



Financial Data and  
Technology Association

<http://www.fdata.global/north-america>

July 29, 2020

Chief Counsel's Office  
Attn: Comment Processing  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, S.W.  
Suite 3E-218  
Washington, D.C. 20219

**SENT VIA ELECTRONIC MAIL TO [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).**

**Re: Advance Notice of Proposed Rulemaking regarding National Bank and Federal Savings Association Digital Activities (Docket ID OCC-2019- 0028)**

The Financial Data and Technology Association of North America (“FDATA North America”) appreciates the opportunity to provide comments to the Office of the Comptroller of the Currency (“OCC”) in response to its Advance Notice of Proposed Rulemaking (“ANPR”) regarding national bank and federal savings association digital activities.

FDATA North America supports the implementation of an open finance ecosystem in the United States under which end users are fully empowered to access and utilize their own financial data. Given our mission, we are encouraged by the OCC’s recognition that the U.S. banking system is not “frozen in time” and that innovation and safety and soundness are not mutually exclusive principles.

**About FDATA North America**

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 the Alliance for Innovative Regulation, API Metrics, Betterment, Direct ID, Equitable Bank, Envestnet Yodlee, Experian, Fintech Growth Syndicate, Fiserv, Flinks, Interac, Intuit, Kabbage, Mogo, Morningstar, M Science, MX, Petal, Plaid, Questrade, Quicken Loans, TransUnion, Trustly, VoPay, Wealthica, Xero, and others among 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 policymakers and to regulatory bodies internationally that are contemplating, designing, and implementing open finance frameworks. With chapters in North America, Europe, Australia, South America, and India, FDATA Global has established itself as an expert in the design,



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implementation, and governance of open finance standards and frameworks globally since its inception in 2013.

As the leading trade association advocating for consumer-permissioned, third-party access to financial data, FDATA North America’s members include firms that provide technology services to large financial institutions and that partner with national banks to enable innovation and expand financial access and inclusion. Collectively, our members enable tens of millions of American consumers and small business customers to access vital financial services and products.

### **Innovation Is at Risk in the U.S. Market**

As the OCC is aware, over the last several years a growing number of large financial institutions have implemented mandates that customer-permissioned data aggregators must execute bilateral data access agreements with them in order to continue facilitating the flow of financial data necessary to fuel the technology tools on which as many as 100 million Americans rely.<sup>1</sup> Permissioned data access is critical to enabling customers of financial technology firms and banks alike, as many large financial institutions have themselves deployed products or services that rely on their customers’ ability to grant access to data held elsewhere. For example: in the midst of the Paycheck Protection Program (“PPP”), a large number of national banks relied on aggregation-enabled banking<sup>2</sup> and accounting data to verify their small business customers’ eligibility for critically-needed PPP loans, expediting the underwriting process and enabling their customers to receive funding much more quickly.

While these bilateral agreements are intended to provide critical governance in banks’ transitions from existing data gathering technologies to application programming interfaces (“APIs”), including compliance with the OCC’s most recent guidance to its supervised banks with regard to aggregation and data connectivity,<sup>3</sup> market participants generally recognize that individually negotiated bilateral agreements are an inefficient means of dealing with permissioned data access. Such agreements lack uniformity and transparency, which can be challenging and expensive for third party partners, and because these agreements can enable institutions to restrict data access – including data fields that the customer has requested be shared – competition can be hindered, resulting in a suboptimal experience for the consumer. Given the reality of how American interact with the financial system today, the unintended effect of bilateral agreements is a potential limitation on consumer choice.

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<sup>1</sup> John Pitts, *BankThink: OCC did its part to secure customer data. Now it’s CFPB’s turn*, American Banker, <https://www.americanbanker.com/opinion/occ-did-its-part-to-secure-customer-data-now-its-cfpbs-turn>.

<sup>2</sup> Small businesses often have more than one checking account.

<sup>3</sup> “Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29 | OCC.” OCC, 5 Mar. 2020, <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-10.html>.



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While FDATA North America is generally supportive of a transition from existing technologies to APIs, we also are concerned that smaller financial institutions will struggle to keep pace with the largest national banks regarding API integration for several reasons. The expense and expertise required to build and implement an API specifically for customer-permissioned data access is significant. Our members have heard from many small institutions that view API implementation as cost prohibitive. Further, in the absence of a clear customer data right in the U.S. financial marketplace, the breadth of issues included in bilateral data access agreements can be overwhelming. Several FDATA North America's member organizations that have executed data access agreements report that the negotiations can take as long as three years from inception to execution and often require intensive legal costs that smaller financial institutions are less likely to bear. Finally, the OCC's most recent guidance regarding third-party relationship risk management could present an additional hurdle for smaller financial institutions in this space. This is because the guidance makes clear that supervised banks that deploy APIs and enter into bilateral data access agreements must implement enhanced governance over their third-party relationships as compared to those that enable their customers to access their data through other technologies. Incidentally, the Federal Deposit Insurance Corporation's recent request for information regarding standard setting and voluntary certification for models and third-party providers of technology and other services has the potential, if such a system were implemented, to significantly address the barriers that smaller financial institutions face in deploying new technologies.

FDATA North America also observes that the deployment of an API does not, in and of itself, ensure that a bank's customer has full visibility to, or utility over, their data. For example, a financial institution may use a token to facilitate permissioned access to financial data via an API which can be set to expire after a period of time. Frequent token expiration, which forces the customer to constantly re-authorize permission for data access, may deter a customer from relying on a third-party financial service; in some cases, by adding extensive friction and in others by undermining services that rely on continual data access. The result of this outcome is not just exasperation by the customer, which is problematic in itself if it encourages the customer to use less secure services, but also that it ultimately leads to customers' inability to access critical financial technologies to which they otherwise may not have access. Some services, including small business lending platforms based on cash-flow data, as well as real-time financial management applications, rely on continuous, customer-permissioned updating of information and may be rendered unusable by token expiration requirements imposed by a financial institution.

APIs may also be implemented that, while facilitating the ability of bank customers to access some of their data, restrict other critical data fields. For example, selectively blocking the sharing of some portion of data that another lender, be it a financial technology firm or a



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traditional bank, uses for underwriting can undermine the lenders' ability to perform effective analysis of creditworthiness, and therefore its ability to compete to provide a competitive loan to the customer. This is true even if the lender has access to some, but not all, of the data the customer permissions to allow the service to function effectively. Such outcomes stifle innovation, undermine competition and reduce financial access.

In 2019, FDATA examined the impact of restricting access to a portion of the market that currently relies on credentialed access rather than APIs. The findings were based on a survey of its members and were shared with the Consumer Financial Protection Bureau ("CFPB"). We concluded that overriding consumer-permissioned access to data would be devastating to the market. Indeed, as many as 1.8 billion consumer and small business accounts in the United States would lose functionality if customer-directed credentialed data access was completely cut off and only data provided through financial institutions' APIs was permitted. This number is a conservative estimate since it was based only on an assessment of the largest financial institutions' APIs.

### **Recommendations**

Safety and soundness and customer protection are the highest priorities for both the regulatory community and for market stakeholders. As a number of jurisdictions globally implement open finance regimes -- including the United Kingdom, Europe, Australia, Canada, and Brazil -- the core principles embedded in these frameworks are the dual mandates that the customer must have full utility over their own financial data and that they must be uniformly protected from financial harm for which they are not responsible. Critically, these mandates apply to both incumbent financial institutions and third-party providers, assuring that consumers and small businesses may choose whichever financial services provider they like without sacrificing any important customer protections. In the United States, meanwhile, a patchwork of state data privacy and portability regimes has, in large part, blocked development of a true open finance regime.

For all these reasons, and for the sake of continued customer financial access and inclusion, increased competition, and an innovative financial marketplace, FDATA North America urges the OCC to facilitate an open finance ecosystem in the United States by:

- 1) Working alongside the CFPB and other regulatory agencies to use existing statutory authority to provide for a legal customer financial data right, including the CFPB's recent announcement of its intention to issue an ANPR under Section 1033 of the Dodd-Frank Act;



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- 2) Avoiding any mandate, explicit or otherwise, that requires supervised financial institutions to transition to API environments for the purposes of enabling their customers to provide access to transaction data to third-party providers; and
- 3) Reviewing existing OCC rulemakings and guidance to implement regulatory oversight over third-party financial technology tools in a manner that assures that the party responsible for a customer's financial loss as a result of a data breach is responsible for making that customer whole.

While we recognize these undertakings represent a significant shift in the U.S. financial ecosystem, with millions of Americans dependent on third-party financial tools today, they collectively would allow the regulatory framework to adapt to the reality of how Americans interact with the financial system today. Moreover, these steps represent a critical path toward facilitating a more innovative and inclusive financial ecosystem that allows the United States to keep pace with other large economies abroad.

### **Conclusion**

FDATA North America appreciates the opportunity to provide the perspective of the aggregation and fintech community to the OCC in response to its ANPR. As the trade association representing firms that provide critical financial wellness tools to millions of Americans, and as a chapter of a global organization that has overseen the implementation of open finance ecosystems across the globe, we believe in balancing innovation with appropriate safety and soundness protections. As the OCC attempts to strike that balance, it should observe the experiences of several other markets around the world and create an open finance ecosystem that has a consumer's right to access and share their own data as its centerpiece.

Sincerely,

A handwritten signature in black ink, appearing to read "StB" followed by a long horizontal flourish.

Steven Boms  
Executive Director  
FDATA North America