September 23rd, 2020

John O'Brien
Licensing Manager
Office of the Comptroller of the Currency
Central District
425 S. Financial Place, Suite 1700
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RE: Formative Bank, N.A. Interagency Charter and Federal Deposit Insurance Application

Dear Mr. O'Brien:

The National Community Reinvestment Coalition, joined by the National Consumer Law Center (on behalf of its low-income clients) and the Center for Responsible Lending, submit this comment on the pending application from Formative Bank for a de novo charter and deposit insurance.

We believe this proposal raises numerous consumer protection concerns, comes with substantial compliance concerns, and fails to adequately consider or implement the requirements of the Community Reinvestment Act (CRA). We do not believe that Formative has made a satisfactory effort at this time to develop a CRA plan, nor do we believe regulators are prepared to create a framework to hold them accountable to the CRA.

We strongly encourage the OCC to reject this application.

The risks associated with Banking as a Service

Formative Bank is one of the first charter applicants with a business model centered exclusively on offering banking-as-a-service ("BaaS"). As it states, it will "provide licensed bank rails to financial technology firms ("Fintechs") and to large companies who do not wish to become banks themselves."

BBVA, a large institution that includes a BaaS division within its scope, provides a useful explanation of BaaS in an article published on its website[1]:

> *"On the surface, Banking as a Service may sound similar to open banking, as both provide the user access to a financial institution's platform. The difference...is that while open banking provides third parties access to the data of existing bank customers, Banking as a Service provides third parties access to bank functionality, so that non-bank companies can connect users outside of the bank's existing footprint to banking services. For instance, open banking allows for services like Mint to access their customer's banking data and view it in new and interesting ways; while Banking as a Service gives a provider, like technology company Simple, the ability to*

[1] BBVA "Not the same: Open Banking, Open APIs and Banking as a Service" https://bbva.info/3iA3OFi

build its own, differentiated experience for its customers, under its brand, supported by the bank's existing infrastructure and expertise."

We do not contest the place for BaaS in the marketplace. Using BaaS, companies can bring new financial products to market with fewer startup costs, enabling good ideas to find customers sooner. However, decreased time-to-market may mean that products are offered to consumers too soon.

When a company contracts with a BaaS provider, it effectively deputizes a specialist bank such as de novo Formative to manage its banking and API functions. That leaves the fintech to focus on areas of product design and customer acquisition. This arrangement allows a small fintech team – perhaps even a handful of individuals – to go into the business of making financial products. Notably, the system separates the acumen of bankers from the experience of consumers. The fintech creates marketing materials, designs the consumer-facing contours of the product, and finds customers. The chartered institution is the conduit that provides access to the ACH payments system, manages compliance-related activities, and maintains deposit insurance.

However, when the keys to the banking system are turned over to inexperienced or unaccountable firms, the banking system could be subject to unacceptable compliance concerns, consumer protection risks, and serious challenges and ambiguity around the application of the Community Reinvestment Act. Moreover, it is inappropriate for banks that are not themselves offering services to extend their ability to ignore state consumer protection laws to nonbank entities.

Compliance Concerns for a Pure "Banking as a Service" Chartered FI

While BaaS may accelerate innovation, it also speeds up risks. We are still evaluating the issues and impacts posed by BaaS activities. Nonetheless, we can say for certain that an application of this sort – to create an entity that would essentially use its charter as a part of a consultancy and only for non-bank fintechs - presents additional layers of concern. In Formative, we see a potential "pure" BaaS bank, operating within a poorly-articulated regulatory framework, that would be given freedoms under its charter to potentially undermine state consumer protection laws. Moreover, questions of how it would be held accountable to meet the conveniences and needs of the underserved are themselves also not clear. It should go without saying that to give a charter to Hypothetico (the corporate parent of de novo applicant Formative) would be to trust a small startup with substantial compliance responsibility.

It is not clear what types of financial products will be offered by this bank.

In its application, Formative says it would act as the issuer of deposit and credit card accounts, manage payment services, and potentially warehouse lending.

Such a plan creates several unknowns. First, there is substantial uncertainty about how it will use its charter. Will it mainly become an issuer of credit cards? If so, will those credit cards carry high rates that would be illegal for the fintech to offer directly? Will it become a bank of banks that provides specialized payment platforms? Will it issue prepaid debit cards? Will it specialize in high-yield savings accounts? We do not know at this point. A lack of clarity about the actual business model presents uncertainty about compliance. Being a credit card bank versus a prepaid debit card issuing bank versus a payments-focused institution are all very different things.

Regulators should be wary of the additional complexity of offering more than one type of product to many different partners. There are fixed costs associated with each new partnership. With each, there is another set of risks related to the possibility of leaving open a vulnerable access point to the banking system.

The application provides little detail on the proposed bank's size.

The application does not reveal Formative Bank's likely size. Likewise, a review of industry trade publications fails to provide evidence of any equity investments in its corporate parent. While it is not always the case, applicants often indicate their expected asset size in their applications. This document does not include that information. Indeed, a reader of this application should be uncertain about the likely impact of this charter. Formative could become the bank that partners with a multinational consumer-facing retail corporation (for example, to offer credit to customers of Amazon or a Dell Computer), or it could be a niche bank to small startups. On their respective LinkedIn pages, the founders do not resolve the ambiguity, commenting only that their company is in "stealth mode."

There is even some mystery surrounding the nature of the parent applicant. Hypothetico does not have a web page, it does not have a company page on LinkedIn, and there is no mention of the company in TechCrunch, the business journal of the startup community in Silicon Valley. This information would make a difference. Formative needs to provide more specifics. What financial resources does Hypothetico have? While the board members have experience in certain aspects of banking (data science, digital product design, venture capital, and wealth management), the Board does not include anyone with a work background in compliance. That seems like a stunning gap for a firm in its intended space. Additionally, there is no one on the Board with CRA experience.

Size is an important for many issues related to governance. The size of the institution predicts its ability to provide resources for compliance, its ability to remain financially sound, and its needed scope of CRA-related activities.

Consumer protection risks

The application does not preclude the use of a charter to evade important state interest rate laws

As a bank whose sole purpose is to partner with non-bank fintechs, Formative could be the next bank that uses its charter to provide loans at interest rates that exceed state rate caps. If Formative received a national charter from the OCC, the regulatory privileges would be in place for it to do so under the OCC's proposed "true lender" rule combined with the "Madden-fix" rule.

Partnerships between banks and non-bank fintechs create an opening for a Pandora's box of consumer protection problems. Already a small group of banks is using their charters to help non-bank lenders originate loans at high interest rates that are likely illegal and that the banks are not offering directly. Consider the example, included in the Appendix, of FinWise Bank, a Utah lender that partners with Elevate Credit, Inc. (a non-bank from Texas) to offer Rise installment loans.

A recent lawsuit filed by the Attorney General of the District of Columba against Elevate Credit outlines some of the unconscionable tactics deployed through such a partnership between willing banks and an unscrupulous non-bank fintech lender. The complaint revealed that Elevate, through its bank partners, had originated loans at interest rates that were as much as 42 times greater than the District's relevant rate caps. Karl Racine, the District's Attorney General, has claimed that Elevate violated the District's Consumer Protection Procedures Act.[2]

[2] District of Columbia v. Elevate Credit. https://bit.ly/33GWuBH

With a bank charter, Formative could use its charter in much the same as Elevate's bank partners, creating more opportunities for consumers to receive high-cost credit that they struggle to repay, leaving them worse off.

Concern for how short-lived fintech partners impact the financial experience for the unbanked.

"Tenure risk" also presents a major consumer protection concern for bank and fintech partnerships. Tenure risk is our effort at describing the tendency for fintech startups to have shorter lifespans. That tendency draws from their capital structure, as fintechs tend to draw their capital from an inherently impatient set of sources. Most tap venture capital funds, from early-stage seed to mezzanine debt, during the first several years of their existence. At the occasion of each new capital raise, the future of the company is at risk. Many early-stage firms experience a moment that tests their future long-term viability.

Even when some companies remain whole, they may jettison their low-wealth customers. It's also not uncommon for a startup to keep the same branding but to radically re-organize its product offering, even if it means changing the type of customer it serves.[3] While we recognize the rights of investors to expect a return on the risk they take when funding a startup – and to exert control on the business plans of the companies inside their portfolios - we believe that ability to successfully meet the needs of low-wealth consumers are left unaddressed in this equation.

Many fintechs claim to be gateways that will introduce new people to the banking system. If that is true, then we should ask what happens when a person who is new to banking sees their new account closed, with little or notice? Does such an experience become one more way that hardens the perception among the unbanked (or formerly banked) that it is too risky to put money in a bank?

To demonstrate that point, consider the following list of new fintech program managers that only lasted a short time before they went out of business: The Magic Card, the Suze Orman card, and the SpendSmart Card had hundreds of thousands of customers. The small group of program managers who offered bank accounts designed for new-to-banking Latinos has struggled. Waleteros, the George Lopez card, Lemando, Motiv, Mango Money, and Univision Tarjeta are examples of prepaid debit cards focused on the Latino market segment. They have in common the fact that they closed soon after they opened. Those cases come from just one market segment – prepaid general-purpose reloadable ("GPR") debit cards – and they are only a fraction of the ones that share the same story. Yet it is not only the relationship between fintechs and the experienced for the unbanked and formerly-banked. The same tenure challenges plaguing GPR cards extend to the history of startups in payments, unsecured credit, and other fintech-centric gateways to the banking system.

Relatedly, we believe that tenure risk presents a data leakage concern for all consumers. As the banking partner in these third-party relationships, Formative will have responsibility for protecting the data of end-users. That could become more difficult in instances when their partners go out of business, and indeed, it could become a greater challenge if Formative's lifespan was short-lived.

Substantial Third-Party Compliance Risks.

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[3] For example, in 2019, two relatively new program managers whose core products consisted of demand deposit accounts aimed at low-wealth households re-designed their services to a new model with monthly fees for $9 to $12. They effectively changed their customer bases. The new offerings served as budgeting tools to give account holders a snapshot of their spending and investments across multiple financial institutions. The brand names did not change, but the shift in pricing and services naturally led to a change in whom they served.

A very relevant aspect of fintech partnership relates to the safety and soundness of a BaaS-only bank.

To address this, regulators have given special attention to the relationships between banks and third-parties.[4] All of those concerns are relevant to reviews of this application; all of the revenue this entity will derive will come from third-party relationships.

Formative is not another iteration of the same digital-first model that characterizes recent charter applications. It is not like Varo or Square – digital entities where branding and consumer experience are all managed in-house, under the same corporate parent as the charter holder. Formative is twice-removed from the traditional model of branch-oriented relationship-driven banking. It wants to be the shadow behind an avatar – a white-label service running in the background behind a digital banking experience that is itself a proxy for in-person relationship-oriented interaction. BaaS is the middleware that makes these partnerships work – providing the integrations between non-bank fintechs and chartered issuing banks.

Earlier, we described how two federally-chartered banks have partnered with Elevate Credit to provide high-cost installment loans and credit lines, both at interest rates that greatly exceed state interest rate caps. That precedent is relevant here, as Formative says its sole purpose is to partner with third-party non-bank fintechs that do not want to become banks themselves -- and thus likely do not want to take on the direct supervision that banks receive. Many of these relationships have become the object of lawsuits by state Attorneys General. Those partnerships create reputational risk, credit risk, and safety and soundness risk. For example, even after using its proprietary AI underwriting model, Elevate reported principal losses of between 17 and 20 percent of originations every year between 2006 and 2011.[5]

Existing guidances speak clearly to the special concerns associated with loans made through third-party arrangements. Several of the stated concerns in the OCC's 2020 bulletin on third-party lending speak specifically to Formative's model. For example, the OCC expressed the view that banks should be wary of the financial condition of third parties. The OCC called out a particular concern for engagements with start-up fintech companies.[6] Other relevant risk areas include risks related to the use of alternative data, relationships with data aggregators (screen scraping and APIs), and risk modeling.

Consumer Protections Are Not Established for AI-related Banking.

Finally, we should recognize that the experience and interest of the leadership of Formative suggests that artificial intelligence and machine learning will play an important role in their business model. Questions of how regulators will address the challenges of artificial intelligence and machine learning into fair lending laws remain unanswered. With the use of artificial intelligence and the uncertain complexities of machine learning, it becomes entirely possible that banks will not adequately explain the reasons behind adverse actions. Going forward, banking regulators should look to the emerging field of "explainable artificial intelligence" ("XAI") to solve some of the problems with these techniques. XAI solves a problem that no one might have anticipated – it seeks a means for humans to understand the results of their work. While some might contend that forcing algorithms to obey human comprehension makes them less useful, research shows that the effect on predictive power is minimal. It is not only consumers who

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[4] Federal Deposit Insurance Corporation. "Examination Guidance for Third-Party Lending." July 29, 2016 https://bit.ly/2ZKEZir

[5] Elevate Credit 2019 Annual Report.

[6] Office of the Comptroller of the Currency. 2020. Bulletin 2020-10. "Third-Party Relationships: Frequently-Asked Questions to Supplement OCC Bulletin 2013-29." https://bit.ly/2ZJe6M0

benefit when expressions of financial information are distilled in ways that make comprehension more manageable, but also the financial institutions that have created some of those products.

While regulators have been slow to address the mismatch between the capabilities of artificial intelligence and existing regulations, academics in the fields of statistics and computer science have issued warnings about the lack of explainability. Consider this excerpt from a recent article in the magazine of The Association for Computing Machinery:

> *Is it ethical to make important decisions about individuals without being able to explain these decisions? For example, in some U.S. states, parole judges use algorithms for predicting the likelihood of a prisoner re-offending if released from jail, influencing parole decisions. Is it ethical to keep someone in jail on the basis of a decision from a black box without them knowing why, or knowing what they need to do before their next hearing? Similarly, is it ethical to reject an individual's application because a black box with 95 percent accuracy says so, with no way for the applicant to find out how to improve? Many people will claim it is not. Hinton and many AI experts argue we should merely run experiments and see if algorithms are biased or safe, effectively ignoring the small percentage of wrong decisions. These types of arguments seem to be born from the privilege of white middle-class males such as myself, who are unlikely to be adversely affected by such decisions.*[7]

Unfortunately, the velocity of change of algorithmic underwriting has outpaced the responses made by regulators. Online lenders use data sets of such size and dynamic interaction that explanation may be beyond their staff's ability. The high-cost lender Enova says its current model incorporates 51.1 million consumer banking transactions and 37 terabytes of data.[8] Not to be outdone, Elevate Credit indicates that its "proprietary risk analytics infrastructure utilizes a massive (approximately 80+ terabyte) Hadoop database composed of more than ten thousand potential data variables related to each of the 2.4 million customers we have served and about 8.6 million applications that we have processed… As a result of our proprietary technology and risk analytics, approximately 94% of loan applications are automatically decisioned in seconds with no manual review required."[9]

Regulators are still working to find methods to account for these changes. The last part of the excerpt from Elevate's annual report reveals something significant: in 94 percent loan applications, the company underwrites a loan application without using human judgment. How is it possible that the requirements for adverse action notices and fair lending compliance are met when models operate outside human understanding? Moreover, these complex equations and data sets could easily be making judgments that correlate with and ultimately are based on race, not individual creditworthiness.

There is a yet irreconcilable disconnect between the act of providing banking as a service and meeting the obligations of the Community Reinvestment Act

We doubt that a bank whose primary line of business involves providing BaaS to non-bank third-party fintechs can meet the obligations of the Community Reinvestment Act, a concern that stems from Formative's internal makeup as well as regulator's previous lack of attention to BaaS activities.

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[7] Miller, Tim. 2019. "But Why? Understanding Explainable Artificial Intelligence." XRDS Crossroads. 25 (3). https://bit.ly/3iGFTnK

[8] Enova 2019 Annual Report.

[9] Elevate Credit 2019 Annual Report.

We see no evidence that the proposed bank management has the experience to implement a Community Reinvestment Act program

None of the board members listed in the application have the skills necessary to address our concerns about Formative's capabilities for operating a successful CRA program. Certainly, their resumes give the impression that each has attained a high degree of experience and skill in their chosen fields. Each offers value for running a BaaS-oriented business. Still, none have any background in CRA. Moreover, the application mentions each senior executive officer by name, with the exception of the Chief Compliance Officer. The identity of the CCO is confidential.

Some aspects of having a charter require specialized experiences. That need seems particularly relevant to the management of a CRA program. Operating a CRA program requires a unique set of skills and acumen, including awareness of capital structures that source financing from programs that are not the same as those used in mainstream commercial banking.

Prior CRA exams at similar banks have not considered BaaS relationships

The existing CRA framework does not know how to assess an institution that only engages in BaaS activities. We oppose the decision to charter an institution that will issue new deposit and credit products when the CRA does not have a means to capably hold it accountable to meet the needs and conveniences of underserved households. Existing banks that outsource BaaS are examined under CRA for other activities. Additionally, we do not believe that Hypothetico has not demonstrated that it has the experience or perhaps even the inclination to implement an adequate CRA program.

As a pure BaaS company, Formative has no other business line through which it could meet the needs and conveniences of LMI households. It does not originate mortgages, as Green Dot Bank does in Provo. It does not offer small business loans, as is the case with Cross River Bank in New Jersey. It is nothing like BBVA. As a result, its plans to serve the community are for now only hypothetical.

Green Dot is one of the closer analogs to Formative Bank's intended business model.[10] Green Dot's BaaS platform brings a suite of services to a non-bank customer: the use of an FDIC-insured bank charter, in-house product designers, an omnichannel distribution network (retail, online, affiliates, tax preparers), and program management.[11]

Green Dot Bank's CRA exam completely ignores its BaaS program. Instead, Green Dot Bank's strategic plan's emphasis falls primarily on the lending and investments it makes from its single bank branch in Provo, Utah. The exam reviews Green Dot Bank for its local small business and community development lending and investment activity – even though lending and investing constitute only fractions of its overall business revenues. The exam measures the rate of volunteerism among its Provo employees. While the strategic plan mentions Green Dot Bank's general-purpose-reloadable card ("GPR") business, it is only in the context of a small partnership program between the card division and a Boston non-profit. Moreover, while the plan describes the program, the results from the relationship do not count. The

[10] Cross River Bank might be another example of a small institution where BaaS services play a larger-than-normal share of activities. The Cross River CRA exam does not incorporate the loans it makes with non-bank fintechs partners.
[11] Green Dot Corporation. Q3 2019 Investor Presentation. https://bit.ly/3kpzmOG

strategic plan excludes the non-profit partnership results as a measurable component in the 2018-2020 strategic plan.[12]

The example of Green Dot shows that BaaS is not a part of a CRA exam. How will Formative, as a pure BaaS bank, be evaluated for CRA?

No evidence that the reliance on third-party relationships can ensure that the proposed bank can meet the convenience and needs of low-and-moderate income people.

We see many points where the question of the fit of CRA to Formative remain uncertain, as most are without precedent. How will Formative know that it can meet the needs and conveniences of low-and-moderate-income ("LMI") households when it does not have control over the customer acquisition plans for the products of its non-bank fintech partners will be? How can its leadership guarantee that it will use its charter to extend loans and services throughout the community? All of its fintech clients may serve high-wealth customers, and if that was the case, how would Formative be able to change it?

The application provides insufficient information to address the disconnect between BaaS and the Community Reinvestment Act

We believe that Formative's CRA plan fails to provide enough detail on how it would implement its outreach to non-profit partner groups in its assessment area. In its application, the bank acknowledges that "developing and refining future iterations of the Bank's CRA Strategic Plan" is an activity that will occur in the future. Moreover, the plan is short on details.

The application provides no criteria for which the bank's community reinvestment performance could be evaluated.

It provides a framework for its goals, but it makes no effort to give measurements for earning a Satisfactory or an Outstanding rating. We understand that the amount of the bank's assets remains unknown and is likely to change with time, but the bank should still provide a set of quantitative expressions for how its activities will be evaluated.

Such metrics are commonplace. For example, a recent application from a fintech included measurements for the overall percentage of its loans made to low-to-moderate income ("LMI") and in places with fewer bank branches relative to norms across the country. Additionally, it would be helpful to have a list of at least some of the not-for-profit agencies that Formative intended to support inside its assessment area. Formative's CRA plan is still in its formative stage.

The application's assessment of community needs provides no new information.

The lack of effort on the part of Formative to assess community needs is underwhelming - to put it mildly. The bank printed a map of the San Francisco-Oakland MSA, created a table from Census data, and made some notes on overall employment and income rates. Section 2.4 Needs of the Community consists of four sentences spread out across two paragraphs. There is no evidence that the bank met with any local groups.

We also note that Section 5.3 in the application repeats – in some cases in verbatim – published OCC guidelines in stating what the bank "may" do. Several of the sentences in this section are lifted directly

[12] Green Dot Bank, dba Bonneville Bank, and GoBank. Provo, Utah. CRA Strategic Plan 2018-2020. https://bit.ly/32CK0eY

from page 3 of the OCC's January 2019 Community Development Loans, Investments, and Services Fact Sheet.[13]

Community Development Approach	Recommendations from the OCC Fact Sheet dated January 2019	Section 5.3 Formative Bank, N.A. Approach
may incorporate community development loans to:	Financial intermediaries including community development financial institutions (CDFI), new markets tax credit-eligible community development entities (NMTC CDEs), community development corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development.	Financial intermediaries (such as Community Development Financial Institutions ("CDFIs"), New Markets Tax Credit ("NMTC"), Community Development Entities (CDEs), Community Development Corporations ("CDCs"), community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in LMI areas or to LMI individuals in order to promote community development.
The community development strategy may incorporate the contribution of time, TA, or funding in the following way:	Providing technical assistance on financial matters to non-profit, tribal, or government organizations serving LMI housing or economic revitalization and development needs.	Providing technical assistance on financial matters to non-profit or government organizations serving LMI housing or economic revitalization and development needs.
May incorporate qualified investments to:	Financial intermediaries (such as CDFIs, NMTC CDEs, CDCs, minority-and-woman-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in LMI areas or to LMI individuals in order to promote community development.	Financial intermediaries (such as CDFIs, NMTC CDEs, CDCs, minority- and-women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in LMI areas or to LMI individuals in order to promote community development.

There are other parts of Section 5.3 that are also copied word-for-word from the OCC Fact Sheet. We believe the applicant should make a more in-depth effort to understand community needs in its intended assessment area.

When the keys to the banking system are turned over to relative novices, bad things may happen. Some aspects of having a charter require specialized experiences. That need seems particularly relevant to the management of a CRA program. Managing a CRA program requires a unique set of skills and acumen,

[13] Office of the Comptroller of the Currency. January 2019. Fact Sheet: CRA: Community Development Loans, Investments, and Services. https://bit.ly/35YdKVR

including awareness of capital structures that source financing from programs that are not the same as those of mainstream banking.

The proposed bank would operate nationwide but only meet its CRA commitment in the metro area surrounding its headquarters

Formative will establish its headquarters in the San Francisco metropolitan statistical area (the "MSA"), and as such, it intends to meet its CRA commitments in that area. While we would never fault an institution for committing to serve its local community, Formative itself notes that it will serve a market well beyond that single MSA. In outlining the market characteristics, Formative states that the "Bank will offer its products and services nationwide." Formative's deposits will come indirectly from accounts managed by partners. Most consumers will not understand the disconnect.

We believe that the Directors of Formative Bank may share our views. Consider their comments, taken from Appendix of their application:

> *As the bank does not plan to operate any branches, deposit-taking ATMs, or otherwise maintain a physical footprint beyond its head office, the bank views its community to be the United States as [a] whole. The bank anticipates that the opportunity to designate assessment areas outside of the bank's facility-based area in San Francisco will allow the bank to magnify its impact on the well-being of its community.*

Formative's comment is correct, and as such, we feel that it is necessary to point out the lack of fit between Formative's product delivery footprint and its planned CRA footprint. Indeed, the bank will not have branches, nor will its offices be open to the public, so in what meaningful way is Formative's relationship with underserved residents of San Francisco different from its relationship with people from any other part of the United States?

The question of "how" to evaluate a BaaS is compounded by the question of "Where" to apply those evaluations. We will add that in this case, it is also a question of "when?" Will Formative have a deposit-based assessment area at the time its charter is approved, or only after some time has passed, and it can show the geographic distribution of its deposits? As with so much else in this application, that question is left unanswered. The application states, "The Bank will evaluate whether such circumstances exist as the potential compliance dates, depending on the Bank's size, of January 1st, 2023, or January 1st, 2024 approaches, and will submit a new or revised strategic plan, as may be appropriate." It should concern regulators that an entity such as Formative – which will probably receive deposits equally on a per-capita basis across the entire country – would be able to go several years without any meaningful CRA responsibilities.

Conclusion

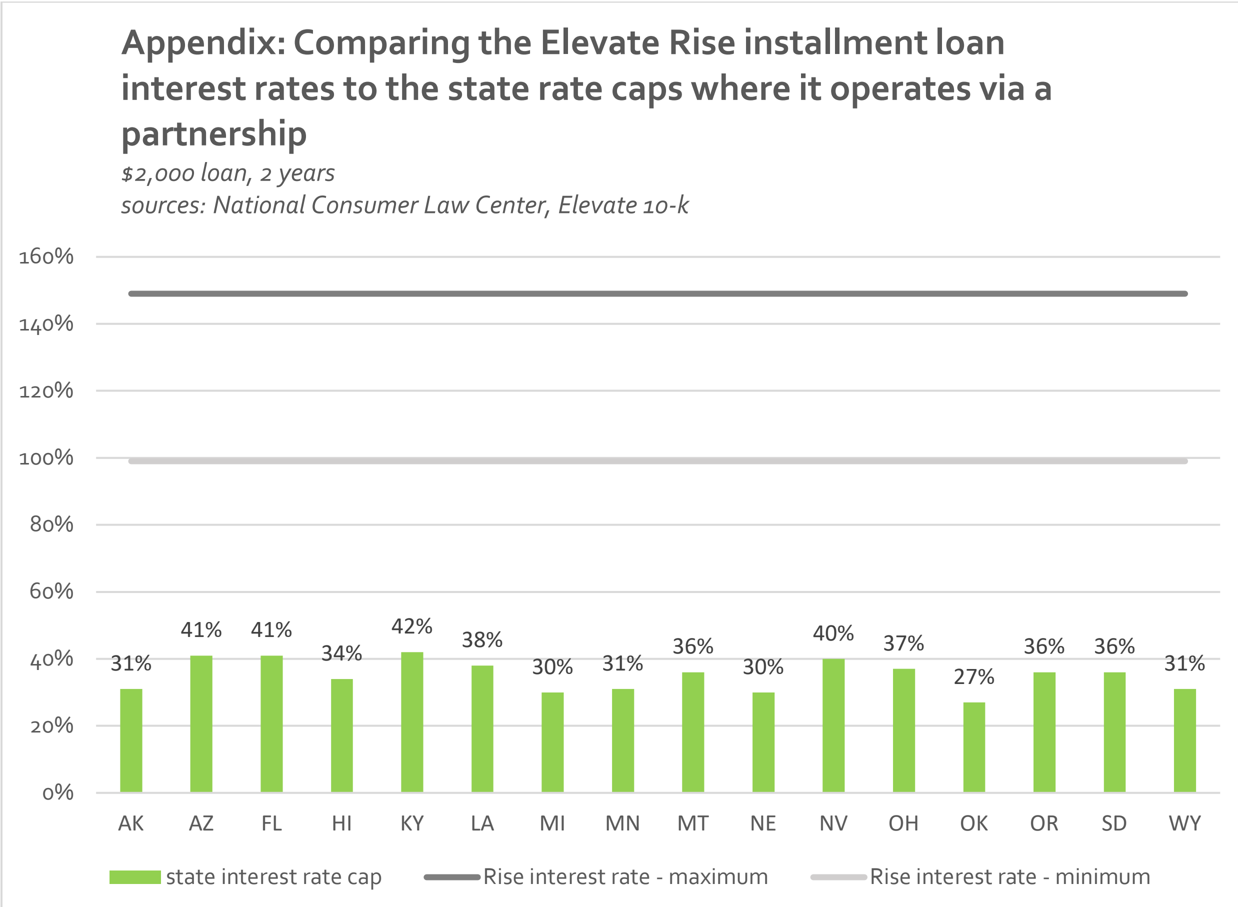
The OCC should not approve Formative's application. The bank has not made a legitimate effort to build a CRA plan, beginning with its inadequate assessment of the area's needs and its half-hearted attempt to build out a list of potential activities. The proposed business model comes considerable compliance and consumer protection risks. As a bank whose sole focus is to program the rails for partner non-bank fintechs, Formative would be a first-of-its-kind chartered institution. The issues presented by such a plan should not be ignored, and absent significant updates to how laws apply to BaaS and AI, we do not believe it is feasible to provide a charter to any institution whose business model is limited to such a narrow set of activities.

The OCC must recognize that so much remains a mystery about this applicant. Because of their emphasis on BaaS, we have no reliable means of understanding how they will deploy a charter. They say they will provide various services, but there is no clear sense of where, to what extent, and with whom. How can community groups offer input on a CRA plan for Formative when the applicant has not given any indication of the product mix it will provide through as-yet-unknown third-party relationships?

If we can provide any clarifications to our comment or if we answer further questions, please feel free to reach out to Adam Rust (arust@ncrc.org) and me. Thank you for the opportunity to provide our input.

Sincerely,

Jesse Van Tol
Chief Executive Officer
National Community Reinvestment Coalition


Appendix: Comparing the Elevate Rise installment loan interest rates to the state rate caps where it operates via a partnership
$2,000 loan, 2 years
sources: National Consumer Law Center, Elevate 10-k
160%
140%
120%
100%
80%
60%
40%
20%
0%
31%
41%
41%
34%
42%
38%
30%
31%
36%
30%
40%
37%
27%
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OK
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SD
WY
state interest rate cap
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