Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Re: Docket No. CFPB-2023-0052

Submitted via Federal Rulemaking Portal

December 22, 2023

Dear Director Chopra:

We, the 25 undersigned organizations, are pleased to submit these comments in support of the Consumer Financial Protection Bureau's (CFPB's) Proposed Rulemaking on Personal Financial Data Rights, issued October 19, 2023. We applaud the Bureau for establishing a regulatory framework for open banking in the United States, one that would help eliminate barriers to competition and foster a banking system where consumers have greater control over their own financial data and gain new protections from companies misusing it.

Such a framework is needed to address the ways in which financial institutions and our financial system have created or perpetuated racial and economic injustice. Decades of discriminatory financial schemes which excluded Black and Brown Americans from opportunities for financial security and prosperity have harmed many and fostered distrust of financial institutions by these individuals and communities.[1] When combined with the myriad barriers to access to financial services, these factors have contributed to millions of low-income, BIPOC individuals in the U.S. being unbanked or underbanked,[2] and have contributed to consumers seeking alternative forms of financial services, including through fintech products and service providers.[3]

Such new forms of finance offer both promise and peril. Technological changes or shifts can sometimes spur competition within the financial services industry, offering consumers more choices with lower costs and fewer barriers to entry. Additionally, consumers will be better able to walk away from bad service providers if they have more control over how and when their personal financial data can be accessed or used.

However, fintech products, services and business models are not intrinsically "better" than traditional finance. While new technology has the potential to foster competition and innovation, tech firms have also used their platforms and market positions to establish monopolies that

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[1] https://www.frbsf.org/community-development/publications/community-development-investment-review/2021/august/the-racialized-roots-of-financial-exclusion/
[2] https://www.fdic.gov/analysis/household-survey/index.html
[3] https://bailard.com/fintech-the-engine-accelerating-financial-inclusion-across-the-unbanked-and-underbanked/#:~:text=Nonbanks%20have%20emerged%20as%20key,access%20more%20traditional%20financial%20services.

crowd out competition and disadvantage consumers. Fintech business models are just as liable as traditional finance to be used or abused for exploitative purposes that can harm consumers, workers, and communities— all of which can disproportionately impact BIPOC individuals. And, fintech firms have also exploited gaps in regulatory oversight and maximized use of consumers' personal financial data to optimize their profits and reduce costs through predatory practices, regardless of the consequences.

Technological advances or innovation should not be touted as a reason to avoid proper regulation, oversight and consumer protection. Robust safeguards are needed to protect consumers from harm, including fraud and erroneous transactions, abusive data collection, and potential exploitation by companies flexing their increased market power as more large technology firms enter the financial services industry.

In that vein, we believe the proposed rule strikes an appropriate balance between protecting consumers, creating standards and accountability mechanisms for financial service providers, and bolstering consumers' rights to control their own financial data, while also fostering competition and innovation. This framework will make it easier for consumers to take control of their financial futures and choose products and services that work best for them, and provide consumer protections across a broader swath of the financial system.

Building from a technical analysis of the rule conducted by Consumer Reports, in this comment we identify ways in which the rule - both as written and in some cases strengthened by key changes - would help address a number of long-standing racial equity issues.

Specifically, we urge the Bureau to expand the scope of those entities or 'persons' who would be covered by the rule to help ensure more consumers are protected by the rule in more instances. We express support for strong data standards outlined in the rule because of their critical role in ensuring consumers' control and use of their own data. And, we call on the Bureau to continue to pursue a 'data minimization' approach throughout the rule that limits what consumer information can be collected, how it can be used, by whom, and under what circumstances. Progress on these issues would have significantly positive benefits for individuals who have been marginalized by the existing financial system.

Overall, as the Bureau seeks to finalize the rule, we would urge the Bureau to keep racial justice and equity concerns at the forefront. And, as the rule is implemented, we urge the Bureau to monitor and report on how and whether the new data access rights and protections afforded by this rule is achieving parity, with respect to racial equity.

Scope of Coverage - We urge expansion of the types of data providers covered under the proposed rule to include nondepository entities. Those particularly important with regard to racial equity are:

- **Credit bureaus**, **collection agencies and non-credit data furnishers** - much has been written about how our current system of evaluating the 'creditworthiness' of individuals both creates and perpetuates racial discrimination in our financial system. The credit scoring system has been criticized for using arbitrary means of evaluation; for using algorithmic analyses that contain bias against BIPOC individuals; for not considering data that would otherwise demonstrate borrowers' ability to pay, and for penalizing low-income, BIPOC consumers with low credit scores due to their lack of access to both generational wealth and conventional methods of borrowing - perpetuating a catch-22. Adding insult to injury, studies have shown that consumers in non-White neighborhoods (Black and Hispanic) are more likely to have disputes regarding their credit history, suggesting such consumers are subject to more errors in their credit histories, further impacting their ability to access credit.[4]

Requiring entities that collect, provide and evaluate information about individuals' banking and credit history opens up competitive avenues for those cut out of the banking system to qualify for better banking products. For example, this rule would allow transaction history to be considered in the underwriting process for a more curated banking experience. Access to such data would also improve consumers' ability to dispute errors in their financial data history, and allow them to better understand how financial institutions decide which products to offer them based on this data. The Bureau should also go further by requiring CRAs to ensure that their data and scoring models are equally accurate across populations and geographies.

- **Non-bank lenders -** because of historic and continuing racial discrimination in the financial system and broader economy, BIPOC individuals and households are more likely to rely on non-traditional lenders for access to credit, such as payday lenders, auto-title loans, and 'buy now, pay later' products. Many of these products are higher cost, rife with abuses, and disproportionately target BIPOC individuals and communities as their customer base.

  Requiring these lenders to provide their customers with access to their financial data would help consumers have a better picture of the full costs and risks associated with these products, dispute erroneous or fraudulent charges, or ultimately choose products that are less risky or prone to abuse. Inclusion of non-bank lenders in particular would also bring much needed parity in security and privacy standards, as consumers entrust these entities with critical information about their identities and financial activities.

- **Electronic Benefit Cards -** The data providers definition in this rule should include Electronic Benefits Transfer card providers. Over 40 million Americans rely on needs-based EBT card programs for essential food and cash assistance; enabling consumer data access would vastly impact their financial lives.[5] Including EBT cards in

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[4] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-credit-report-disputes-far-more-common-in-majority-black-and-hispanic-neighborhoods/

[5] EBT cards provide benefit recipients both convenience as a payment method and oversight of their benefit funds each month when facing food, financial and other insecurities. By enabling financial access for vulnerable segments of the population and providing a gateway for them to build digital fluency, credit history, and engage more

the scope of this proposed rule also aligns with the goals of Section 1033, for several reasons, First, since many low-income families rely on EBT cards for many basic household purchases, giving those consumers access to that data would enable them to budget their finances in a more accurate and timely way. Second, most EBT card holders currently rely on third party providers for access, but often receive inadequate service from these providers, including portal outages, lack of data available within their portals, and slow response times. Finally, some EBT card holders have become targets of widespread fraud scams, but due to lack of adequate data security protections and data access, victims of such scams have struggled to secure timely and adequate remedies in such circumstances. For these and other reasons, including EBT cards in the scope of this rule would create a harmonized data framework for both public and private data holders, which would better serve, protect and empower consumers using EBT cards, as well as foster better service from their card providers and data providers.

Establishing and Maintaining Data Access - The standards in this rule require service providers and data aggregators to meet and maintain technical standards that guarantee concrete and durable data access across markets, in part by requiring covered providers to maintain consumer interfaces and establish and maintain developer interfaces.

These standards are particularly important given the ongoing presence of a digital divide that disproportionately impacts BIPOC individuals and communities. BIPOC consumers more typically rely on their smartphones for internet access (rather than broadband) when compared to White consumers, and are less likely to have reliable broadband access than White households.[6] At the same time, the cost of fast, reliable internet service via mobile phones can also be a barrier to internet access for low-income/BIPOC consumers. Slow, or intermittent access can further penalize individuals using online financial services via non-broadband channels - say, if a payment or transaction is interrupted by a service outage or the failure of an application.

Consumers need to have confidence that, should they seek to transfer or share their data with other providers or 3rd parties, they can do so with ease, clarity and reliability, with products that are resilient and with minimal disruption or confusion stemming from the design of products and their customer interfaces. This rule can bolster such confidence by ensuring that the formats and interfaces consumers use to access their personal financial data work well under a variety of circumstances and scenarios.

This rule also aims to create such consistency in consumer data access across both traditional financial institutions and new fintech apps. The rule requires newer fintech companies to follow FTC data protection standards, like periodic audits, breach disclosures, etc., that are consistent

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meaningfully with banks, payment networks, retailers and the broader financial ecosystem. EBT cards can support the most vulnerable consumers' entry into the banking ecosystem, leading to more open checking / savings accounts.

6 https://www.pewresearch.org/short-reads/2015/04/30/racial-and-ethnic-differences-in-how-people-use-mobile-technology/

with strict federal privacy rules already governing banks. This bridges prior gaps by upholding equivalent security prerequisites universally across old and new consumer finance data holders, preventing unevenness in safeguards as more consumers adopt digitally-native financial platforms beyond just incumbent options. However, some specific timeline allowance differences in the rule phases could still temporarily sustain gaps enabling uneven standards. The rule's tiered effective dates may create data access gaps across institution types, enabling inequality which could last for years after adoption before equal standards fully take effect.

Privacy and Data - Many fintech business models rely on a 'data maximization' approach that captures more data from consumers than is necessary to provide the relevant products or services. This approach can render marginalized communities more vulnerable to a range of civil rights concerns, including those linked to questions around policing, surveillance and law enforcement; targeting by fraud artists or predatory market actors; data security and more. We believe a 'data minimization' approach should be the baseline for covered persons and actors under this rule. We are glad to see the rule embodies this approach as well by including important security and privacy safeguards regarding collection of consumer data, such as the requirement of proper containment controls, consent flows for sensitive financial information, and limiting provider and third party use of consumer data to only what is necessary to provide the service.

In conclusion, we believe the Personal Financial Data Rights rule as proposed, and with additional strengthening measures - such those named in this letter - would provide important safeguards that will help protect consumers, in particular BIPOC individuals and communities. It will also establish robust standards for open banking that will give consumers greater control over their own financial data and foster competition and innovation, which in turn can help address longstanding financial inequities and improve practices within both traditional finance and in the fintech sector.

Thank you for the opportunity to submit this comment and your consideration of these remarks. For further information, please contact Mark Hays with Americans for Financial Reform Education Fund and Demand Progress Education Fund (markhays@ourfinancialsecurity.org).

Sincerely,

American Economic Liberties Project

Americans For Financial Reform Education Fund

Better Markets

Center for LGBTQ Economic Advancement & Research

Center for Responsible Lending

Consumer Action

Consumer Reports

Demand Progress Education Fund

Florida Consumer Action Network

Georgia Watch

JustUS Coordinating Council

Maine People's Alliance

National Association of Consumer Advocates

National Consumer Law Center (on behalf of its low-income clients)

New Jersey Citizen Action

Public Citizen

Revolving Door Project

Rise Economy (formerly California Reinvestment Coalition)

Texas Appleseed

US PIRG

Virginia Organizing

VOICE (Voices Organized In Civic Engagement)

Woodstock Institute