

December 29, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Required Rulemaking on Personal Financial Data Rights (Docket No. Docket No. CFPB–2023–0052)

Dear Director Chopra,

The American Financial Services Association (AFSA)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (Bureau) proposed rulemaking to implement Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) entitled, “Required Rulemaking on Personal Financial Data Rights.” We encourage the Bureau to keep in mind during this rulemaking that consumers benefit from credit models that are created from a diverse data set, and overly restrictive use limitations will hinder innovation and access to credit.

AFSA supports innovation in the financial services industry and the ability of consumers to have access to and control over their financial records. At the same time, it is critical that consumers’ financial data be protected. Below, we offer suggestions to clarify definitions in the proposed rule, raise questions regarding self-regulatory organizations (SROs), explore the consequences of the rulemaking on third parties, discuss consumer consent, and inquire about the intersection of this rulemaking and the Bureau’s rulemaking to amend Regulation V. We also strongly encourage the Bureau to lengthen the time financial institutions have to comply with the rule.

First, our comment letter provides three specific language changes that would clarify definitions and intent so the CFPB and AFSA members can work together to navigate the line between providing consumers increased access while ensuring that their sensitive information is protected. These three language changes are listed below:

1. Section 1033.111(b)(3): Following the phrase “Facilitation of payments” and before the phrase “from a Regulation E account...” the phrase “to third parties” should be inserted. The full sentence would read as follows (bolded phrase is inserted): “Facilitation of payments **to third parties** from a Regulation E account or Regulation Z credit card.”
2. Section 1033.111(c)(3): Following the word “possesses”, “covered data” should be inserted. Following the phrase “product or service” the word “that” should be inserted. Following the phrase “the consumer obtained” the word “directly” should be inserted. Following the word “from” and before the word “person”, the word “that” should be replaced with the phrase “such other”. The

¹ Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance

full sentence should read as follows (bolded phrase is inserted and struck through word is deleted):
“Any other person that controls or possesses **covered data** concerning a covered consumer financial product or service **that** the consumer obtained **directly** from ~~that~~ **such other** person.”

3. Section 1033.111(d): Following the phrase “data providers” the phrase “that are depository institutions” should be struck. The full sentence should read as follows (struck through phrase is deleted): The requirements of this part do not apply to data providers ~~that are depository institutions~~ that do not have a consumer interface.

These simple changes would clarify the CFPB’s proposed exemptions by tightening the definitions in the proposed rule. AFSA respectfully requests these changes before the rule is finalized in order to avoid any confusion during implementation. Even with these clarifications, AFSA requests that the CFPB lengthen the deadline for compliance with a final rule based on the technical complexities of implementing the requirements of the rule.

Second, we respectfully submit that the CFPB has not provided enough detail about standard-setting bodies to provide covered parties clear rules of the road in this space. This raises numerous questions, including: (1) How does the simple text of Section 1033 authorize the CFPB to create a complex regulatory structure involving SROs? (2) Why is this complexity necessary? (3) What precedents are there for an agency to mandate that industry create SROs that don’t currently exist? Ultimately, if the CFPB intends one or more industry consortia to form SROs, the CFPB must delay the enforcement deadline for the rule based on the magnitude and complexity of such an undertaking.

Third, it should be clear in this rulemaking that third parties may use consumer data in fraud prevention efforts and for improving internal credit models. Not allowing financial institutions to use consumer data for fraud prevention would have the unintended consequence of reducing consumer data security and privacy.

Fourth, data providers should be able to choose whether consumers need to reauthorize their consent each year. Some data providers may want to obtain the consumer’s reauthorization after one year. Others, particularly smaller institutions, should have the option of relying on the right to revoke/opt-out. Mandating the same rules for all institutions regardless of different sizes and business models hinders innovation and may be burdensome on consumers that authorize their data to be used for certain third-party services (e.g., financial wellness platforms and applications).

The CFPB should take notice that some consumers sign up with certain third parties specifically to receive offers for various products and services, and matching the consumer to offers may be driven by consumer-permissioned access to bank account or other transactional data. Consumers should be free to opt in to targeted advertising and cross-selling of other products and services, when that consent is freely given.

Finally, the CFPB should clarify the interplay of the Section 1033 rulemaking with the announced rulemaking to amend Regulation V. Based on the SBREFA outline issued by the CFPB on September 15, 2023 for the upcoming Regulation V rulemaking, a “data aggregator” under the proposed Part 1033 may also be a “data broker” under the Regulation V proposal in some cases. Industry needs clear guidance on when the CFPB intends a party to be covered by both regulations. And to the extent both regulations apply, industry needs guidance on how to comply with both regulations. For instance, may a data aggregator

combine the consumer consent required by Part 1033 with a consent establishing the data aggregator's permissible purpose based on the written instructions of the consumer under Regulation V?

We appreciate the CFPB's work on this important rulemaking that ensures consumers have access and control over their financial records. AFSA's suggestions intend to guarantee that financial institutions can properly follow the requirements of the new rule, while safeguarding financial data. In order to appropriately protect sensitive data, we urge the CFPB to clarify the language of certain definitions, share more detail regarding SROs, confirm that third parties can use consumer data in fraud protection, consider differences in business capabilities when discussing consumer opt-out, and provide further guidance on how financial institutions can be consistent with this rulemaking and Regulation V rulemaking. Given the breadth of this rulemaking and the need for some clarifying answers, the enforcement deadline should be delayed so that financial institutions can properly comply. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-776-7300 or cwinslow@afsamail.org

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association