,* or *balance-sheet lenders,* hold most or all of the loans on their own balance sheets, earn the interest on the loans, and face the credit risk if a borrower does not repay, as shown in the top panel of **Figure 1**. These lenders typically raise funds to make loans by issuing equity to large investors, such as hedge funds and venture capitalists. Direct lenders are

[3] Loan securitization refers to an arrangement in which the holder of loans creates and sells a security to an investor which entitles that investor to receive payments dependent on the repayment of the underlying loan or loans. Typically, marketplace lenders that engage in securitization sell securities backed by a single loan. Typically, other types of lenders that engage in securitization sell securities backed by a pool of hundreds or thousands of loans.

[4] A mortgage secured by a house is an example of a loan that is secured by collateral.

[5] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending,* May 10, 2016, pp. 10-15, at https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

[6] Ryan Nash and Eric Beardsley, "Future of Finance Part 1: The Rise of the New Shadow Bank," *Goldman Sachs Equity Research*, March 15, 2015, pp. 12-15, 23-26.

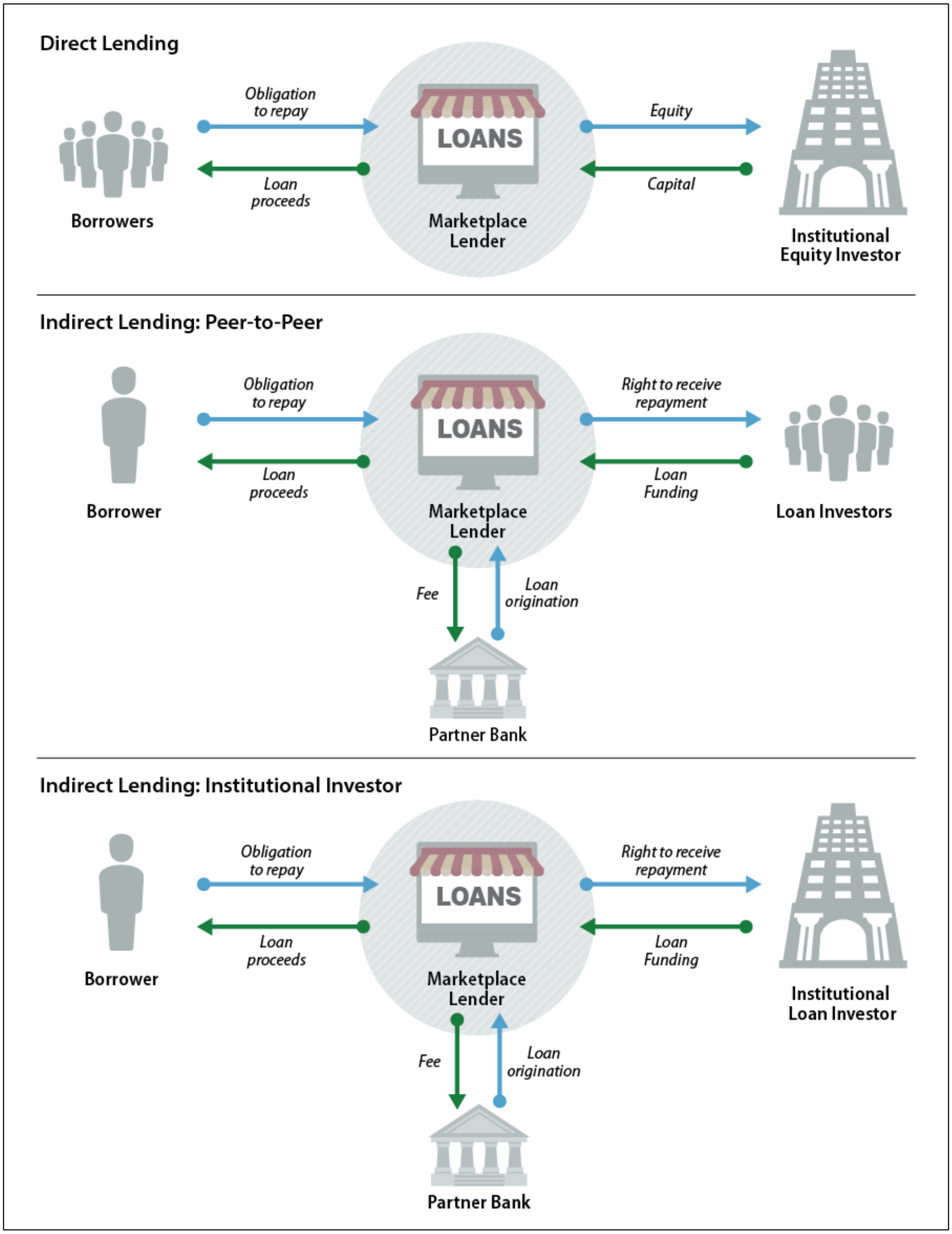
increasingly using new methods to raise funds, which make these lenders increasingly resemble more established nonbank lenders. In cases where an online lender securitized many loans that the lender originated, the lender would not be engaged in marketplace lending as described in this report.

Indirect lenders, or *platform lenders,* rarely hold loans themselves. Instead, they match individual loans to investors that want to purchase the loans, as shown in the bottom two panels of **Figure 1**. Prospective loan investors—individuals, financial institutions, or investment funds—select loans with interest rates and risk profiles that they want to own to earn interest. When investors have committed to fund a loan, marketplace lenders use a partner bank to originate the loan.[7] The marketplace lender buys the loan from the bank and then sells the loan to the investors, often using an instrument called a *payment dependent note*, which directs payments to the investor based on the performance of the loan. These marketplace lenders earn origination and servicing fees on the loan and do not face losses in the event of a default.[8]

[7] Some marketplace lenders use issuing banks at least in part for regulatory reasons. By making a bank the originator of the loans, the marketplace lender may be able shift compliance of certain regulations to the bank. These issues are discussed in more detail in the "Regulation" section.

[8] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending,* May 10, 2016, pp. 5-8, at https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

Figure 1. Examples of Marketplace Lender Business Models



Source: Congressional Research Service (CRS).

Note: This figure does not contain an exhaustive list of marketplace lending business models. These are stylized examples that illustrate some common lending and funding practices.

Size and Growth

Marketplace lending is small relative to total personal and small-business credit outstanding in the United States. Marketplace lenders originated almost $23 billion of loans in 2015, according to one estimate based on available information.[9] However, this figure accounted for less than 1% of the total market, as total consumer credit outstanding was $3.5 trillion and nonfinancial, noncorporate business loans—a category largely comprised of small-business loans—outstanding totaled $1.4 trillion at the end of 2015.[10]

However, growth in recent years has been rapid. Marketplace origination has experienced an annual compounding growth rate of 163% between 2011—when originations were just $473 million—and 2015.[11] One market analysis predicts originations could grow to $90 billion by 2020.[12] Another analysis identified $386 billion in personal and small-business lending that could potentially migrate from banks to marketplace lenders over the next 5 years to 10 years.[13]

Continued growth relies on marketplace lenders' ability to secure funding, and recent deals anecdotally suggest that institutional investors and venture capitalists will continue to play an important role. Venture capitalists provided $2.7 billion in 36 equity investments in marketplace lenders in 2015, with four of those deals accounting for almost $2 billion.[14] In separate 2015 agreements, two investment funds committed to buying $1 billion and $400 million of loans from two marketplace lenders.[15]

Participants

The borrowers in the marketplace lending industry are individuals and small businesses. Making the loan involves the marketplace lender, funding providers, and sometimes banks.

Marketplace-Lending Companies

One online compendium lists 111 marketplace lenders operating in the United States but does not claim to be exhaustive.[16] Many of these marketplace lenders are still small, but a few prominent companies are originating billions of dollars of loans. For example, Lending Club focuses on personal loans and originated $8.4 billion of loans in 2015.[17] Prosper and Avant are also large

[9] Neil Tomlinson et al., "Marketplace Lending: A Temporary Phenomenon?" Deloitte Insights, May 2016, p. 5.

[10] Federal Reserve, "Financial Accounts of the United States" (formerly Flow of Funds), First Quarter 2016, Table L.222, line 1, and Table L.104, lines 18 and 19 (mortgages excluded), at https://www.federalreserve.gov/releases/z1/.

[11] Neil Tomlinson et al., "Marketplace Lending: A Temporary Phenomenon?" Deloitte Insights, May 2016, p. 5.

[12] U.S. Department of the Treasury, "*Opportunities and Challenges in Online Marketplace Lending,"* May 10, 2016, pp. 10-15, at https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

[13] Ryan Nash and Eric Beardsley, "Future of Finance Part 1: The Rise of the New Shadow Bank," *Goldman Sachs Equity Research*, March 15, 2015, pp. 12-15, 23-26.

[14] KPMG International, "The Pulse of Fintech, 2015 Year In Review," March 9, 2016.

[15] Smittipon Srethapramote et al., "Global Marketplace Lending: Disruptive Innovation in Financials," Morgan Stanley Blue Paper, May 19, 2015, p. 30.

[16] "Marketplace Lending Industry Compendium," *Lending Robot* (blog), July 21, 2016, at http://blog.lendingrobot.com/industry/marketplace-lending-industry-compendium/.

[17] Neil Tomlinson et al., "Marketplace Lending: A Temporary Phenomenon?" Deloitte Insights, May 2016, p. 5.

lenders focusing on personal loans. OnDeck is a small-business lender that originated $1.9 billion in loans in 2015.[18] SoFi securitized or sold nearly $1.7 billion of student loans in 2015.[19]

Funding Providers

Funding for the loans comes from both individuals and large institutional investors. Initially, the industry mostly relied on *peer-to-peer lending*, in which individuals invested small amounts to purchase a piece of a loan. However, large institutional investors—such as hedge funds and private investment firms—have become an increasingly important source of funding in recent years through whole loan purchases and equity investments. Matching specific loans to individual investors was initially a very distinctive characteristic of marketplace lending, and the migration toward institutional funding makes the industry increasingly similar to incumbent nonbank lenders.

This transformation likely has several causes. Marketplace lenders had to establish a track record of low delinquency and charge-off rates before institutional investors would purchase loans. Also, large investors are searching for assets with relatively high yields in a low-interest-rate environment. Finally, some institutional loan owners have had success securitizing marketplace loans.[20]

Banks

Some banks are collaborating with the new marketplace lenders in a variety of ways. As mentioned earlier, indirect lenders use an issuing bank to originate loans for a fee, which the indirect lender buys within a few days. Although this business model is widely used and involved in issuing billions of dollars of loans, only a few specialized banks currently participate.

Small and large banks are involved in marketplace lending as purchasers of loans. According to reports, one marketplace lender finances almost 10% of its loans with small banks, and another reportedly has an agreement with a single bank that allows the bank to purchase up to 25% of the lender's loans. Typically, banks apply their own automated filters on loan characteristics to determine which loans they want to purchase. This arrangement allows banks to use the low-cost underwriting of marketplace lenders without having to create their own online platforms. Banks are able to acquire loans that they otherwise may not originate themselves because of high underwriting and servicing costs relative to the income generated by small loans. However, the borrowers are not aware of a bank's involvement, and so banks are not able to build customer relationships or offer additional products, as they would if they made the loan themselves.[21]

Banks also enter into arrangements with marketplace lenders in ways that allow the banks to maintain closer relationships with the borrowers. In *referral* partnerships, a bank will refer customers—usually those who do not meet underwriting standards or are looking for a product the bank does not offer—to a marketplace lender. Often the bank collects a fee from the lender,

---

[18] OnDeck, *2015 Annual Report*, March 3, 2016, p.38, at https://s21.q4cdn.com/249473406/files/doc_downloads/On-Deck-2015-Annual-Report.pdf.

[19] SoFi, "SoFi Is Transforming Financial Services for Financially Responsible Consumers," information release, December 2015, at http://origin-qps.onstreammedia.com/origin/multivu_archive/ENR/296765-About_SoFi_121615.pdf.

[20] Smittipon Srethapramote et al., "Global Marketplace Lending: Disruptive Innovation in Financials," Morgan Stanly Blue Paper, May 19, 2015, pp. 9-10.

[21] PriceWaterhouseCoopers, "Peer Pressure: How Peer-to-Peer Lending Platforms Are Transforming the Consumer Lending Industry," February 2015, pp. 5-6.

but the interaction with the borrower may allow the bank to establish or maintain a business relationship.

White label or *co-branded* partnerships allow banks to be more closely associated with the provision of credit to a customer, while still taking advantage of the cost advantages of a marketplace lender. These partnerships are also an example of how marketplace-lending activities are increasingly being adopted by traditional lenders. In these partnerships, a bank sets underwriting standards, originates the loans, and holds the loan once issued.[22] The marketplace lender sets up the online application platform and automation of the underwriting.[23] In this case, the lending ceases to be marketplace lending in the sense that this report uses the term, as the marketplace lending company acts as a third-party vendor for a bank.

Potential Opportunities

Some industry observers assert that marketplace lending has inherent advantages over traditional lending, including the following:

- Cost structures may be lower.
- Underwriting may be more accurate.
- The application and underwriting processes may be faster, more convenient, and more aligned with certain customer preferences for financial-service delivery.

Proponents argue that these advantages will allow marketplace lending to continue to grow and transform the way individuals and small businesses acquire credit. Furthermore, proponents assert that the changes will provide an opportunity for improvements in financial and societal outcomes:

- Credit could become less expensive for individuals and small businesses.
- Credit could become more available, especially for traditionally underserved or unserved market segments, such as small businesses and people with thin credit histories.
- Returns for credit investors could be higher.

This section analyses those arguments.

Industry Advantages

Marketplace lenders likely hold *operating-cost* advantages over banks, because online-only application processes, automated underwriting, and a lack of branch infrastructure keep labor and overhead costs low. One analysis estimates that loan processing and servicing costs for marketplace lenders as a percentage of loan amounts were 61% lower for marketplace lenders than traditional banks. Whether marketplace lenders could hold operating-cost advantages over other nonbank lenders is not clear, but it is possible if older nonbank lenders have more costly legacy systems.[24]

---

[22] The bank may at a later time sell or securitize the loan, as the bank would any other loan it originates and holds.

[23] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016, pp. 15-17, at https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

[24] Neil Tomlinson et al., "Marketplace Lending: A Temporary Phenomenon?" Deloitte Insights, May 2016, p. 13.

Some analysts question whether marketplace lenders have a *total* cost advantage over banks, because banks have lower funding and marketing costs. Early analyses find that marketplace lenders' total costs as a portion of loan amount are similar to the largest banks.[25] However, it may be too early to make these comparisons. Marketplace lenders have only recently begun to build their business, whereas the largest banks have achieved economies of scale that reduce average costs. Marketplace lenders' costs per loan may decrease as these lenders become bigger and refine their business models and practices. For example, the technology-driven innovations used to process and service loans are likely scalable, meaning costs will not increase substantially as lending volumes do. Therefore, operating-cost advantages could grow as the industry does.[26]

Some marketplace lending proponents argue that the automated underwriting used by marketplace lenders may be more accurate than traditional underwriting processes.[27] Traditional lenders use income, debt, and credit score information—such as FICO scores, a measure of past debt-repayment performance—to assess the likelihood that a borrower will repay the loan.[28] Whereas traditional credit scores are mostly based on a customer's repayment performance on past debt, marketplace lenders often analyze more factors.[29] Each company uses different variables in its proprietary algorithm, but data used in some algorithms may include information such as utility bill payment history, monthly cash flow and expenses, government records, Internet presence, and social-network activity. Whatever advantage marketplace lenders may have in this area is precarious, because established lenders can adopt similar technologies and practices.

Another potential advantage that the marketplace-lending industry holds over incumbent bank and nonbank lenders is its ability to better satisfy the preferences of and reduce time costs for potential borrowers. Consumers are increasingly comfortable using the Internet and mobile devices for the delivery of financial services, and they value speed and convenience. Whereas traditional lenders have to adjust legacy systems and existing infrastructure to use these technologies, marketplace lenders may be able to design their processes to fit current customer needs. However, traditional lenders may adapt their large infrastructures to meet customer preferences at less cost than a start-up company with no existing infrastructure.[30]

---

[25] Comparisons of funding costs between the industries are challenging, because the true cost of raising funds and attracting customers is difficult to compare across the industries. Banks offer a wider range of financial services than marketplace lenders and have different costs and sources of funding. Banks pay low interest rates on deposits—one of their main sources of funding—to fund loans, but banks also incur other costs to attract funding and provide other services besides lending. Deposits are attractive to many savers because they are guaranteed by government deposit insurance. This insurance requires banks to take on regulatory costs of complying with bank safety and soundness regulation to obtain that insurance. Banks have costs associated with maintaining payment and processing systems and branch networks that are used in part to attract and retain depositors. Marketplace lenders avoid much of these costs and instead offer higher rates of return for investor funds and spend more on marketing to attract customers.

[26] Ryan Nash and Eric Beardsley, "Future of Finance Part 1: The Rise of the New Shadow Bank," *Goldman Sachs Equity Research*, March 15, 2015, p. 16.

[27] This assertion stands in disagreement with the argument that relationship lending—meaning lending in which the borrower and lender have a professional, person-to-person relationship—results in the more accurate underwriting. Until more data about the performance of marketplace loans is available to systematically compare to other lending types, empirically evaluating the merits of the arguments will be challenging.

[28] For more information on how credit scores are computed and issues related to them, see CRS Report R44125, *Consumer and Credit Reporting, Scoring, and Related Policy Issues*, by (name redacted).

[29] Letter in response to a Request for Information from Lending Tree, Inc. to U.S. Department of the Treasury, September 30, 2015, at https://www.regulations.gov/document?D=TREAS-DO-2015-0007-0037.

[30] "Digital Disruption: How Fintech Is Forcing Banking to a Tipping Point," Citi GPS, March 2016. pp. 8-12.

Resultant Outcomes

Although there is no official data to accurately measure the effects of marketplace lending on financial markets and the economy, it is possible that the advantages described above could result in desirable outcomes, such as lower rates for borrowers, better returns for investors, and increased credit availability for some borrowers without access to bank credit.

If the costs of originating and servicing loans and the costs of losses from nonperforming loans (due to more accurate underwriting) are lower, then these savings could be passed on to consumers in the form of lower interest rates and lower loan fees.[31] In addition, lowering the cost of making loans and reducing losses on the loans improves the efficiency of financial intermediation—the matching of a borrower's need for funds to a saver's or an investor's available funds. If marketplace lenders as intermediators are able to charge less to cover their costs, that could result in higher returns for the investor as well as lower costs for borrower.[32]

Accurate underwriting using a greater number of factors could also result in the extension of credit to creditworthy borrowers that otherwise would not have been approved. Small businesses and people with a lack of credit history—many of whom are low-income earners, minorities, or immigrants—are often cited as being at particular risk of being denied credit, even if they may be creditworthy. Marketplace lenders could overcome two potential causes for this lack of available credit.

One problem is that small loans generate little revenue relative to large ones, but underwriting and processing a small loan carries similar costs to underwriting and processing a large one. Traditional lenders may find it difficult to make small lending profitable.[33] Another issue is that a lack of credit history—which is vital to traditional credit assessments through credit scores—creates too much uncertainty about the potential borrower's ability to repay.[34] Lower costs allow smaller-revenue-generating loans to still be profitable, and the innovative use of a wider array of data could reduce the uncertainty of credit assessments compared with traditional underwriting. Better credit availability also could be realized if traditional banks and nonbank lenders adopted similar methods to reduce costs and expand data usage in underwriting.

Potential Risks

Given that the marketplace-lending industry is young and rapidly growing and evolving, some observers are concerned that a great deal of uncertainty surrounds the industry. Skeptics argue that marketplace lending is creating risks for borrowers, investors, and the financial system. The sources of potential risk include the following:

- Underwriting accuracy and loan performance has not been tested by economic recession.

[31] Smittipon Srethapramote et al., "Global Marketplace Lending: Disruptive Innovation in Financials," Morgan Stanley Blue Paper, May 19, 2015, p. 27.

[32] Alistair Milne and Paul Parboteeah, *Research Report: The Business Models and Economics of Peer-to-Peer Lending*, European Credit Research Institute, No. 17, May 2016, p. 4.

[33] Bank Administration Institute, "Making Small Business Loans Profitably," July 7, 2015.

[34] Karen G. Mills and Brayden McCarthy, *The State of Small Business Lending: Credit Access During the Recovery and How Technology May Change the Game*, Harvard Business School, Working Paper no. 15-004, July 2014, pp. 39-45.

- Some—including a number of the largest marketplace lenders—generate revenue from origination fees but do not hold the resultant loans and are not subject to risk-retention rules, creating an incentive to make excessively risky loans.
- Funding has been available and demand for loans has been high during a period of economic expansion with low interest rates, but the ability to raise funds and attract borrowers in other economic conditions is unproven.
- Servicing of loans in the event of a failure of a marketplace lender could be disrupted.

These risks potentially threaten the borrowers of and investors in marketplace loans, marketplace lending companies themselves, and—if marketplace lending grows sufficiently in coming years—the financial system. The adverse outcomes could include the following:

- Loan delinquency and default rates could grow to an unexpectedly high rate, harming borrowers' future credit availability and inflicting large, unanticipated losses on investors.
- Credit determinations by marketplace lenders could disparately impact minorities and other protected groups.
- Loan demand or funding for marketplace loans could contract to the point that marketplace lenders fail, potentially stopping the flow of payments to loan investors.
- If the industry grows sufficiently large in the future, bad underwriting, large losses on marketplace loans, or marketplace lender failures could create systemic stress.

This section analyses those arguments.

Sources of Risk

The accuracy of the data-driven algorithms used by marketplace lenders is hard to determine without a long history of data for these types of loans to compare their performance with that of traditionally originated loans. Importantly, marketplace lending has only grown into a substantial financial activity during the current expansion, when loans of almost all types are expected to perform well. All new lending companies and underwriting methods remain untested for a period, but the rapid growth of marketplace lending occurring during relatively favorable economic conditions could create a concentration of underwriting risk. A more revealing test will come during the next economic downturn, when delinquency and default rates across assets can be expected to rise.[35]

Some observers are concerned that marketplace-lending companies—especially indirect lenders—could be threatened by changing economic conditions. Marketplace lenders need to continually attract both borrowers demanding loans and investors willing to fund loans. Lenders have been able to do this successfully in recent years, but exclusively in a time of economic expansion and low interest rates. During expansion, credit demand is relatively high, which results in more loans to originate. Investors have been willing to fund relatively high-interest-rate

---

[35] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016, p. 1, at https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

loans, potentially because investors are seeking out higher rates of return in a low-rate environment. When these conditions change, marketplace lending may not remain viable.

Banks and some nonbank lenders, by contrast, may be better able to withstand a change in these conditions. Unlike many indirect marketplace lenders, banks and nonbank companies that hold assets on their balance sheets will earn interest on those assets and their portfolios of loans and other assets may be more diversified than those of direct marketplace lenders. Additionally, deposits give banks a source of stable funding.[36]

Some finance companies—nonbank lenders that hold consumer and business loans and leases on their balance sheets—share important characteristics with marketplace lenders; they make loans and rely on market funding rather than deposits. The experience of finance companies during the financial crisis illustrates the potential risk marketplace lenders face. When market funding contracted, many finance companies failed or were bought by banks.[37]

Certain aspects of some marketplace-lender business models could create incentives to weaken underwriting and originate bad loans. Many marketplace lenders originate a loan for a fee but do not hold the loan on their balance sheets. If the borrower defaults, the loan investor bears the loss. So, a marketplace lender could make bad loans and collect fees but not suffer the ensuing losses, potentially creating the incentive to make bad loans. This activity is also common among traditional bank and nonbank lenders, but these lenders are subject to risk-retention rules—which will be discussed in more detail the "Regulatory Issues" section—designed to mitigate this risk. However, marketplace lenders are generally not subject to these rules, and the originate-to-sell model concerns some observers.[38]

The potential for marketplace-lender failure creates uncertainty surrounding loan servicing—a process that includes taking payments from borrowers and delivering these payments to the investors. After marketplace lenders sell loans, they often still perform loan servicing for a fee. Typically, when a mortgage servicer fails the servicing rights are quickly reassigned. Whether a marketplace-lending company would be able to continue processing these payments or transfer the mortgage company in the event a failure is unclear. This risk exists for any mortgage servicer, but the risk of disruption may be greater at marketplace lenders that are relatively inexperienced. Some worry that loan servicing would be disrupted and loan investors would stop receiving their payments.[39]

Adverse Outcomes

Borrowers could potentially be harmed in several ways as a result of these risks. Faulty underwriting could result in borrowers being rated as being a higher credit risk than they actually are and having to pay unnecessarily high interest rates. Alternatively, if the underwriting is too lenient, loans could be made to borrowers that lack the ability to repay the loans. Defaulting would then restrict these borrowers' future access to and prices paid for credit.

---

[36] Smittipon Srethapramote et al., "Global Marketplace Lending: Disruptive Innovation in Financials," Morgan Stanly Blue Paper, May 19, 2015, pp. 32-33.

[37] Todd Baker, "Marketplace Lenders Are a Systemic Risk," *American Banker*, August 17, 2015.

[38] Prepared Remarks of Jeffrey Langer, Assistant Director for Installment Lending and Collections Markets, Consumer Financial Protection Bureau (CFPB), "Marketplace Lending: A CFPB Perspective," *LendIt USA Conference*, April 12, 2016.

[39] Angela Herrboldt, "Marketplace Lending," *FDIC Supervisory Insights*, vol. 12, no. 2 (Winter 2015), p. 17.

Another possibility is that the algorithms and data used in automated underwriting could make credit assessments that are correlated to borrower characteristics protected by fair-lending laws, such as race or gender. Whether this correlation were intentional or unintentional, it could result in borrowers from a protected group being disproportionately denied credit or charged higher interest rates compared with other groups.[40]

Investors in marketplace loans also face risks related to the accuracy of credit assessment. Proprietary underwriting systems and lack of track record through all types of economic and credit conditions introduce uncertainty regarding the future performance of marketplace loans. If the underwriting proves to be inaccurate, investors could be buying inappropriately high-risk loans and eventually could suffer unexpected losses.

The failure of marketplace lending firms is not problematic per se. Uncompetitive or unsustainable business models failing and equity holders suffering losses after taking informed risks is a central dynamic to a market economy. However, widespread failure of marketplace lenders—especially if these lenders grow to the point that they provide a substantial amount of credit to consumers and small businesses—could lead to a sharp contraction in the availability of credit to the economy. Also, because marketplace lenders often service loans they make, marketplace lenders' failure could disrupt payment to investors from performing loans.[41]

Another potential future issue is systemic risk from marketplace lenders. Currently, marketplace lending is likely too small relative to total credit outstanding to cause stress across the financial system if loan defaults were to rise or marketplace lenders were to fail. However, the industry is growing rapidly, and its investors include individual savers and large institutional investors. Banks buy marketplace loans and enter into a variety of agreements and arrangements with marketplace lenders. If the size and interconnectedness of marketplace lending continues to grow, the industry risks could threaten systemic stability in coming years.[42]

Regulation

Marketplace lending is subject to federal and state regulations and requirements. The rules are numerous but will be generally described here in three groups:

- Securities registration and disclosure.
- Consumer protection and fair-lending compliance.
- State-level regulatory requirements.

Although marketplace lending is subject to these rules and regulations, the existing regulatory system was designed prior to the advent of online marketplace lending. As a result, there is some uncertainty related to how regulation should be applied and how effective it can be. Some issues include the following:

- Potential lack of supervisory oversight.
- Lack of risk retention.

[40] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending,* May 10, 2016, p. 20, at https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

[41] Angela Herrboldt, "Marketplace Lending," *FDIC Supervisory Insights,* vol. 12, no. 2 (Winter 2015), p. 17.

[42] Todd Baker, "Marketplace Lenders Are a Systemic Risk," *American Banker,* August 17, 2015.

- Uncertain, inconsistent, or unnecessarily burdensome application of state regulation.

Existing Regulatory Framework

Making loans and selling whole loans, loan notes, or equity to investors are well-established financial activities, and participating firms are subject to many existing regulations and requirements involving both federal and state regulatory agencies.[43] Examples of federal regulations are listed in the **Appendix**. This section focuses on certain issues concerning securities issuance, consumer protection and fair lending, and regulations at the state level.

Securities Regulation

The objective of securities law is to ensure that investors have enough information to make informed judgements and to prevent investors from being defrauded. The Securities Act of 1933 (P.L. 73-22) generally requires issuers that make a public offering of securities—which would include marketplace lenders raising funding by selling loan notes or issuing equity to the general public—to register securities with the Securities and Exchange Commission (SEC). Registration involves providing investors with a prospectus containing detailed information about the company issuing securities and the securities themselves, including descriptions of the issuing company and securities, analysis of financial information, and a discussion of risk factors. Companies issuing registered securities also must fulfill ongoing reporting requirements related to their financial condition under the Securities Exchange Act of 1934 (P.L. 73-291).[44]

Certain marketplace lenders may be able to forego registration of their securities with the SEC if they meet criteria that qualify them for general exemptions. Some of these exemptions restrict funding sources and marketplace lender size. For example, a marketplace lender that offered securities online could be exempt from SEC registration if the securities are sold only to institutional investors and high-net-worth individuals. Also, the size threshold to qualify for an exemption as a small security offering is $50 million of offerings from an issuer in a 12-month period. Companies can also qualify for reduced reporting requirements as an "emerging growth company" if they meet certain criteria, including annual revenues of less than $1 billion.[45]

Regardless of whether the securities are registered or unregistered, marketplace lenders would be liable for investor losses if the offering materials they provided contained materially false information or omitted important information. Borrower-provided information could potentially create such a liability. Marketplace lenders verify much, but not all, of the information borrowers include in applications, some of which could be incorrect. Marketplace lenders have addressed the problem by stating in their offering materials what borrower information is unverified and specifying that investors assume the risk that this information is unverified.[46]

---

[43] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016, pp. 38-39, at https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf. For more information on financial regulation, see CRS Report R43087, *Who Regulates Whom and How? An Overview of U.S. Financial Regulatory Policy for Banking and Securities Markets*, by (name redacted) .

[44] Peter Manbeck and Marc Franson, *The Regulation of Marketplace Lending: A Summary of the Principle Issues (2016 Update)*, American Bankers Association White Paper, April 2016, pp. 13-16.

[45] Ibid, pp. 14, 16-19.

[46] Ibid, pp. 15-16.

Notably, securities issued by marketplace lenders generally have not been treated as *asset-backed securities* (ABS) by the SEC. ABS are defined as securities backed by a *pool* of assets. Because most marketplace lenders issue notes backed by a *single* asset, an individual loan, their issuances are not considered ABS. This distinction also allows marketplace lenders to avoid certain reporting requirements and risk-retention rules—prescribed by The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203)—that require ABS issuers to retain a stake in the assets underlying an issuance.[47] The purpose of this regulation is to incentivize prudent lending.[48]

Consumer Protection

When marketplace lenders make loans to consumers, the lenders are subject to consumer-protection laws. The Truth in Lending Act (P.L. 90-321) requires that lenders provide consumers with standardized, easy-to-understand information about the terms of the loan. The Equal Credit Opportunity Act (P.L. 94-239) prohibits lenders in a credit transaction from considering a borrower's race, color, sex, age, religion, national origin, marital status, or whether the borrower receives income from public assistance. Also, the method used to determine creditworthiness must not have a disparate impact on those groups based on any of these characteristics. The Dodd-Frank Act prohibits unfair, deceptive, and abusive acts and practices in consumer lending, and the Federal Trade Commission Act (P.L. 75-447) prohibits unfair or deceptive acts and practices in or affecting commerce, including lending. Consumers are also protected by laws related to debt collection, privacy, and credit-reporting practices, all of which may apply to marketplace lenders when their activities fall within the scope of these laws.[49] Additional federal laws and regulations apply, but an exhaustive examination is beyond the scope of this report.

The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) are two important agencies involved in regulating marketplace lending. The CFPB has the authority to enforce federal consumer-protection laws, and nonbank lenders—including marketplace lenders—are generally subject to this enforcement authority. The CFPB also has rulemaking authority over consumer lending, including for rulemaking that prohibits unfair, deceptive, or abusive acts and practices. The FTC has enforcement authority of certain consumer-protection statutes. The FTC also has regulations in place prohibiting certain abusive terms in credit contracts.[50]

State Laws

In addition to securities and lending laws, many marketplace lenders are subject to related state-level laws in states in which they operate. The issuer of securities generally has to register the securities with a state securities commission, and that registration sometimes must be renewed annually. The state commission may have the authority to deny registration of any security it judges to be unsuitable for sale. Individual states also have laws prohibiting unfair or deceptive

---

[47] Ibid, pp. 15, 29-31.

[48] For more information on the risk-retention requirement, see CRS In Focus IF10204, *QRM: Risk Retention and the Mortgage Market*, by (name redacted) . Although this report focuses on residential mortgage securitizations, it also contains a primer on risk retention.

[49] Peter Manbeck and Marc Franson, *The Regulation of Marketplace Lending: A Summary of the Principle Issues (2016 Update)*, American Bankers Association White Paper, April 2016, pp. 44-52.

[50] Joseph Barloon, Darren Welch, and Neepa Mehta, "Leveling the Playing Field: Implications of CFPB Authority over Non-Depository Financial Institutions," *Antitrust*, vol. 27, no. 2 (Spring 2013), pp. 71-78.

trade practices. Each state may require a marketplace lender to get one or more licenses to operate as a lender, broker, or debt-collection agency, depending on the state's requirements. Finally, many states have usury laws, limiting the amount of interest and fees a lender can charge for certain loans.

State usury laws and lending license requirements are likely important factors for why some marketplace lenders—including some of the largest—use an indirect lending business model. Recall that in this model, a federally chartered bank originates the loans and the marketplace lender sells a note backed by the loan to investors. As nonbanks, marketplace lenders cannot obtain a federal charter themselves.

The indirect lending arrangement may allow indirect marketplace lenders to avoid being subject to individual state usury laws, although this faces legal uncertainty. Typically, the terms of a loan made by a national bank are subject to federal law and regulations that preempt state law, and that preemption follows the loan if it is sold to another party. This arrangement allows the interest rates on loans made by national banks to be "exported" to loan investors in different states. Indirect marketplace lenders use banks located in states with no usury laws to originate the loan and then are able to sell the loan anywhere without being constrained by individual state limits.[51] However, a court ruling—which will be examined in more detail in the next section—has created uncertainty over whether marketplace lenders will be able to continue to export loan terms without being subject to state usury laws.

Regulatory Issues

The existing regulatory framework was developed before marketplace lending emerged, which has created concern and uncertainty regarding how existing laws and regulations will be applied. A general concern is that marketplace lenders are practicing regulatory arbitrage—meaning they are designing their business models and activities specifically to circumvent certain regulations. Potentially, this practice could mean that marketplace lenders are not fundamentally different from other, more established nonbank lenders but instead have simply found ways to get more lenient regulatory treatment.[52]

Marketplace lending—similar to much nonbank lending—is not subject to the same supervisory oversight that banks are. Although many laws and regulations apply to marketplace lenders, regulatory oversight checking for compliance is less active *ex ante* than it is at banks, where examiners periodically check if the institution is in compliance with regulations. However, other forms of oversight exist for marketplace lenders.

In the case of indirect marketplace lenders depicted in the bottom two panels of **Figure 1**, the partner bank originating the loan—not the marketplace lender—undergoes regular examination. Also, as third-party vendors, indirect lenders are subject to supervision if the bank's regulator chooses to examine them. However, direct lenders are not subject to this third-party oversight, because their lending activities do not involve a bank. Some observers are concerned that as currently constructed, this situation creates opportunities for marketplace lenders to harm borrowers.[53]

---

[51] Peter Manbeck and Marc Franson, *The Regulation of Marketplace Lending: A Summary of the Principle Issues (2016 Update)*, American Banks Association White Paper, April 2016, pp. 1-3.

[52] Some observers may assert that established nonbank lenders themselves are undertaking regulatory arbitrage by structuring themselves in ways to avoid bank regulations.

[53] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016, p.
(continued...)

When marketplace lenders sell a single loan or pieces of a single loan, they generally have not had to adhere to risk-retention rules, which apply to issuers that pool many loans together into a single security, a common practice at banks and nonbank lenders. Risk-retention rules were adopted after the financial crisis in an effort to prevent imprudent lending by institutions originating loans with the intent to securitize them. The rules generally require an institution that securitizes loans into a pooled security to hold a portion (usually 5%) of the underlying assets on its balance sheet. Potential loss from loans defaulting is an incentive for the originator to maintain careful underwriting and not make excessively risky loans. Some observers assert that marketplace lenders face the same incentive to weaken underwriting that issuers of pooled securities do and should be subject to the rule. Others argue that risk retention is unnecessary. One reason is because the simplicity of a single loan—unlike a security, with numerous loans and complex payment structures—makes it easier for an investor to understand risks he or she is taking.[54]

Uncertainty regarding indirect lenders also exists in the area of state-level regulation. Indirect marketplace lenders use banks at least in part to avoid state-level licensing requirements and to originate loans under terms that preempt state-level usury laws. Some consumer advocates assert that this practice is a case of regulatory arbitrage and are concerned that this type of relationship is allowing a lender to sidestep state-level regulation in a way that weakens consumer protection. These consumer advocates assert that the marketplace lender, not the bank, is the true lender and should have to comply with state regulations, such as usury laws. Proponents of the marketplace-lending industry say marketplace lenders are enter into these arrangements out of necessity, because it is unnecessary and costly for a nationwide lender—which is complying with all relevant federal regulations—to tailor lending terms and conditions to 50 different sets of state-level regulations.[55]

The United States Court of Appeals for the Second Circuit issued a decision in May 2015 in the case of *Madden v. Midland Funding, LLC* that created uncertainty over whether the use of an issuing bank to preempt state usury laws will continue. Under the decision, the interest rate of a consumer loan originated by a national bank may not be enforced by a nonbank debt purchaser if the interest rate exceeds the limit of state usury law. The case involves bad credit card debt, but it may apply to the sale and assignment of other types of loans originated by national banks—potentially including certain marketplace loans.[56]

Potential Future Developments

The marketplace-lending industry is young and involves much uncertainty. Several developments should reveal more about the future of the industry, including the following:

- Traditional lender response to new innovations and companies.

(...continued)

28.

[54] Peter Manbeck and Marc Franson, *The Regulation of Marketplace Lending: A Summary of the Principle Issues (2016 Update)*, American Banks Association White Paper, April 2016, pp. 29-31.

[55] Thomas Brown and Molly Swartz, *Competition Policy in Consumer Financial Services: The Disparate Regulation of Online Marketplace Lenders and Banks*, Competition Policy International, March 20, 2016.

[56] CRS Legal Sidebar WSLG1366, *UPDATED: Bank Can't Sell Its Interstate Usury Exemption*, by (name redac ted) .

- Marketplace lending performance during and after a recession.
- Resolution of outstanding regulatory issues.

Traditional Lender Response

Incumbent lenders may respond to the emergence of marketplace lending in several ways, including no longer competing for small, unsecured loans; adopting the technology and practices of marketplace lenders; and entering into cooperative relationships with marketplace lenders. How the market develops and to what extent marketplace lending becomes part of regular bank and nonbank lending practices may affect how the regulatory system will respond.

Some banks may choose not to compete directly with marketplace lenders. Small loans have low profit margins compared to large ones.[57] Banks may decide that their business models, which require branch infrastructure and higher regulatory costs, should not include making small, unsecured loans. By not competing in this market, banks would avoid the costs of setting up their own online automated systems or changing their application and underwriting systems, while losing only unprofitable customers. However, banks would risk later losing market share of more profitable segments if marketplace lending continues to grow and branch out into more profitable market segments.

Alternatively, banks could choose to compete directly with the emergent companies. One option for banks would be to independently start their own online, automated platforms and use more data in underwriting. All loans or certain loans that align with a bank's own underwriting standards could be held on the balance sheet, and capabilities to match loans with investors could also be developed. By developing their own platforms, banks could bring the efficiencies of marketplace lenders into their own business models. Alternatively, banks could purchase existing online marketplace lenders and make them part of the bank's organization. The risk associated with developing a platform or purchasing an existing one is that it would require a potentially large investment in an area outside bank expertise.[58] Another, more concerning possibility is that in competition for market share, banks may weaken underwriting to generate more originations, potentially leading to loan losses.[59]

Another option that banks are commonly pursuing is to enter into a collaborative relationship with marketplace lenders, as discussed in the "Participants" section. For most banks, this approach means investing in loans originated by online lenders or contracting with marketplace lenders to create an online, automated platform for the bank. These arrangements could allow banks to share in some of the benefits of marketplace lending and to commit to smaller additional costs.[60]

Performance in Recession

Many uncertainties about marketplace lending will likely be clarified after the industry has been active during an entire economic cycle with a recession. Loan demand and funding availability

[57] Bank Administration Institute, "Making Small Business Loans Profitably," July 7, 2015.

[58] PricewaterhouseCoopers, *Peer Pressure: How Peer-to-Peer Lending Platforms Are Transforming the Consumer Lending Industry*, February 2015, pp. 9-10.

[59] Financial Stability Oversight Council, 2016 Annual Report.

[60] PricewaterhouseCoopers, *Peer Pressure: How Peer-to-Peer Lending Platforms Are Transforming the Consumer Lending Industry*, February 2015, pp. 5-8.

likely will decline during adverse economic conditions, and whether marketplace lenders fail will reveal more about the sustainability of the business models. Following recession, delinquency and default rates of marketplace loans may be more meaningfully compared with those of traditional loans and the industry's performance likely will affect funding availability.[61] A funding contraction could result in marketplace lenders failing or becoming banks through mergers or acquisitions to gain access to deposits as a funding source, as happened to finance companies during the last recession.

Regulatory Environment

Industry participants and observers will closely watch developments in the regulation of marketplace lending. One possibility is that the existing regulatory framework will not change substantively. If this is the eventual outcome, the industry could grow more rapidly if regulatory and judicial uncertainties are resolved. However, if the uncertainties remain unresolved, industry growth could be hindered.

Another possibility is that regulatory changes will be made to address issues specific to the marketplace-lending industry. An agency or agencies could take a more active role in the direct oversight of marketplace lenders. This may require a statutory change, depending on the current authority of regulatory agencies. For example, the CFPB has supervisory authority over consumer lenders, and so could increase oversight of certain marketplace lenders, but small-business lenders may not be subject to this authority. Risk-retention rules could be applied to the marketplace lenders or their partner banks. Allowing marketplace lenders to be federally chartered could resolve some state issues.[62]

Conclusion

Marketplace lending is a rapidly growing and evolving industry involving new firms and technologies, individual borrowers and savers, institutional investors, and banks. The industry's lack of track record and its interconnectedness result in many areas of uncertainty. Opportunities for benefits exist for borrowers (especially underserved borrowers), investors, and the financial system, but these opportunities come with potential risks. The current regulatory system aims to balance benefits and risks, but it was developed before marketplace lending became prevalent. As a result, it is not clear how effectively the existing system will regulate the marketplace-lending industry. As the industry matures and if regulatory issues are resolved, the effects of marketplace lending for the financial system and the economy will become clearer.

[61] Smittipon Srethapramote et al., "Global Marketplace Lending: Disruptive Innovation in Financials," Morgan Stanly Blue Paper, May 19, 2015, pp. 32-33.

[62] U.S. Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016, pp. 26-27.

Appendix. Examples of Regulations and Requirements

Table A-1. Examples of Federal Regulation Potentially Applicable to Marketplace Lending

Law	Examples of Requirements or Provisions	Relevant Federal Agencies
Bank Service Company Act (P.L. 87-856)	Provides federal banking agencies with the authority to regulate and examine certain third-party service providers for banks.	FRB, OCC, FDIC, NCUA
Electronic Fund Transfer Act (P.L. 95-630) - Regulation E	Stipulates that terms and conditions of electronic transfers to and from customer accounts must be disclosed and consumer liability for unauthorized transfers is limited.	OCC, FRB, FDIC, NCUA, FTC, CFPB
Equal Credit Opportunity Act (P.L. 94-239) - Regulation B	Prohibits lenders from discriminating against applicants on the basis of race, color, religion, national origin, sex or marital status, age, or whether public assistance is a source of income.	CFPB, FRB, OCC, FDIC, NCUA,FTC, DOJ
Fair Credit Reporting Act (P.L. 91-508) - Regulation V	Imposes disclosure requirements on lenders that deny an application based on information in a credit report. Requires that information reported to credit bureaus is accurate, that credit reports are obtained only for a permissible purpose, and that lenders have an identity-theft-prevention program.	FTC, CFPB, FRB, OCC, NCUA, FDIC
Fair Debt Collection Practices Act (P.L. 95-109) - Regulation F	Provides guidelines and limitation on conduct of consumer debt collectors. Prohibits false and misleading representations, harassing or abusive conduct, and unfair practices.	FTC, CFPB, OCC, FRB, FDIC, NCUA
Section 1036 of the Dodd-Frank Act (P.L. 111-203)	Prohibits unfair, deceptive, or abusive business acts or practices.	CFPB
Section 5 of the Federal Trade Commission Act (P.L. 75-447)	Prohibits unfair or deceptive business acts or practices.	FTC, FRB, FDIC, OCC, NCUA
Securities Act of 1933 (P.L. 73-22)	Requires securities issuers engaged in a public offering to register the securities with the SEC, unless the securities are exempt.	SEC
Securities Act of 1934 (P.L. 73-291) - Risk Retention Rule	Generally requires securitizers or sponsors of asset-backed securities (ABS) to retain an economic interest of at least 5% of the credit risk of the assets collateralizing the ABS.	FDIC, FRB, OCC, SEC, FHFA, HUD
Title V of the Gramm-Leach-Bliley Financial Modernization Act (P.L. 106-102) - Regulation P	Limits when financial institutions may disclose a consumer's nonpublic personal information and requires financial institutions to notify customers about their information-sharing practices and about the customer's right to opt out.	FTC, CFPB, FRB, OCC, NCUA, FDIC
Truth in Lending Act (P.L. 90-321) - Regulation Z	Requires lenders to provide understandable disclosures about certain terms and conditions of their transaction with the borrower and gives borrowers certain rights to updated disclosures. Regulates the advertising of lenders.	CFPB, FRB, OCC, NCUA, FDIC, FTC

Source: Peter Manbeck and Marc Franson, *The Regulation of Marketplace Lending: A Summary of the Principle Issues (2016 Update)*, American Bankers Association White Paper, April 2016, pp. 38-39.

Notes: This is not an exhaustive list of all regulations related to marketplace lending but rather an illustrative list of examples.

CFPB = Consumer Financial Protection Bureau

DOJ = Department of Justice
FDIC = Federal Deposit Insurance Corporation
FHFA = Federal Housing Finance Agency
FRB = Federal Reserve Board
FTC = Federal Trade Commission
HUD = Department of Housing and Urban Development
NCUA = National Credit Union Administration
OCC = Office of the Comptroller of the Currency
SEC = Securities and Exchange Commission

Author Contact Information

(name redacted)
Analyst in Macroeconomic Policy
[redacted]@crs.loc.gov, 7-....