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Financial Data and Technology Association

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April 8, 2022

Comment Intake-Fee Assessment
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20052

Submitted electronically via regulations.gov

Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Service (Docket No. CFPB-2022-0003)

The Financial Data and Technology Association of North America ("FDATA North America") appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau ("CFPB" or "the Bureau") in response to its Request for Information ("RFI") regarding fees assessed by financial services companies. 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 and the ability to choose the financial product or service that best suits their individual needs.

About FDATA North America

FDATA North America was founded in early 2018 by several financial firms whose technology-based products and services allow consumers and small and medium businesses ("SMBs") to improve their financial wellbeing. We count innovative leaders such as the Alliance for Innovative Regulation, APImetrics, Basis Theory, Betterment, BillGO, Codat, Direct ID, Equitable Bank, Envestnet Yodlee, Experian, Finansytech, Fiserv, Flinks, Hank Payments, Interac, Intuit, Inverite, Kabbage, Mogo, Morningstar, M Science, MX, Petal, Plaid, Questrade, SaltEdge, Trustly, ValidiFi, Vaultree, VoPay, Wealthica, and Xero, among 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 policymakers and to regulatory bodies internationally that are contemplating, designing, and implementing open finance frameworks. With chapters in North America, Europe, Australasia, Latin America, and India, FDATA Global has established itself as an expert in the design, implementation, and governance of open finance standards and frameworks globally since its inception in 2013.

Overview

As a trade association that represents dozens of financial technology companies that are focused on enabling greater competition and choice in the financial services marketplace, we believe the most practical remedy to reducing predatory fees in the financial ecosystem is to implement an open finance regime in the United States. At the center of such a framework must be an unambiguous and legally binding customer financial data right, which would ensure that consumers and small businesses could easily shop for financial services and products among scores of potential providers in an open, transparent marketplace.

Of course, it is not sufficient to merely provide end users with access to their financial data. While such access may be highly valuable to a consumer who lacks the ability to see the totality of what they have and what they owe across multiple accounts, the ability of the end user to act based on this data access is the most important benefit of open finance. We envision an open banking system where consumers can easily and fluidly switch between all forms of financial service providers as they please, just as they would between produce vendors in a farmer's market or gas stations on the highway.

This ability of any consumer to easily select or switch between providers of any good or service is the critical element that allows for market competition, which in turn reduces the price of the good or service for consumers. Through various statements and orders, the Biden Administration and the CFPB have made it clear that they believe increased centralization and weakened competition within the financial services industry has led to worsening consumer value, fewer choices, and increasing prices, which is particularly dangerous in today's economic environment of persistent inflationary pressure.

For far too long, U.S. consumers have faced significant difficulty switching from one financial provider to another due to friction caused by a system that exerts barriers to doing so. To wit: a recent study found that the average American adult has used the same primary checking account for more than 14 years.[1] The status quo, under which financial institutions exercise control over their customers' data, and, in some cases, limit the ability of their customers to utilize their own data to shop for alternative providers, offers little benefit to the consumer or small business. While, in some cases, financial institution throttling or blocking of third-party tools may be positioned as being based on security or regulatory compliance postures, competitive concerns unquestionably have fueled some of this behavior as well. In these instances, the end user typically is unaware as to why the product or service they are trying to use – or even have depended on for their financial wellbeing in the past – is not functioning or supported.

In an attempt to tackle mounting market concentration, President Biden issued in July 2021 an Executive Order on Promoting Competition in the American Economy. Included in the Executive Order was a directive for the CFPB to consider "commencing or continuing a

[1] Mary Wisniewski, *Survey: While checking fees vary wildly by race and age, Americans stay loyal to their banks*, Bankrate (Jan.15, 2020).

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." This encouraging statement from the White House clearly demonstrates that the establishment of a customer financial data right is a priority for the administration, and one that FDATA North America and its members strongly support.

We were also greatly heartened by comments in CFPB Director Rohit Chopra's remarks during a press call regarding overdraft fees in December of last year. During the call, Director Chopra astutely noted that "*If America can shift to an open banking infrastructure, it will be harder for banks to trap customers into an account for the purpose of fee harvesting.*" As the preeminent North American trade association promoting open finance, we wholeheartedly agree with this statement, and urge the CFPB to fulfill Director Chopra's statement and the President's Executive Order by finalizing its regulation implementing Section 1033 of the Dodd-Frank Act to fully realize a customer financial data right for the United States that will empower consumers and small businesses, unleash a new wave of market competition, and lower prices across the financial services marketplace.

Synchrony with Dodd-Frank Section 1033 Consumer Data Right Rulemaking

The lack of a customer financial data right in the United States sees competition in data-driven financial services stifled by financial institutions that override customer direction to authorize sharing of their financial data. These restrictions include broad, as well as specific, attempts to directly limit third parties' access to data despite customer authorization; degradation of data sharing that effectively thwarts customer-directed access to financial data; and self-imposed mandatory reauthentication requirements and targeted blocking of sharing specific data fields in ways that effectively disable competing services. This unlevel playing field has, to date, been dictated by opaque bilateral data access agreements between financial institutions and aggregation firms that enumerate what choices consumers have to utilize their own financial data and the protections they are afforded when they do so. These barriers artificially stifle both consumer choice and marketplace competition and create an environment in which fees charged to end users may stay stagnant – or even increase – over time.

To tackle these thorny challenges, FDATA North America has, since its inception, encouraged the CFPB to utilize the authority vested in it under Section 1033 of the Dodd-Frank Act to promulgate, by rule, a customer financial data right that will spur greater financial services innovation and competition, lower fees, and improve financial access and inclusion.

Competition issues cannot take a back seat as the regulatory and technological framework in customer-permissioned data sharing continues to evolve. FDATA North America and its members have long advocated for a regulatory approach that facilitates the sharing of data by customers with, and between, their financial service providers, based on consent and with safeguards for privacy and security. Systems that achieve these objectives have been implemented in the United Kingdom, Australia, New Zealand, and several other countries. The success of these regimes, including increased competition in the financial services market, has motivated other countries, including both Canada and Mexico, to pursue similar frameworks. Unlike this growing list of other large economies across the globe, the United States currently lacks any distinct legal assertion of a customer's legal right to access and permission access to their financial data.

Centuries of economic philosophy and research has demonstrated that highly competitive markets provide far more consumer value. As the CFPB considers public input to this RFI, FDATA would offer that one of the best ways to protect customers from abusive or deceptive fees is to provide them with the ability to easily switch away from a financial service provider that charges, or even attempts to charge, such fees. This simple market corrective would go a long way to snuffing out deceptive pricing tactics, reducing the need for complex regulation and compliance burden. In a financial services marketplace where all consumers can easily exercise their right to control where their data is located and how it is used, as a finalized Section 1033 rule would guarantee, providers will be far more reluctant to charge such fees out of the simple fear that their customers will flee to other providers. We would respectfully offer that a customer financial data right under Section 1033 of the Dodd-Frank Act will be key to driving the costs of financial products and services lower and increasing competition in the financial marketplace.

Open Finance Boosts Competition and Consumer Value

In the absence of a legally binding customer financial data right, consumers and small businesses have enjoyed some level of increased competition for financial services in recent years, including for products driven by their ability to permission access to their own financial data. These services allow customers to take greater control over their financial lives and opportunities: to find new sources of affordable credit based on innovative underwriting models, to initiate payments to friends, family and vendors in real time and without fees, and to help manage their financial outlook across multiple accounts and plan effectively for the future, to name a few. In a time of enormous economic uncertainty, these services are more important than ever to help consumers and small businesses navigate difficult financial circumstances.

This innovation in financial services is powered by customers' ability to permission access to and to use their financial data, often in conjunction with cutting edge machine learning and other data analytics technology. Much of this financial data is associated with consumers' and small businesses' transaction history at their existing accounts with financial institutions.

A July 2018 U.S. Department of the Treasury report demonstrated this growth, showing that from 2010 to the third quarter of 2017, more than 3,330 new technology-based firms serving the financial services industry were founded, and the financing of such firms reached $22 billion globally in 2017.[2] Accenture has estimated that investments in fintech companies reached $53 billion globally in 2019.[3] As of 2018, lending by such firms made up more than 36% of all U.S. personal loans, up from less than 1% in 2010.[4]

Moreover, "survey data indicate that up to one-third of online U.S. consumers use at least two fintech services — including financial planning, savings and investment, online borrowing, or some form of money transfer and payment"[5] – which compete directly with traditional financial institutions' products. In 2020, for example, *Forbes* listed a dozen personal finance startups among its top 50 fintech companies.[6] As the 2018 Treasury report notes, some digital financial services reach up to 80 million members, while financial data aggregators can serve more than 21 million customers.[7]

These more recent market entrants compete both with each other and with traditional depository financial institutions to provide innovative financial products that greatly benefit consumers, including by lowering costs and expanding access by filling gaps in the market. The direct line between competition and innovation is well-chronicled, as the Treasury report notes:

> *The increasing scale of technology-enabled competitors and the corresponding threat of disruption has raised the stakes for existing firms to innovate more rapidly and pursue dynamic and adaptive strategies. As a result, mature firms have launched platforms aimed at reclaiming market share through alternative delivery systems and at lower costs than they were previously able to provide. Consumers increasingly prefer fast, convenient, and efficient delivery of services. New technologies allow firms with limited scale to access computing power on levels comparable to much larger organizations. The relative ubiquity of online access in the United States, combined with these new technologies, allows newer firms to more easily expand their business operations*.[8]

Unfortunately, much of this transformative potential remains stifled in the United States as a result of a lack of a customer data right. Experience in the United Kingdom, however, where Open Banking has been a reality for more than four years, demonstrates that the Treasury report's linkage between competition and innovation is anything but theoretical. According to the U.K. Open Banking Implementation Entity, more than five million customers are now

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[2] U.S. Treasury, *A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation* (July 2018).

[3] Michael Del Castillo et al., *The Forbes Fintech 50: The Most Innovative Fintech Companies In 2020*, Forbes (Feb. 12, 2020).

[4] Treasury Report at 5.

[5] *Id.* at 18.

[6] Kelly Anne Smith, *The Future of Personal Finance: Fintech 50 2020*, Forbes (Feb. 12, 2020)

[7] Treasury Report at 5.

[8] *Id*. at 6.

regular users of Open Banking-enabled tools, of which 3.9 million are consumers and 600,000 are small businesses. These figures represent a 60% increase in new customers over the past year, with one million new active users added every six months. At the end of 2021, cumulatively over 26.6 million Open Banking payments were made in the U.K., an increase of more than 500% in just 12 months.[9]

Moreover, the availability of services continues to expand. Adoption of Open Banking in the U.K. has continued to grow with 7.5 – 8.5% of digitally-enabled consumers now estimated to be active users of at least one enabled service, up from 5.0 – 6.0% in December 2020. This research also revealed that 91% of consumers found Open Banking-enabled financial services easy to setup, and 76% intend to continue to use them. The U.K. Open Banking Implementation Entity found that these services have helped consumers save more and build a financial cushion, with 22% saying that an Open Banking empowered savings app was their first adult savings account.[10] Most relevant to the purpose of this RFI and perhaps most importantly of all, recent U.K. data has shown a consistent *increase* in the number of financial services providers, bucking trends of market consolidation in other sectors and driving down prices for customers.[11]

Such rapid growth and customer uptake is just the latest evidence of the competitive benefits that can emanate from the establishment of an open finance regime. While the objective of the CFPB's RFI is to collect information on how best to minimize unfair, abusive or deceptive fees, we agree with Director Chopra's assessment in his comments accompanying the release of this request for input: a lack of competition in the financial services marketplace is making it more difficult for consumers and small businesses to avoid paying fees to their financial services providers. Therefore, as the CFPB considers input from a wide variety of stakeholders and develops strategies for tackling such fees, FDATA North America would urge it prioritize a rulemaking under Section 1033 of the Dodd-Frank Act to realize the market benefits of open finance as a means of addressing the issues raised in this RFI.

Conclusion

FDATA North America appreciates the opportunity provide the perspective of financial technology companies and aggregation platforms on the competitive benefits, including a reduction of unfair, abusive, or deceptive fees, that will be delivered to consumers and small businesses through a final rule implementing Section 1033 of the Dodd-Frank Act. As the trade association representing firms that provide critical financial wellness tools to millions of Americans, we believe that this rulemaking will align with the goals of this RFI, the administration's top economic priorities, and improve competition, financial access, and consumers' and SMBs' financial outcomes.

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[9] UK Open Banking Implementation Entity (OBIE) "Five Million Users-Open Banking Growth Unpacked." (Dec 2021)
[10] UK Open Banking Implementation Entity (OBIE): "The Open Banking Impact Report." (Oct 2021)
[11] Statista.com. UK: number of regulated open banking providers. (Sept. 2021)

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Sincerely,

Steven Boms
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FDATA North America