

October 27, 2023

Via Electronic Mail

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

Re: Docket No. CFPB-2023-0052 – Request for Extension of Comment Period for Notice of Proposed Rulemaking on Personal Financial Data Rights

Dear Director Chopra:

The American Fintech Council (AFC),¹ the American Bankers Association (ABA),² the American Financial Services Association (AFSA),³ the Bank Policy Institute (BPI),⁴ the Clearing House Association,⁵ the Community Development Bankers Association (CDBA),⁶ the Consumer

¹ The American Fintech Council (AFC) is the premier trade association representing the largest financial technology (Fintech) companies and the innovative banks that power them. Our mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting responsible innovation in Fintech and encouraging sound public policy. AFC members are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved consumer segments and geographies. Our members are also lowering the cost of financial transactions, allowing them to help meet demand for high-quality, affordable products.

² The American Bankers Association (ABA) is the voice of the nation's \$23.5 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard \$18.6 trillion in deposits and extend \$12.3 trillion in loans.

³ 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.

⁴ The Bank Policy Institute (BPI) is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

⁵ The Clearing House Association, L.L.C., the country's oldest banking trade association, is a nonpartisan organization that provides informed advocacy and thought leadership on critical payments-related issues. Its sister company, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the U.S., clearing and settling more than \$2 trillion each day. See The Clearing House's web page at www.theclearinghouse.org.

⁶ The Community Development Bankers Association (CDBA) is the national trade association of banks and thrifts with a primary mission of promoting community development. The majority of our members are US Treasury-designated Community Development Financial Institutions (CDFIs), which means that they target at least 60% of their total lending and activities to Low- and Moderate-Income (LMI) communities and customers that are underserved by traditional financial service providers. Many of our members are also Minority Depository Institutions (MDIs). CDBA members work in impoverished urban, rural, minority, and Native American communities to narrow the wealth gap and create real economic opportunity.

Bankers Association (CBA),⁷ the Credit Union National Association (CUNA),⁸ the Electronic Transactions Association (ETA),⁹ the Independent Community Bankers of America (ICBA),¹⁰ the Innovative Lending Platform Association (ILPA),¹¹ the National Association of Federally-Insured Credit Unions (NAFCU),¹² the Online Lenders Alliance (OLA),¹³ the Professional Background Screening Association (PBSA),¹⁴ and the Securities Industry and Financial Markets Association (SIFMA)¹⁵ respectfully request an extension of the comment period of the notice of proposed

⁷ The Consumer Bankers Association (CBA) is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

⁸ The Credit Union National Association (CUNA) is the only national association that advocates on behalf of all of America's credit unions, which are owned by more than 135 million consumer members. CUNA, along with its network of affiliated state credit union leagues, delivers unwavering advocacy, continuous professional growth and operational confidence to protect the best interests of all credit unions.

⁹ The Electronic Transactions Association (ETA) is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S. and in more than a dozen countries around the world. ETA members make commerce possible by processing approximately \$44 trillion annually in purchases and P2P payments worldwide and deploying payments innovation to merchants and consumers.

¹⁰ The Independent Community Bankers of America® (ICBA) creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding \$5.8 trillion in assets, \$4.8 trillion in deposits, and \$3.8 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America.

¹¹ The Innovative Lending Platform Association (ILPA) is the leading trade organization representing a diverse group of online lending and service companies serving small businesses. United by a shared commitment to the health and success of small businesses in America, the ILPA is dedicated to advancing best practices and standards that support responsible innovation and access to capital for small businesses.

¹² The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 137 million consumers with personal and small business financial service products. It provides members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU proudly represents many smaller credit unions with relatively limited operations, as well as many of the largest and most sophisticated credit unions in the Nation. NAFCU represents 78 percent of total federal credit union assets and 62 percent of all federally-insured credit union assets.

¹³ The Online Lenders Alliance (OLA) represents the growing industry of innovative companies developing and deploying new financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services.

¹⁴ The Professional Background Screening Association (PBSA) is an international trade association of over 700 member companies that provide tenant, employment, and volunteer background screening and related services to virtually every industry around the globe. The consumer reports prepared by PBSA's background screening members are used by property managers, employers, government entities, and volunteer organizations every day to help ensure that communities are safe for all who reside, visit, or work there. PBSA members range from large background screening companies to individually-owned businesses, each of which must comply with applicable law, including how they obtain, handle, or use public record data. Among other goals, PBSA members seek to promote the accurate, lawful, and timely reporting of a variety of consumer-related information for the purpose of empowering housing, employment, volunteering, and other opportunities to individuals.

¹⁵ The Securities Industry and Financial Markets Association (SIFMA) is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (the "GFMA").

rulemaking on Personal Financial Data Rights (NPRM) until 90 days after its publication in the Federal Register. The aforementioned associations represent companies of all sizes seeking to operate responsibly within the modern consumer reporting and banking system(s). These entities and their members will be significantly impacted by the NPRM and therefore require at least 90 days after publication in the Federal Register to properly consider the effects of the specific proposals within the NPRM.

The Consumer Financial Protection Bureau (CFPB) has pursued a deliberate approach to implementation of Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which has resulted in the agency taking nearly 7 years to propose its formal NPRM on this matter. During this time, CFPB solicited public comment on three separate occasions.¹⁶ Each of these comment periods offered at least 90 days for industry and members of the public to provide their views to the agency. Further, in the intervening time between public comment solicitations, CFPB pursued additional information gathering efforts and provided agency views through multiple speeches, blog posts, and events.¹⁷ At each point, CFPB provided significant time for industry and the broader public to react to how the agency viewed the issue of personal financial and other data rights. Our recounting of the CFPB's extended process is not intended to be a criticism. In fact, it is quite the contrary. We the undersigned believe that this approach by the agency reflects a common understanding about the substantial effect that the Section 1033 regulations will have on consumers and industry participants, and the underlying complexity of the issue.

As noted above, CFPB has provided at least 90 days for notice and comment at previous points in their 1033 rulemaking process. Pursuing a notice and comment period that is less than 90 days creates a concerning divergence from CFPB's established practices on the 1033 rulemaking. Further, the unique role of the NPRM within the agency rulemaking process necessitates due consideration to the time allotted to the public to provide comment on the agency's formal plan to accomplish its goals on a specific regulatory topic beyond that provided during other points in the rulemaking process. Unlike other aspects of the rulemaking process, the NPRM is the primary opportunity for industry and members of the public to convey their views on the specific proposals put forth by the agency for full consideration by the agency in the finalization of the rulemaking. As evidenced by the information contained in the CFPB's 299-page NPRM, the agency is seeking responses on technical and non-technical issues beyond the level of specificity requested in the previous public comment periods associated with the implementation of Section 1033. This specificity creates a unique need for additional time to

¹⁶ Consumer Financial Protection Bureau's (CFPB) original Request for Information published in the Federal Register on November 22, 2016, and Advance Notice of Proposed Rulemaking published in the Federal Register on November 6, 2020, both provided approximately 90 days for public comment. CFPB's Small Business Regulatory Enforcement Fairness Act (SBREFA) Outline, issued on October 27, 2022, provided approximately 90 days for public comment. Coinciding with this comment period, CFPB held its SBREFA Panel on January 19 and 25, 2023. The agency issued a final report on the SBREFA findings released on April 3, 2023.

¹⁷ CFPB issued its Consumer Protection Principles on October 18, 2017, held a symposium on Consumer Access to Financial Records on February 26, 2020. Also, Director Chopra issued a blog post on June 12, 2023 entitled "Laying the foundation for open banking in the United States, and detailed his views in prepared remarks at Money 20/20 on October 25, 2022.

ensure proper evaluation of the proposed requirements and their impacts on relevant business processes.

As noted above, this NPRM represents the agency's plan to implement regulations on the inherently complex issue of personal financial and other data rights to an extent that has not been previously pursued in federal U.S. law. The CFPB has tacitly recognized this complexity based on the number of public comment requests, information gathering efforts, and public statements on the topic. This recognition of the complexity associated with the implementation of Section 1033 of the Dodd-Frank Act is best exemplified by the fact that CFPB required over 180 days to develop its NPRM from the issuance of its Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) report on March 30, 2023. To provide only 70 days to comment, especially with a comment period and deadline during a time typically unavailable for those observing various November and December holidays - further reducing the work time period, reflects a lack of reciprocity between the implementing agency and affected entities to engage in the discourse needed within this complex issue and rulemaking. Thus, it seems prudent for the CFPB to offer a proportionate time for consideration by affected entities in industry or the broader public as the agency took to develop the NPRM.

Specifically, insufficient time for small entities to fully consider the myriad issues discussed in the rulemaking and their impacts on the institutions could pose a risk to the CFPB's ultimate goals of fostering increased competition through the implementation of Section 1033. While we recognize that CFPB convened a SBREFA panel, as required by statute, many of the small business entities that would be affected by this rulemaking lack the resources necessary to respond to the NPRM during the current time frame, due to the consistently competing interests of serving their consumers most effectively. Therefore, small business entities impacted by this rulemaking would again be disadvantaged in the process. Without the duly considered responses by these small entities, the final rulemaking could adopt requirements that would ultimately disadvantage the entities and undercut the CFPB's desire to create competition through the implementation of Section 1033. Thus, we believe that this provides a unique rationale for the CFPB to extend its comment period to provide crucial considerations for these small business entities to ensure that these entities have adequate time to provide comments with their limited available resources and vast array of competing commitments.

It is also important to extend the comment period so industry can evaluate the implications the CFPB's forthcoming consumer reporting rulemaking will have on the Section 1033 proposed rule. On September 15, 2023, the CFPB released its Small Business Advisory Review Panel for Consumer Reporting Rulemaking Outline of Proposals and Alternatives under Consideration,¹⁸ and the Bureau's revised definition of a consumer reporting agency (and the undefined term "data broker") may encompass what would be considered data providers, data recipients, and data aggregators under the Section 1033 rule. The CFPB's 1033 NPRM likewise acknowledges that data aggregators in certain circumstances will be "regulated as a consumer reporting

¹⁸ Consumer Financial Protection Bureau, *Small Business Advisory Review Panel for Consumer Reporting Rulemaking – Outline of Proposals and Alternatives under Consideration* (Sept. 15, 2023), available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbreffa_outline-of-proposals.pdf.

agency under the [Fair Credit Reporting Act].”¹⁹ Industry requires further time to understand how these two rulemaking efforts intersect with one another, and specifically how the consumer reporting rulemaking will impact the rights and obligations of entities like data aggregators.

Further, a rush to finalize this 1033 rulemaking, especially after the CFPB has pursued such a deliberate process up to this point, would invite scrutiny and potential future revisions, ultimately creating confusion for consumers and businesses, as well as additional compliance costs. We, the undersigned associations, seek to avoid any confusion or unnecessary future revisions by requesting that the CFPB allow for the necessary time for entities of all sizes to provide duly considered and fully reasoned comments on the NPRM.

It is for the reasons stated above that we, the undersigned associations, respectfully request the comment period be standard to other proposed rulemaking timelines of this scope and magnitude. The comment period should be 90 days after publication in the Federal Register on this NPRM to allow industry and the broader public the necessary time to provide detailed and duly considered comments. Ultimately, extending the comment period is for the benefit of ensuring proper finalization of the CFPB’s position on personal data rights implementing Section 1033 of the Dodd-Frank Act. Simply put, the implementation of Dodd-Frank Section 1033 is far too important to financial institutions, fintechs, companies, and consumers to rush this rulemaking process at this crucial juncture. We look forward to continuing our work with the CFPB on this rulemaking and thank you for considering our request.

Sincerely,

The American Fintech Council (AFC)
The American Bankers Association (ABA)
The American Financial Services Association (AFSA)
The Bank Policy Institute (BPI)
The Clearing House Association
The Community Development Bankers Association (CDBA)
The Consumer Bankers Association (CBA)
Credit Union National Association (CUNA)
Electronic Transactions Association (ETA)
The Independent Community Bankers of America (ICBA)
Innovative Lending Platform Association (ILPA)
The National Association of Federally-Insured Credit Unions (“NAFCU”)
The Online Lenders Alliance (OLA)
The Professional Background Screening Association (PBSA)
The Securities Industry and Financial Markets Association (SIFMA)

¹⁹ Consumer Financial Protection Bureau, Notice of Proposed Rulemaking on Personal Financial Data Rights (October 19, 2023) at 23, available at https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice_2023-10.pdf.