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July 14, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G St., NW
Washington DC 20552

Re: Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information [Docket No. CFPB-2023-0020]

Dear Director Chopra,

On behalf of America's credit unions, I am writing to the Consumer Financial Protection Bureau (CFPB or Bureau) in response to the Request for Information (RFI) on data brokers.¹ The Credit Union National Association (CUNA) represents America's credit unions and their more than 135 million members.

Technology has facilitated the creation of a tremendous amount of consumer financial data. The unprecedented proliferation and availability of this data has enabled the development of new financial innovations that stand to benefit customers. However, the inherent sensitivity of this data and the discussion around the appropriate role of data brokers in banking highlight the need to ensure that financial data is handled appropriately and securely. As financial institutions innovate, they do so within an established regulatory framework, reinforced by strong supervision and oversight that ensures robust customer and data protection. Innovation is also taking place outside of banking: technology-focused startups are building consumer-facing products that rely on access to financial data. As a result, the demand for consumer financial data has increased dramatically, creating a complex market for this data.

However, sharing financial information is not without significant risks. Consumer financial data is extremely sensitive and must be protected appropriately. One of the principal ways in which the Bureau assesses compliance with and enforces data protection laws is through the supervision and examination of covered persons; yet non-depository institutions, the majority of data brokers and data aggregators in the market, are not subject examination by the CFPB. Rather, the market largely relies on discrete and contractual relationships by supervised financial institutions to maintain oversight and assess any potential consumer risk. This supervisory imbalance creates

¹ See Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information, 88 FR 16951 (March 31, 2023), *available at* <https://www.federalregister.gov/documents/2023/03/21/2023-05670/request-for-information-regarding-data-brokers-and-other-business-practices-involving-the-collection>.

both an unsustainable model as the market for data grows and the risk that the laws applicable to the activities of those larger participants in the market will be enforced inconsistently.

Financial Institutions Should be Excluded from the Definition of Data Brokers

The RFI defines data brokers as:

“[A]n umbrella term to describe firms that collect, aggregate, sell, resell, license, or otherwise share consumers’ personal information with other parties. Data brokers encompass actors such as first-party data brokers that interact with consumers directly, as well as third-party data brokers with whom the consumer does not have a direct relationship. Data brokers include firms that specialize in preparing employment background screening reports and credit reports. Data brokers collect information from public and private sources for purposes including marketing and advertising, building and refining proprietary algorithms, credit insurance underwriting, consumer-authorized data porting, fraud detection, criminal background checks, identity verification, and people search databases.”

While we understand the desire to utilize this broad definition in the information-gathering stage of a potential rulemaking, the use of this definition in the future would cause significant confusion and harm given the inclusion of all entities that handle any consumer personal information. Therefore, we ask that the definition of data broker specifically exclude financial institutions as defined under Title V of the Gramm-Leach-Bliley Act (GLBA) and its implementing regulations.

Participation in a Section 1033 Data Sharing Ecosystem Should Not Equate to Qualification as a Data Broker Under this RFI

Simply participating in a data sharing regime, like the forthcoming Section 1033 Personal Financial Data Rights Rule², should not, in and of itself, qualify that entity a data broker under this potential rulemaking or any other. New requirements related to the use of data should focus on new market entrants and unregulated entities that are not yet subject to a stringent regulatory framework surrounding the acquisition and use of consumer data. This boundary should be clearly delineated both in the Section 1033 proposed rule and in any future data broker rulemaking.

By the nature of their business, data brokers hold a tremendous amount of consumer financial data. While consumers may consent to the sharing of their financial data, many of these same consumers are unaware of the activities in which these intermediaries engage, how the information is being collected, and how the data may be used or shared. For example, a December 2021 consumer

² 124 Stat. 2008 (codified at 12 U.S.C. § 5533).

survey report on data privacy and financial app usage found that 80 percent of consumer respondents were largely unaware that apps use third-party provider to gather users' financial data; only 24 percent knew that data aggregators can sell personal data to other parties for marketing, research, and other purposes; and 78 percent didn't know that aggregators regularly access personal data even when the app is closed or deleted.³

This scenario presents very real questions about how third parties such as data aggregators currently utilize consumer-permissioned financial data once it is on their systems, the extent to which these activities are meaningfully disclosed, and the level of consumer consent to the activity. It is also often unclear to what extent third parties assemble, reshare, and monetize the data they receive. These questions are usually left unanswered due to a lack of supervision. These questions are best left to the ongoing Section 1033 rulemaking.

A Data Brokers Rulemaking Should Not Interfere with Financial Institutions' Core Operations and Member Service

Financial institutions' use of consumer's personal information is strictly governed by federal laws and regulations like the GLBA. The GLBA allows financial institutions to share personal information with certain nonaffiliated entities under specified exceptions to the requirement that consumers receive notice and the right to not allow information to be shared. Furthermore, entities that receive the information under these exceptions may only disclose and use the information in the ordinary course of business to carry out the purpose for which it was received.

Our members play critical roles in providing the financial services that allow consumers to obtain and manage financial services and improve their financial lives. As part of that role, credit unions seek to prevent fraud, including identity theft that harms consumers and disrupts their lives. Credit unions utilize consumer information and third-party relationships to confirm applicants and account holders to prevent synthetic identity fraud.

Information gained from third-party relationships is critical for credit unions preventing money laundering, the financing of terrorism, and carrying out bank secrecy act compliance including customer identification and beneficial ownership requirements. Our members' ability to utilize consumer information to carry out these functions is essential and required by law.

As the Bureau considers any potential rulemaking following this RFI, it must recognize the stringent regulation, supervision, and examination that governs financial institutions' critical use of consumer data to execute core operations and member services.

³ The Clearing House, 2021 Consumer Survey: Data Privacy and Financial App Usage 3 (Dec. 2021), *available at* https://www.theclearinghouse.org/-/media/New/TCH/Documents/Data-Privacy/2021-TCHConsumerSurveyReport_Final.



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Conclusion

On behalf of America's credit unions and their more than 135 million members, we thank you for the opportunity to share our views with the CFPB regarding data brokers and their practices. If you have questions about our comments, please do not hesitate to contact me at (202) 577-3463 or mrose@cuna.coop.

Sincerely,

A handwritten signature in black ink, appearing to read "Madison Rose".

Madison Rose
Senior Director of Advocacy & Counsel for Payments and Technology