October 24, 2023

Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

SENT VIA ELECTRONIC MAIL TO CFPB_consumerreporting_rulemaking@cfpb.gov.

Re: Small Business Advisory Review Panel for Consumer Reporting Rulemaking; Outline of Proposals and Alternatives Under Consideration

The Financial Data and Technology Association of North America ("FDATA North America") and the Financial Technology Association ("FTA") appreciate the opportunity to provide their perspectives in response to the Consumer Financial Protection Bureau's ("CFPB" or "the Bureau") Small Business Regulatory Enforcement Fairness Act ("SBREFA") memo ("the memo") outlining proposals and considerations under consideration for a future rulemaking that would "remove medical bills from Americans' credit reports."[1] Having reviewed the memo, the FDATA North America and FTA observe that the proposals being considered by the CFPB for the purposes of this rulemaking would drastically exceed simply removing medical bills from consumers' credit reports and, if implemented, would represent a significant, and in some instances, an inappropriate, expansion of the scope of the Fair Credit Reporting Act ("FCRA").

Additionally, with the recent release of the Bureau's proposed rule implementing Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act"), we would offer that it is impossible, before having had the opportunity to review that proposal in depth, to meaningfully evaluate and comment on how the FCRA framework envisioned by the memo would practically exist in a post-Section 1033 rulemaking environment. Accordingly, FDATA North America and FTA respectfully request that the CFPB extend the comment period for this SBREFA memo by no less than 30 days after the publication of the Bureau's proposed rule implementing Section 1033 of the Dodd-Frank Act in the *Federal Register*.

About FDATA North America and the Financial Technology Association

FDATA North America was founded in early 2018 by several financial technology firms whose technology-based products and services allow consumers and small and medium enterprises to improve their financial wellbeing. As the leading trade association advocating for consumer-permissioned access to financial data, FDATA North America's members include firms with a variety of different business models.

[1] https://www.consumerfinance.gov/about-us/newsroom/cfpb-kicks-off-rulemaking-to-remove-medical-bills-from-credit-reports/.

Collectively, FDATA North America's members provide more than 150 million American consumers and small businesses access to vital financial services and products, either on their own or through partnerships with supervised financial institutions. Regardless of their business model, each FDATA North America member's product or service shares one fundamental and foundational requisite: the ability of a consumer to actively permission access to some component of their own financial data that is held by financial services providers.

FTA is a non-profit trade association representing industry leaders shaping the future of finance. FTA champions the power of technology-centered financial services and advocates for the modernization of financial regulation to support inclusion and responsible innovation.

The CFPB Must Distinguish Between Traditional Consumer Reporting Agencies and Consumer-Permissioned Data Access Under Section 1033 of the Dodd-Frank Act for the Purpose of a Consumer Reporting Rulemaking

The CFPB's memo inappropriately suggests that the contemplated FCRA regulation should capture the activities of consumer-permissioned data aggregation platforms, which operate at the express direction of the consumer, with the consumer in control of the flow of their data at all times, and is separately governed by Section 1033. As both FDATA North America and FTA noted in our respective comment letters responding to the Bureau's request for information on this matter in June of this year, we suggest to the Bureau in the strongest possible terms that consumer authorized third-party providers of financial services that rely on access to consumer-permissioned data, and the consumer authorized data access platforms that they use to support their services, are categorically not data brokers. Moreover, with the CFPB poised to conclude its Section 1033 rulemaking effort in 2024, there will soon exist a very clear regulatory distinction that will allow the Bureau to easily distinguish between consumer-permissioned data access providers and traditional consumer reporting agencies: data that is shared under the processes and consumer protections that will be articulated in a Section 1033 rulemaking as opposed to data that is collected and shared outside of that process. FDATA North America and FTA urge the CFPB to exclude, for the purposes of its forthcoming consumer reporting rulemaking, data collected and shared at a consumer's direction under Section 1033 of the Dodd-Frank Act, as well as the authorized third parties that collect, share, and utilize that data under a Section 1033, consumer-permissioned data sharing framework.

Such a distinction in a future consumer reporting rulemaking is essential. End-to-end consumer control and transparency is an inherent feature of the consumer-permissioned financial data marketplace. When account connectivity is first established with an authorized third-party financial service provider, aggregation platforms present conspicuous disclosures regarding what data is being accessed, for what purpose, and for what length of time. In many cases, financial institutions, in coordination with data access providers and data recipients, present to their account holders a dashboard enumerating the various data connections they have established to their accounts, and which data elements they have permissioned to fuel the use cases for which they have connected. The consumer's control of their data in the consumer-permissioned financial data

marketplace, which we anticipate will be enshrined in the Bureau's 1033 rulemaking, is a key feature of the ecosystem in which third-party financial providers and data aggregation platforms operate today.

As the CFPB considers its approach to a forthcoming consumer reporting rulemaking, FDATA North America and FTA emphasize that the type of data collected and the manner of data collection conducted by consumer-permissioned third parties operating under Section 1033 of the Dodd-Frank Act is very different than traditional consumer reporting agencies. Consumer-permissioned third-party providers of financial services operating under Section 1033 of the Dodd-Frank Act can only make use of the specific data fields to which the consumer has expressly granted them access, and, as a general rule, only access that data under scenarios for which the consumer has requested that they do so and for only the purpose(s) authorized by the consumer. Unlike credit reporting agencies, these entities make no assessment of a consumer's creditworthiness, and never access a consumer's data unless they have been granted informed consent from that consumer to do so.

Failure to exclude entities that facilitate consumer-permissioned data access under Section 1033 of the Dodd-Frank Act and the underlying data they access at the express direction of a consumer would have significant and negative implications for consumers. For example, the CFPB's memo suggests that the Bureau's consumer reporting rulemaking may "clarify whether and when aggregated or anonymized consumer report information constitutes or does not constitute a consumer report." In the event that the CFPB were to require consumer-permissioned data platforms operating under Section 1033 of the Dodd-Frank Act to be regulated as consumer reporting agencies, such an expansion of the FCRA's definition of a "consumer report" would significantly restrict many of the use cases of this data today. These tools, applications, and products bestow significant consumer benefits and are only accessed under a lawful basis and with transparency to the end user. Examples include fraud protection, product enhancements, and academic and policy research. Moreover, such a shift in the application of the FCRA would deviate from longstanding guidance from the Federal Trade Commission, which has established that anonymized data means a single data element or a data set that cannot reasonably be reidentified back to an individual end user.[2]

A consumer reporting rule that does not apply only to entities that collect, assemble, or evaluate consumer data outside the framework of Section 1033 risks significant potential for stakeholder and consumer confusion. A credit reporting rule that does not narrowly apply to entities that sell, resell, or license data only and is covered within the scope of the FCRA's focus on accurate and reliable credit scores – and that does not clearly exclude data accessed under a Section 1033 rulemaking – would see financial institutions become furnishers under the FCRA for certain use cases for which their customers had opted in. This would ultimately likely result in restrictions on the types of third-party tools offered to end users, in order to facilitatecompliance with the FCRA's permissible purpose regime. Such an outcome would undermine the principal objective of Section

[2] This definition is consistent with the Federal Trade Commission's guidelines regarding anonymized data as articulated in a 2012 report.

1033 of the Dodd-Frank Act: providing consumers with the ability to select the third-party providers best positioned to help them manage their finances.

Application of the FCRA's dispute resolution mandates would also create confusion if applied to consumer-permissioned data access under Section 1033 of the Dodd-Frank Act. While the FCRA generally requires consumer reporting agencies to correct inaccurate data within 30 days of a consumer's dispute, platforms that facilitate consumer-permissioned data access under Section 1033 of the Dodd-Frank Act are merely providing authorized third parties selected by the consumer with access to data held by another financial services provider. These platforms do not have the ability to correct inaccurate data held by a data provider and any requirement that they do so within a 30-day period creates significant risk that diverging consumer records would be created: one held by the original data provider; an alternate version that has been "corrected" by the consumer-permissioned data aggregation platform; and potentially several other versions maintained by third-party data recipients to which the consumer has permissioned the use of their data. Additionally, for the purpose of the types of data that third parties access and collect under Section 1033 of the Dodd-Frank Act, existing consumer dispute mechanisms already exist, including, for example, under Regulation E and Regulation Z.

To whatever extent the Bureau believes additional controls, disclosures, or transparency is required in this marketplace, FDATA North America and FTA assert that the CFPB's Section 1033 rulemaking is the appropriate – and expected – mechanism through which to exert these additional requirements.

Conclusion

For all the reasons stated above, we urge the Bureau to distinguish consumer-permissioned data access under Section 1033 of the Dodd-Frank Act from other types of data access for the purpose of any future consumer reporting rulemaking. The Bureau's anticipated final rulemaking under Section 1033 of the Dodd-Frank Act will provide significant consumer control and transparency into how their data is being accessed and shared in the consumer-permissioned financial data ecosystem today, and inclusion of this type of data access in a future consumer reporting rulemaking risks undermining the Bureau's Section 1033 rulemaking, as well as introducing the potential for consumer harm and confusion into the consumer-permissioned data access marketplace.

In the absence of the ability to understand and analyze how the proposals set forth in the CFPB's memo would interact with the Section 1033 rulemaking that the Bureau recently released, it is impossible to comment comprehensively on the challenges that the Bureau's consumer reporting rulemaking proposals would pose for consumers and stakeholders in the Section 1033 consumer-permissioned data marketplace. Given that our reading of the memo suggests that the Bureau may opt not to exclude data access under Section 1033 of the Dodd-Frank Act from its forthcoming consumer reporting rulemaking, FDATA North America and FTA respectfully request that the

CFPB extend the comment period for its SBREFA memo by no less than 30 days following the publication in the *Federal Register* of the Notice of Proposed Rulemaking under Section 1033.

Millions of consumers depend upon access to their permissioned financial data on a daily basis. On behalf of FDATA North America's and FTA's membership, which include data access platforms and the apps and solutions powered by consumer-permissioned data, thank you for your consideration of our industry's initial perspectives and our request for adequate time to prepare a thorough, representative response to the memo and its potential interactions with Section 1033.

Sincerely,

Steven Boms	Penny Lee
Executive Director	President and Chief Executive Officer
FDATA North America	Financial Technology Association