



February 3, 2021

Comment Intake – Section 1033 ANPR
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Consumer Access to Financial Records Docket No. CFPB-2020-0034/RIN 3170-AA78

To Whom It May Concern:

The Housing Policy Council (“HPC”)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) advance notice of proposed rulemaking on consumer access to financial records (“ANPR”).

HPC supports the CFPB’s efforts to-date to implement section 1033 of the Dodd-Frank Act through a practical approach that balances the benefits of consumer-authorized access to data with the need for strong data security. HPC supports the CFPB’s 2017 *Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation*. We offer the following thoughts in response to the ANPR as the CFPB evaluates additional measures to implement section 1033:

- (1) Consumers and the industry benefit from consumer-authorized data access;
- (2) Effective consumer disclosures are critical;
- (3) Data aggregators must be subject to data security standards and effective oversight;
- (4) Security is paramount and CFPB should support industry-led efforts to provide secure data access;
- (5) CFPB should address and resolve ambiguities and inconsistencies between the application of 1033 and other laws and guidance; and
- (6) Interagency coordination should yield common guidance based on the CFPB’s principles.

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.

Consumers and the Financial Services Industry Benefit from Consumer-Authorized Data Access

HPC agrees with the CFPB that consumer-authorized data access and use offer a promising opportunity for continued innovation in consumer lending and enhancements to consumer financial products and services. As a trade association representing many of the largest mortgage originators, servicers, insurers, and service providers, one of HPC's goals is to foster such innovation to improve the customer experience, risk management practices, and operational efficiencies, all of which may help to expand consumer access to affordable credit. HPC members include entities that are data holders as well as data users, and, as such, we understand the potential consumer benefits from accessing financial data.

For example, accessing and using consumer bank account data, could enable a gradual evolution to a more practical form of cash flow underwriting, an approach that generates a more accurate assessment of the household financial profile, especially for those consumers that may lack traditional credit scores or have a thin credit file. With such information, creditors can make more informed underwriting and credit decisions, capturing and evaluating net income and obligations for each customer in real-time, rather than gross income based on annual tax return data. Net or cash-flow credit insights could result in a fuller and more accurate understanding of a borrower's credit risk.

This and other innovations, made possible through the use of consumer-authorized data access, have the potential to unlock credit access – a benefit for the consumer and all stakeholders involved in credit decisioning and management of credit risk. However, it is critical that the broad access to and use of this data in consumer lending be accompanied by strong security measures and structures to protect the integrity of the process and the reliability of the data.

Effective Consumer Disclosures are Critical

Consumer-authorized data access can advance responsible innovation in consumer lending and increased access to affordable credit only if such access is tied to clear disclosures for consumers. A consumer needs to understand what data she is authorizing a third party to access, how the third party will use that data, and whether such data will be shared with additional parties. Informed consent is critical to this understanding and agreement, which should serve as an underpinning for consumer-authorized data access; explicit identification of what data, for what purpose, and the time frame for access to that data within the disclosures would help ensure consumer understanding.

Data Aggregators must be Subject to Data and Security Standards and Effective Oversight

Consistent with clear disclosures, the data aggregator should only be permitted to access the specific and limited data set needed for a specific transaction, for a limited period of time.

Additionally, data aggregators should be subject to security requirements that are no less stringent than the data security standards of the data holder. This is in line with the CFPB's principle to ensure that consumer data are accessed, stored, used, and distributed securely. Security should travel with the data, regardless of the type of entity transferring, holding, or using it. A consumer's data must be secure throughout its lifecycle, and that can only happen if the entire data ecosystem is subject to appropriate and stringent data security standards.

Additionally, we encourage the CFPB to promulgate a rulemaking delineating the CFPB's supervisory authority over larger participants in the data aggregator market. The CFPB can conduct comprehensive and effective oversight of the entities that hold vast amounts of consumer data.² Employing this authority will establish both appropriate standards and enforcement mechanisms to protect the data as well as prevent data breaches and unauthorized use of the data. Proactive supervision and oversight of these critical industry participants is preferable to after-the-fact enforcement actions for a data breach, at which time the damage to the consumer has been done and is irreversible.

Security is Paramount, and CFPB Should Support Continuation of Industry-Led Efforts to Provide Secure Data Access

Data protection is imperative to consumer-authorized access to financial data. The transfer of data between entities presents security risk, which is more pronounced with "screen scraping" and credential-based approaches to access. The financial services industry has made great progress in the development and adoption of technological solutions that safeguard data in the transmission process. Under the leadership of the Financial Data Exchange ("FDX"), the industry created an Application Programming Interface ("API") that has enabled companies to move away from credential-based access and "screen scraping." HPC commends the financial services industry for development of this API-based access and asks that the Bureau allow for and support the continuation of this good work. Ensuring the data is securely transferred between entities mitigates the security risk by limiting the access to only the data that is required for the transaction, in an electronically auditable manner.

We ask the CFPB to support these efforts by ensuring that any future rulemaking or guidance explicitly permit ongoing innovation and evolution in this work and avoid overly restrictive or prescriptive requirements. CFPB can help the industry and data sharing ecosystem mature and allow more innovation by continuing with the existing "principles-based" approach to consumer-authorized data access.

² E.g., In January 2020, Plaid stated that 25% of people in the United States with bank accounts have connected to Plaid through an app. (Kate Rooney, *Visa to acquire Plaid, the fintech powering Venmo and other banking apps, in \$5.3 billion deal*, CNBC (Jan. 13 2020), <https://www.cnbc.com/2020/01/13/visa-to-acquire-plaid-the-fintech-powering-venmo-and-other-banking-apps-for-5point3-billion.html>).

CFPB Must Resolve Ambiguities in Other Laws and Guidance

In considering the implications of consumer-authorized data access, the CFPB will need to resolve ambiguities between 1033 and the application of other consumer financial laws. A number of these ambiguities were highlighted in the CFPB's February 2020 symposium on section 1033.

For example, outstanding questions remain on the potential application of the Fair Credit Reporting Act for those engaged in the provision of consumer-authorized data access. The creditor that provides the data at the consumer's request is not a data furnisher and yet, the literal text of FCRA could be misconstrued or misinterpreted to suggest as much. We strongly believe that such a result is not in line with the language or intent of FCRA. The CFPB has the authority to clarify this, and we ask the agency to do so. Providing data to a third party at the consumer's request should not invoke such treatment under the FCRA, and to say otherwise likely will hinder the intent of section 1033.

Another area in need of CFPB clarification is liability under Electronic Fund Transfer Act and Regulation E. If there is an unauthorized transaction that relies on information released via consumer-authorized data access, there is ambiguity as to the responsible party. We ask that the CFPB clarify Reg E to ensure that the liability travels with the data and resides with the parties responsible for safeguarding data from retrieval through transit, for the full period during which that party maintains the data. This delineation would improve consumer protection and further the CFPB's principle regarding ability to dispute and resolve unauthorized access, that "parties responsible for unauthorized access are held accountable for the consequences of such access."

Separately, we ask that CFPB, in coordination with the federal banking agencies, clarify that the relationship between a data holder and a data aggregator is not a third-party service provider relationship subject to the Bank Service Company Act and the various agencies' guidance. Data aggregators are authorized by, and act on behalf of, consumers, not the data holder. The agreements that data holders enter into with data aggregators is focused on reducing the risk to that data, but this is not a traditional service provider relationship; the data aggregator is not performing a function or service on behalf of the data holder. We ask the CFPB to work with the federal banking agencies to confirm this understanding.

We encourage CFPB to resolve these ambiguities using the many tools at its disposal, including rulemakings, guidance, advisory opinions, and no action letters, as appropriate.

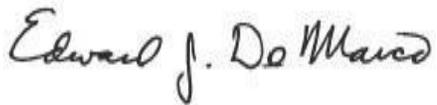
Interagency coordination should yield common guidance based on the CFPB's principles

In furthering section 1033, we ask CFPB to consult with the federal banking agencies and the Federal Trade Commission ("FTC"). As we noted above, HPC is supportive of the CFPB's principles on data sharing and aggregation. Those principles should be used by the CFPB and the other federal agencies as the foundation of joint guidance on consumer-authorized data

access. A uniform set of principles from all the key federal regulators will help ensure that data holders, aggregators, and users are subject to the similar standards, and consumers and their data are protected.

HPC stands ready to work with the CFPB on data access and other ways to help encourage innovation that can result in greater access to affordable, responsible credit. Should you have any questions or need additional information, please do not hesitate to call Meg Burns, EVP for the Housing Policy Council, at 202-589-1926.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial "E" and "D".

Edward J. DeMarco
President
Housing Policy Council