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VIA ELECTRONIC SUBMISSION

September 29, 2021

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer
Protection and Financial Institutions
House Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer
Protection and Financial Institutions
House Financial Services Committee
4340 O'Neill House Office Building
Washington, D.C. 20024

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

The Financial Data and Technology Association of North America (“FDATA North America”) appreciates this opportunity to submit a letter for the record for the House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions hearing entitled “The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System.” As the leading trade association representing financial data aggregation firms and financial technology platforms that provide enhanced consumer financial access and inclusion, FDATA North America and its member companies strongly believe and advocate for a financial ecosystem in which the end user has complete utility of their financial data.

About FDATA North America

FDATA North America was founded in early 2018 by several firms whose technology-based products and services allow consumers and SMBs to improve their financial wellbeing. We count innovative leaders such as the Alliance for Innovative Regulation, API Metrics, Basis Theory, Betterment, BillGo, Codat, Direct ID, Equitable Bank, Envestnet Yodlee, Experian, Fiserv, Flinks, Interac, Inverite, Intuit, Kabbage, Mogo, Morningstar, M Science, MX, Petal, Plaid, Qvestrade, Rocket Mortgage, Salt Edge, Trustly, ValidiFI, 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 and policy 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



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

FDATA North America’s members include firms with a variety of different business models. Many provide technology services to large financial institutions or partner with financial institutions to enable innovation and expand financial access and inclusion. Others offer their own customer-facing financial products or services that may, for example, expand access to low-interest credit for thin or no-file borrowers, provide a gateway to automated savings or investments, onboard Small and Medium Sized Businesses (“SMBs”) to accept and make digital payments, or support the SMB community by enabling technology-powered advisory and accounting services. Collectively, our members enable tens of millions of American consumers and SMB customers to access vital financial services and products, either on their own or through partnerships with financial institutions.

Regardless of business model, each FDATA North America member’s product or service shares one fundamental and foundational requisite: dependence on the ability of a customer to actively permission access to some component of their own financial data that is held by an insured depository institution.

As the subcommittee further considers options to increase competition, spur innovation, and lower consumer financial costs in this uncertain economic environment, we respectfully offer that the creation of a legally binding customer financial data right would provide significant benefit to the financial services marketplace. FDATA North America welcomed President Biden’s July 2021 Executive Order on Promoting Competition in the American Economy, which included a provision directing the Consumer Financial Protection Bureau (“CFPB” or “the Bureau”) to finalize a rulemaking under its Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) Section 1033 authority. This rulemaking, when finalized, will provide a legally binding financial data right for consumers and will create a true open finance regime in the United States in which consumers and SMBs may choose from a more robust market of financial products and services.

CFPB Rulemaking Under Dodd-Frank Section 1033 Will Boost Market Competition

FDATA North America has, since its inception, encouraged the CFPB to promulgate, by rule, a customer financial data right that will spur greater financial services innovation and competition and improve consumer financial access and inclusion. We have been encouraged by two recent developments: the issuance of an advance notice of proposed rulemaking (“ANPR”) by the Bureau pertaining to consumer access to financial records in October of last year and, more recently, language in President Biden’s July 2021 Executive Order on Promoting Competition in



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the American Economy that directs the CFPB to consider “commencing or continuing a rulemaking under section 1033 of the Dodd-Frank Act to facilitate the portability of consumer financial transaction data so consumers can more easily switch financial institutions and use new, innovative financial products.¹”

The building momentum toward this rulemaking comes at a pivotal moment for the United States. Countries around the world are quickly embracing the notion that the customer should be in control of their own financial data. By contrast, the unlevel playing field that currently exists for consumers and small- and medium-sized businesses in the United States constrains innovation, impedes healthy market competition and represents a significant global disadvantage.

This unfortunate situation endures because, unlike a growing list of other large nations across the globe, the United States lacks any distinct assertion of a customer’s legal right to access themselves, or permission access to, their financial data. In the absence of a rule promulgated by the CFPB under Section 1033 of the Dodd-Frank Act, financial institutions may, and sometimes do, override their customers’ direction to share data with third-party financial services providers that can meaningfully improve consumer and SMB financial outcomes.

Principles for Ensuring Consumer and SMB Financial Data Access

The CFPB can significantly level the playing field for consumers and SMBs, expand financial access and inclusion, improve competition in the financial services marketplace and, on a global level, ensure that the United States’ financial services system remains competitive internationally. To accomplish these critically important objectives, FDATA North America has recommended to the Bureau that it utilize its Section 1033 authority to issue a rule that adheres to five key principles:

1. Create a legally binding customer financial data right;
2. Define and clearly enumerate the limited circumstances in which custodians of financial data may override customer consent;
3. Supervise financial data aggregation firms;
4. Coordinate with the prudential regulators on Regulation E modernization; and
5. Recognize the need to permit current and legacy technology.

The combination of these principles would provide consumers and SMBs with safe, secure access to their financial data and, by extension, to critically important financial applications and tools that can meaningfully improve their financial wellbeing.

¹ [White House Executive Order on Promoting Competition in the American Economy; Section 5\(t\)\(i\); July 2021](#)



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Conclusion

FDATA North America appreciates the attention by the subcommittee to this critically important issue. Every financial technology tool, regardless of its specific use case, depends on the ability of its customer, whether consumer or SMB, to grant access to components of their financial data. Accordingly, limitations, restrictions, or outright blocking of financial data access to consumers and SMBs threatens the ability of financial technology tools to support their customers' financial wellbeing and stifles innovation in the financial services marketplace.

As the CFPB works to promulgate a proposed rule under Section 1033 of the Dodd-Frank Act to improve competition in the financial services system, we hope that the subcommittee will continue to examine this vitally important space and encourage the Bureau to use its statutory authority to create a customer-centric, safe, competitive, and secure open finance system in the United States.

Thank you once again for holding today's hearing.

Sincerely,

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

Steven Boms
Executive Director
FDATA North America