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Symposium on Consumer Access to Financial Records, Section 1033 of the Dodd-Frank Act

**Consumer Financial Protection Bureau
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On behalf of the Financial Data and Technology Association of North America (“FDATA North America”), thank you for the opportunity to participate in the Consumer Financial Protection Bureau’s (“CFPB” or “the Bureau”) symposium on consumer access to financial records. As the leading trade association advocating for consumer-permissioned, third-party access to financial data globally, FDATA and its members believe in the power of well-designed, well-implemented open finance frameworks to provide for the appropriate balance of innovation, improved consumer and small business financial access and opportunity, and end-user protection.

FDATA North America was founded in early 2018 by several firms whose technology-based products and services allow consumers to better manage their finances, improve their financial wellbeing, and/or enable small businesses to provide higher-quality products to their customers. We count innovative leaders such as the Alliance for Innovative Regulation, Betterment, DirectID, Envestnet Yodlee, Financial Growth Syndicate, Flinks, Intuit, Kabbage, Mogo, Morningstar, MScience, MX, Petal, Plaid, Questrade, Quicken Loans, TransUnion, Trustly, VoPay, and Wealthica as our members. We are a regional chapter of FDATA Global, actively championing open finance frameworks in the United States, Canada and Mexico. FDATA was the driving force for Open Banking in the United Kingdom and today has chapters advising policymakers and market participants in Asia, India, Europe, Australia, and South America contemplating, designing, and implementing open finance frameworks. In the United States, FDATA North America sees the potential for industry to vastly improve the technological delivery of consumer-permissioned financial data access. Based on its members’ experiences and the engagement of the organization globally, however, we believe the critical first step towards an open finance framework is the promulgation by policymakers of a consumer and small business financial data right.

Countries around the world are embracing the notion that the consumer and small business owner should be in control of their financial data. By not recognizing this modernized approach, the United States risks falling behind as the world leader in digital innovation, financial centrality, and market competition. The open finance rules embraced by the United



Kingdom (“U.K.”), Australia, Canada, and Singapore, for example, are improving the global competitiveness of and enhancing financial inclusion within of these nations.

The United Kingdom’s Open Banking Implementation Entity announced last month, for example, that more than one million net new consumers across the U.K. have adopted tools deployed under the U.K.’s Open Banking regime.¹ Just weeks earlier, the U.K.’s Financial Conduct Authority announced its intention to expand the regime from a payment accounts-focused model to one that encompasses all financial products.² Canada’s Department of Finance signaled its intention last month to move forward with a Canadian deployment of open finance – or “consumer-directed finance” as they will henceforth refer to it – following a thoughtful, wide-ranging consultation that lasted more than one year, and which included significant input from FDATA North America.³ And in Australia, after enactment last year of a statutory Consumer Data Right (“CDR”), consumers will begin to have full utility over their financial data beginning later this year.⁴

The U.K., Canada and Australia, along with many other countries globally, have each taken steps towards providing consumers with financial data rights in an open finance framework. In every deployment of a successful open finance framework throughout the world, government has played a significant role in asserting the right of the consumer and small business owner to access, without unreasonable restriction, their own financial transaction data. Unfortunately, the United States remains, in the absence of a clearly articulated policy framework, mired in a financial system in which consumers and other end users do not have the same ability. The lack of such a policy in the U.S. impedes consumers’ ability to access and use tools that could meaningfully improve their financial well-being.

The Bureau’s symposium seeks to explore the consumer’s ability to access their financial data. When consumers control their data, they can use it to find products and services that meet their unique financial needs. These can include technology-based tools that assist consumers with savings, price comparison, debt management, overdraft protection, budget planning, and investing. For example, tools like Acorns and Stash, which rely on consumer data to automate savings, helped consumers save \$5.6 billion in 2018,⁵ while overdraft protection tools like Qapital help save consumers millions of dollars in overdraft fees. Consumer data access also enables alternative data use for credit underwriting, which recently received support from the Federal Deposit Insurance Corporation, Federal Reserve, CFPB, Office of the Comptroller of the Currency, and National Credit Union Administration. The CFPB’s No-Action letter to Upstart found that their use of alternative data approved 27% more borrowers than traditional lending

¹ <https://www.openbanking.org.uk/about-us/latest-news/open-banking-adoption-surpasses-one-million-customer-mark/>.

² <https://www.fca.org.uk/publications/calls-input/call-input-open-finance>.

³ <https://www.canada.ca/en/department-finance/news/2020/01/minister-morneau-announces-second-phase-of-open-banking-review-with-a-focus-on-data-security-in-financial-services.html>.

⁴ <https://www.accc.gov.au/system/files/Proposed%20CDR%20rules%20-%20Phasing%20table.pdf>.

⁵ <https://www.forbes.com/sites/ronshevlin/2019/02/07/consumers-saved-5billion-with-acorns-and-stash/>.



models with 16% lower average APRs for approved loans.⁶ Without access to their data, consumers are unable to reap the benefits of these tools.

The first critical step in the creation of a market in the United States under which end users control their own financial data is the provision of the legal right for consumers and small businesses to access and leverage that data. Such a right would thereby empower them to use their own data to improve their financial well-being through the use of technology-based tools.

Industry participants, including financial institutions, aggregators, and financial technology firms, over the last several years have begun to collaborate to improve the technology that can allow a financial institution to send a consumer's data to a third party with their consent, largely through the deployment of Application Programming Interfaces ("APIs"). This collaboration has the potential to improve consumers' ability to access their financial data and move the system away from credential-based authentication; however, a recent FDATA North America study determined that even the APIs deployed by the largest financial institutions in the United States lack the data required to power the use cases on which consumers depend today to manage their finances and access vital financial services. Our analysis determined that, if credential-based authentication were to be prohibited today and consumer-permissioned data were shared only via APIs at large financial institutions, approximately 1.8 billion American consumer and small business accounts would lose access overnight to at least one data field critical to powering a use case on which the account owner currently relies.⁷ An overnight ban on screen scraping would result in tens of millions of Americans immediately no longer having the ability to take advantage of tools that help them manage their account balances, pay bills on time, automate their savings, or protect them from overdraft and other avoidable fees, for example.

In the absence of a clear legal right for consumers to have full access to their financial data, some financial institutions argue that existing regulatory requirements, including the prudential regulators' third-party relationships risk management guidelines and Regulation E, provide them with a responsibility to, in some cases, restrict their customers' ability to share their financial data with third parties. These restrictions sometimes take the form of missing data fields embedded within the APIs financial institutions make available to fintech applications. This assertion is true in some cases; all stakeholders in the financial system must protect their customers from fraud, and financial institutions have legal requirements to do so, including to at least partially reimburse their customers in the event of fraudulent withdrawals from their account. But any rational assessment of the ecosystem must also conclude that commercial interests can factor into decisions that financial institutions make with regard to what data to include in their APIs or how onerous the terms of the bilateral agreements they offer to third

⁶ <https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/>.

⁷ <https://fdata.global/north-america/2020/01/30/fdata-north-america-highlights-the-importance-of-credential-based-authentication-in-the-absence-of-a-viable-alternative/>.



parties will be. This is one of the principal rationales for government-led open finance regimes globally: the holders of a consumer’s financial data, who themselves have a commercial interest in retaining that data to offer their customer additional financial products or services, have a competitive disincentive to make that data available.

But even if financial institutions’ APIs did contain all of the data required to fuel the third-party services their customers use today, the ambiguity under the existing framework in the United States regarding consumers’ rights to access their financial data would still result in a system for sharing data between financial institutions and fintechs that is cumbersome and lacks transparency to the end user. The only tool available to the industry to address data access currently is individual bilateral agreements between financial institutions and aggregators, each with differing requirements on the fintech ecosystem and different provisions to consumers.

It is impossible for the thousands of financial institutions in the United States to negotiate and execute bilateral agreements with every financial aggregation firm or fintech company. Moreover, even if this outcome were practical, it would lead to an unequal ecosystem for consumers in which access to vital third-party tools is determined by where a customer banks and the terms of the agreements that bank has signed with aggregators, if any. Additionally, while each of these individual bilateral agreements are being negotiated over the course of several years, consumers face challenges, today, to accessing the account data required to power their desired financial tools. A recent study by FDATA North America of the connectivity data provided by the largest consumer-permissioned financial data aggregation firms in the United States revealed that consumers and small businesses encounter significant difficulty in taking advantage of third-party financial tools. As demonstrated in the appendix, across multiple categories of financial institutions, customers endure connectivity failure rates of between 47.39% and 40.16% when they first attempt to link their accounts to these tools, depending on the type of financial institution they use. Additionally, even those customers who have successfully connected their financial institution account with the third-party tool of their choosing may encounter significant recurring connectivity failures that undermine the ability of their third-party tool of choice to provide them with a valuable financial service or product.

To appropriately encourage innovation in the financial sector for the benefit of consumers and small businesses, policy changes and comprehensive oversight are necessary to ensure the full legal right of the account owner to use their financial data safely and securely. A well-structured customer-directed regime would allow individual consumers and small businesses to choose to provide access to their financial data to providers of their choice, to have agency over who has access to various elements of their financial data, and, most importantly, to revoke that access whenever or if they ever see fit. Additionally, such a regime would necessarily have to provide a level of oversight over third-party technology providers and would have to begin the process of more appropriately accounting for potential liability risk throughout the 21st century financial system.



Congress presciently granted the CFPB with the authority required to foster an American open finance system under Section 1033 of the Dodd-Frank Act a decade ago. The statute provides that, “subject to rules prescribed by the Bureau,” an entity that holds financial data about a consumer shall make that data available to the consumer, “including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.”⁸ The statute further provides that “[t]he information shall be made available in an electronic form usable by consumers,” and that the Bureau may consider, when contemplating a rule under Section 1033, whether to standardize the format by which such data is made available. A report issued by the Department of the Treasury in 2018 determined that the definition of “consumer” under Section 1033, consistent with the definition of the term throughout the statute, “is best interpreted to cover circumstances in which consumers affirmatively authorize, with adequate disclosure, third parties such as data aggregators and consumer fintech application providers to access their financial account and transaction data from financial services companies.”⁹

Given industry-led work in this regard, it may be premature for the CFPB to use its authority under Section 1033 of the Dodd-Frank Act to mandate a technology solution for data access. But the statute clearly provides the CFPB with the authority to promulgate, by rule, a consumer financial data right, subject to the narrow, sensible exemptions included in the law. Though the Bureau has long studied the issue of digital consumer financial data access and published in 2017 the nonbinding “Consumer-Authorized Financial Data Sharing and Aggregation Principles,”¹⁰ it has not taken declarative action to provide end users with the right to access and leverage their own financial data to improve their financial wellbeing. Though industry has attempted for at least the last several years to address the issue on its own, it is clear that policy intervention is warranted, and that the Bureau has been afforded by Congress the authority required to intervene. FDATA North America respectfully urges the Bureau to issue a rule that would provide U.S. account owners with the right to access and make portable any element of their financial data currently available to them through their financial institution’s native online banking application and paper statement.

The United States has an opportunity to improve competition, financial access, and consumers’ financial outcomes by embracing the kind of consumer-directed, open finance regime that is taking hold in other markets around the world. In every case in which a country or geography has delivered full consumer utility over their financial data, including the U.K.’s Open Banking regime, Europe’s second payment services directive (“PSD2”), and Australia’s CDR, the foundational first step toward providing for greater competition, lower pricing, and innovative, technology-based tools was the assertion by government of a legal right for

⁸ 12 U.S.C. § 5533(a). Section 1033

⁹ https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf

¹⁰ https://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation.pdf.



consumers and small businesses to access their own financial data. As countries around the world are quickly embracing the notion that the consumer should be in control of their financial data, by not exerting the legal right for a consumer or small business to leverage their own financial data through the financial provider of their choice, the United States risks falling behind in providing its consumers with the ability to choose the products and services that fit their financial needs and hinders market competition, improved pricing, and innovation. In 2010, Congress provided the CFPB with the authority required to take this important step toward a more transparent, consumer-driven market. Having spent years examining the market, FDATA North America requests that the Bureau now use that authority.

Enclosure: FDATA North America financial data connectivity



**Appendix: FDATA North America Financial Data Connectivity
Fourth Quarter, 2019**

| Financial Institution Category | Conversion Success Percentage¹¹ | Recurring Connection Success Percentage¹² |
|---------------------------------------|---|---|
| Top Four Banks | 54.95% | 93.08% |
| Top Six Banks | 58.71% | 94.54% |
| Top 10 Banks | 59.84% | 92.04% |
| Banks 11-20 | 54.11% | 81.18% |
| Top 10 Credit Unions | 56.58% | 86.70% |
| Branchless Banks | 52.61% | 94.18% |

¹¹ Refers to the ability for an end user to successfully create a new connection to a third party with their financial institution account.

¹² Refers to the ability for an end user to successfully pull data from an account they have already connected with their financial institution account on a weekly basis.