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VIA ELECTRONIC SUBMISSION

Re: Invitation for Feedback on Data Privacy, Protection and Collection

March 14, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and
Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

The Financial Data and Technology Association of North America (“FDATA North America”) appreciates the opportunity to provide feedback to the Senate Banking Committee regarding the collection, use and protection of consumer financial data. As an expert voice on financial data sharing, assessment of liability throughout the ecosystem, end-user privacy, and open banking standards, FDATA North America and its member companies strongly believe in the ability of technological innovation to empower consumers by increasing competition and providing broader access to technology-based financial tools that drastically improve their financial wellbeing, while adhering to best-in-class privacy and data security standards.

FDATA North America respectfully submits that, as part of its review of data privacy, the Banking Committee consider a holistic approach to the issues surrounding financial account data that provides for improved consumer data protection as well as consumer data control and empowerment. To be clear: The United States has benefitted from open banking, in which consumers and small businesses have had access to financial technology tools, for the last two decades. To provide for improved consumer and small business data protection and empowerment moving forward, however, a more thoughtful Open Banking regime is required.

FDATA North America was founded in early 2018 by several firms whose technology-based products and services allow consumers and small businesses to improve their financial wellbeing. We count innovative leaders such as Cardlytics, Envestnet Yodlee, Flinks, Intuit, Kabbage, Moven, Morningstar, MX, Onist, Petal, Plaid, Qeustrade, Quicken Loans, Quovo, and others as our members. We are a regional chapter of FDATA Global, which was the driving force for Open Banking in the United Kingdom and which continues to provide technical expertise to regulators and policymakers and to regulatory bodies internationally contemplating, designing, and implementing open banking frameworks.



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As consumers increasingly desire access to and privacy of their financial data while utilizing technology-powered tools to improve and manage their finances, our members are united behind the notion that consumer electronic financial data access and protection are fundamental rights and a market-driven imperative. This concept was formalized in the Dodd-Frank Wall Street Reform and Consumer Protection Act under Section 1033, which assures consumers access to their electronic financial data. The deployment of financial technology applications in the financial ecosystem has fostered the ability of consumers and small business owners across the United States to use their own financial data to manage their budgets, access capital, increase their savings, and invest safely and securely, among many other use cases.

FDATA North America respectfully submits that an Open Banking framework – a structured regime that facilitates the sharing of data by consumers with, and between, their financial service providers, based on the needs of and consent by consumers – empowers consumer choice, ensures protection and enables industry innovation. Under an Open Banking system, data empowerment goes hand in hand with data privacy. By placing consumers and small businesses – the owners of financial data – at the center of the framework, end users are given complete control over their data. This construct provides them with the opportunity to improve their financial wellbeing by empowering them to use their data for value-based services of their choice, and to control which entities have access to their financial data at all times.

Open Banking has already been implemented in the United Kingdom and is in the process of being deployed in Australia, Canada, New Zealand, South Africa, and a host of other countries globally. In each of these geographies, to ensure that data sharing is operating under a protected and transparent, while innovative and consumer-centric framework, regulatory oversight and coordination are essential components of the Open Banking system. As a result, in each of these countries, consumer financial data is held to the highest and safest standards, with an established legal right that consumers are the owners of their financial data.

With this fundamental and foundational building block established, clear consent requirements are set to ensure that consumers understand precisely what data they are providing to a service provider, and the ability to revoke that consent is omnipresent and at the consumer's sole discretion. From the consumers' perspective, a well-designed Open Banking system ensures data protection, allowing for the consumer to provide and revoke their consent for data sharing in a clear and easily understandable way. The system provides clear disclosure to the consumer or small business what data they have elected to share with third parties, and that the sharing of that data can be stopped at any time. Once consent is given to a third-party provider, the consumer is assured, regardless of the which third party they choose, that the provider is operating in a standardized regime that is has been developed to protect against cyber threats and security breaches.



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For an Open Banking system to work in the United States, it will be important to create federal data breach and data safeguard standards within the regime that are consistently applied to all market participants and are designed and implemented with the consumer's best interests in mind. A consumer should not have to consider when they open a financial technology application which data privacy or data protection regime applies to that tool. Importantly, flexibility must be introduced into any such safeguard regimes to ensure that consumer protections implemented, for example, at the initial deployment of open banking in the United States can evolve and improve over time.

Of course, the potential for bad actors to get access to consumer data will always exist, regardless of the security controls any system implements. Critically, Open Banking provides for shared responsibility across the system, assuring the consumer or small business that, in the event they have lost funds as a result of a breach, the party responsible for that breach will make them whole. To accomplish this important objective, existing rules and statutes in the United States, including Regulation E, must also be modernized to provide clear regulatory expectations regarding what entity holds liability at each point in the Open Banking value chain.

A prerequisite to a clear, evenly-applied apportionment of liability in a system in which consumer data is an asset is the concept of traceability, or the ability to track, using registries, encoded headers, and other tools, the path an end user's data takes once they have consented to use a third party. In Open Banking systems implemented and designed across the world, traceability is an essential component toward ensuring that consumers are made whole in the event of a breach. With traceability functionality woven into the fabric of an Open Banking system, regulators are able, to a higher degree than they otherwise would be, to create a kind of forensic ledger that allows them to appropriately assign responsibility for a data breach. Paired with a well-designed liability scheme, consumer protection in the event of a data breach in an Open Banking system is more transparent than it is under the status quo.

The members of FDATA North America respectfully urge the Senate Banking Committee to recognize that that the metaphorical genie is out of its bottle. Americans today depend on thousands of financial technology applications to improve their financial wellbeing in a policy environment that never envisioned data – and not just consumer funds – as an important asset. Accordingly, to best protect consumer and small businesses, both from data breaches and in the event of data breaches, FDATA North America submits that the committee seriously examine the implementation of an Open Banking regime in the United States that incorporates the legal right of the consumer to permission their data, shared responsibility in the event of a data breach, and traceability.



Financial Data and
Technology Association

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Of course, to the extent that FDATA North America may be able to provide any additional information, we would be delighted to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Boms", with a long horizontal line extending to the right.

Steven Boms
Executive Director
FDATA North America