FINANCIAL DATA AND TECHNOLOGY ASSOCIATION OF NORTH AMERICA, STEVEN BOMS

Proposal and Comment Information

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Organization Name: Financial Data and Technology Association of North America

Organization Type: Organization

Name: Steven Boms

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http://www.fdata.global/north-america

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Chief Counsel's Office
Attn: Comment Processing, Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Federal Reserve Board of Governors
Attn: Ann E. Misback, Secretary of the Board
Mailstop M-4775
2001 C Street, NW
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Submitted electronically via www.regulations.gov.

Re: Request for Information on Bank Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses – Docket No. OCC-2024-0014, Docket No. OP-1836, RIN 3064-ZA43.

The Financial Data and Technology Association of North America ("FDATA North America") appreciates the opportunity to provide comments in response to the Office of the Comptroller of the Currency's ("OCC"), the Board of Governors of the Federal Reserve's ("Fed"), and the Federal Deposit Insurance Corporation's ("FDIC"; collectively, "the agencies") request for information ("RFI") on bank-fintech arrangements involving banking products and services distributed to consumers and business. FDATA North America is concerned that the RFI fails to appropriately capture or distinguish among the breadth of relationships fintech platforms may have with banks, which can include facilitation of deposit-taking, lending, and payment access, or simply enabling customer-permissioned access to data held in an account provided by a financial institution. Irrespective of these very different types of arrangements, fintechs provide substantial benefits to consumers and small businesses, often but not exclusively through arrangements with financial institutions. These partnerships not only boost competition within the financial services marketplace and reduce costs for consumers and small business owners, but also play a vital role in expanding access to affordable, mainstream financial services for underserved populations, addressing gaps left by the traditional banking system.

The range of bank-fintech partnerships is vast, providing myriad consumer and small business financial tools, products and services. Bank-fintech arrangements offer services to end users that go far beyond deposit-taking, lending, and payment facilitation, encompassing areas including personal financial management, which allows customers to see all their finances in one place, debt and wealth management, tax preparation, and bookkeeping, to name only a few. While we understand the agencies' interest in addressing perceived risks in bank-fintech arrangements, it is critical that the agencies distinguish among the types of arrangements that exist and not treat every such arrangement similarly. The agencies should also be mindful that some of these relationships, particularly those that only involve a fintech accessing data held by a financial institution at the consumer's request, will soon be regulated under the imminent finalization of the Consumer Financial Protection Bureau's ("CFPB" or "the Bureau") Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act") Section 1033 rule. This rule, which the CFPB has indicated will be finalized this month, will establish a federally regulated framework for fintechs accessing consumer-permissioned, bank-held data. As this regulatory framework governing consumer-permissioned data access will soon be implemented by the CFPB, we strongly urge the agencies to defer oversight of these bank-fintech relationships to the Bureau's regulatory and enforcement jurisdiction rather than the agencies' third-party risk management ("TPRM") framework. Additionally, virtually all fintechs with relationships with banks will soon become authorized third parties under the CFPB's Section 1033 regulation, which will require compliance with new risk management requirements that address many of the perceived risks associated with bank-fintech arrangements highlighted in the agencies' RFI.

Given these considerations, FDATA North America respectfully requests that the agencies narrow the framing of their inquiry regarding bank-fintech arrangements to exempt consumer-permissioned data access arrangements, which will soon be regulated under the CFPB's Section 1033 rule, from the agencies TPRM framework, and recognize the forthcoming regulatory requirements with which many authorized third parties will soon have to comply under a final CFPB Section 1033 rulemaking. FDATA North America strongly recommends that the agencies allow time to carefully assess the impact of the rule on authorized third parties before taking any further action.

About FDATA North America

FDATA North America and our members have for years been strong advocates for providing consumers, public benefits recipients, small business owners, investors, and other financial services marketplace end users with legally binding financial data rights. As we have seen in other jurisdictions around the world that have granted legal rights and protections to their citizens to access and share access to elements of their financial data, a customer-centric ecosystem in which the end user is in full control of their data leads to a more innovative, more competitive, and more transparent financial marketplace.

Our members' products, services, and tools underscore this reality. 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 ("SMEs") to improve their financial wellbeing. As the leading trade association advocating for customer-permissioned access to financial data, FDATA North America's members include firms with a variety of different business models. Collectively, our members provide more than 100 million American consumers and SMEs 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 customer to actively permission access to some component of their own financial data that is held by financial services providers.

Bank-Fintech Arrangements Deliver Significant Benefits to Consumers, Small Businesses, and the Broader Financial Market

We respectfully submit that the agencies' RFI largely overlooks the numerous benefits that bank-fintech partnerships currently provide to end users of those arrangements, to the bank partners, and to industry competition. The RFI primarily views these partnerships from a risk management approach, offering a narrow perspective that fails to acknowledge how these collaborations positively impact consumers, SMEs, and the broader financial ecosystem. In reality, fintech providers platforms have meaningfully improved Americans' financial wellbeing and are relied on by consumers and small businesses across the country to help them manage their finances. Bank-fintech arrangements have been instrumental in lowering costs for consumers and SMEs, enhancing competition, and providing access to financial services for underserved populations. Additionally, these arrangements help financial institutions provide their services more efficiently to consumers and businesses of all sizes.

The fintech sector provides tens of millions of American consumers and SMEs with a wide array of significant benefits. Research commissioned recently by an FDATA North America member company found that half of Americans use fintech to manage their finances daily (48%), with this figure rising from 42% in 2020 to 44% in 2021, and consumers reported a 10% year-over-year increase in the number of fintech apps they use routinely.[1] As a result, the overall adoption and reliance on fintech have steadily increased, highlighting the growing importance of these tools in Americans' financial lives.

It is no surprise that so many consumers depend on fintech applications to manage their finances, as Americans often find that these platforms help them do so more effectively and less expensively than traditional banking services. Bank-fintech arrangements often introduce consumers to advanced digital tools and platforms that use real-time data analytics and machine learning to help them monitor their spending, set financial goals, and receive personalized insights, including budgeting advice and alerts, all designed to keep them on track with their financial objectives. Additionally, these partnerships often leverage automation and efficient digital processes to reduce the operational costs traditionally associated with banking services.[2] These cost savings are often

[1] *See* "Plaid's 2022 Consumer Survey: The Fintech Effect," https://plaid.com/blog/fintech-effect-report-2022/, October 18, 2022.
[2] *See* "What lies ahead for bank and fintech partnerships," https://corporate.visa.com/content/dam/VCOM/regional/na/us/audiences/documents/visa-twif-bank-fintech-partnerships.pdf, November 2023.

passed down to consumers through lower fees, better interest rates, and more competitive financial products.

The pricing benefits to consumers and SMEs from bank-fintech arrangements are not limited to customers of those fintechs. The increased competition from fintechs pushes traditional banks to lower their prices and improve their service offerings, thereby reducing the overall cost of financial services for customers of traditional financial institutions. A 2023 Congressional Research Service report noted that fintech-driven efficiencies lead to cost savings for financial providers, which often result in lower fees and better services as traditional banks respond to the competitive pressure introduced into the marketplace by nonbank providers of financial services.[3]

The banking sector itself benefits from these arrangements as well. The bank-fintech partnerships in which our members participate have significantly bolstered competition in the financial services industry by enabling smaller, community banks to reach customers they otherwise couldn't, particularly in an environment where bank consolidation might otherwise stifle innovation, consumer and SME choice, and limit competition. The U.S. banking sector has seen a nearly 40% decline in the number of all FDIC-insured institutions since the Dodd-Frank Act was enacted into law in 2010 and the elimination of more than 12,000 bank branches across the country during the same timeframe.[4] This consolidation has made it increasingly difficult for smaller banks to compete in a financial marketplace where size often determines competitive advantage. Partnerships with fintech companies have offered many smaller financial institutions the ability to compete, offering them the capacity to reach customers they otherwise could not and compete in markets they otherwise would be unable to access.

These concerns were highlighted during a recent field hearing held by the House Financial Services Committee ("HFSC") where one such bank's Executive Chair testified that its partnerships with fintech companies allows it to compete with much larger national financial institutions, offering a broader range of products and services that would otherwise be beyond the reach of a community bank.[5] This is emblematic of the crucial role fintech partnerships play in helping small banks remain competitive in an increasingly consolidated industry. The importance of these partnerships is further validated by industry data. For example: a 2016 PwC survey revealed that 42% of banks were involved in joint partnerships with fintechs, which has since more than doubled, with 94% of financial services companies now confident that fintech collaborations will significantly

[3] *See* "Consumer Finance and Financial Technology (Fintech)," https://crsreports.congress.gov/product/pdf/R/R47475, March 15, 2023.
[4] *See* "BankFind Suite: Annual Historical Bank Data," https://banks.data.fdic.gov/explore/historical/?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2023&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc.
[5] *See* "Testimony of Steven E. Trager Executive Chair Republic Bank & Trust Company," https://docs.house.gov/meetings/BA/BA20/20240712/117514/HHRG-118-BA20-Wstate-TragerS-20240712.pdf, July 12, 2024.

contribute to their revenue growth in the coming years.[6,7] As the business and technological arrangements underpinning customer-permissioned financial data sharing evolve, it is essential to maintain competition in the market for data-driven financial services. This competition allows consumers and SMEs to choose the financial services that best meet their needs, enhancing their financial well-being. By fostering a diverse and dynamic market, FDATA North America's member companies empower users to access innovative products and services tailored to their unique financial situations, ultimately contributing to a fairer financial ecosystem.

The expanded reach provided by fintechs has also enabled traditionally underserved communities to more easily access affordable, efficient, and fair financial services, products to tools. For example: fintech participation in COVID-19 financial relief programs for SMEs, including the Paycheck Protection Program ("PPP"), was instrumental to expanding access to critical assistance for minority borrowers.[8] Data from the Federal Reserve Bank of New York revealed that approximately 25% of Black-owned businesses applied for PPP loans through fintech lenders—more than double the rate at which white, Hispanic, and Asian-owned businesses turned to fintech lenders for pandemic aid.[9] This underscores that Black-owned businesses, often underserved by traditional banks, found fintech lenders to be a more accessible and effective option for securing crucial financial support during the economic uncertainty fueled by a global pandemic. This expansion of access has driven traditional banks to innovate and improve their own offerings, thereby enhancing overall market competition. For example, a credit union that also appeared recently before the HFSC testified that its fintech partnership has revolutionized its lending processes, enabling the credit union to serve more members, including those in minority and low-income communities.[10] These partnerships, in addition to keeping banks more competitive, are also enabling minority and low-income communities that otherwise may not have access to these services—or would have limited or more expensive access—to more freely, easily, and efficiently access mainstream financial services. As fintech partnerships continue to grow, they will play an increasingly vital role in ensuring that all communities have equitable access to the financial tools and resources necessary for economic resilience and growth.

Bank-Fintech Arrangements Should Not Be Stifled Under The CFPB's Section 1033 Rule

This month, the CFPB will finalize the Dodd-Frank Act Section 1033 rulemaking, which will standardize consumer disclosure, authorization, consent management, data privacy, data security, data usage, and risk management requirements for any third-party financial provider to whom a

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[6] *See* "Customers in the spotlight: How FinTech is reshaping banking," https://www.pwc.com/gx/en/financial-services/fintech/assets/fin-tech-banking-2016.pdf, 2016.
[7] *See* "Crossing the lines: How fintech is propelling FS and TMT firms out of their lanes", https://www.pwc.com/gx/en/industries/financial-services/assets/pwc-global-fintech-report-2019.pdf, 2019.
[8] *See* "Which lenders had the highest minority share among their Payment Protection Program (PPP) loans?," https://pages.stern.nyu.edu/~jstroebe/PDF/HKS_PPP_Minority.pdf, December 10, 2020.
[9] *See* "Who Received PPP Loans by Fintech Lenders?," https://libertystreeteconomics.newyorkfed.org/2021/05/who-received-ppp-loans-by-fintech-lenders/, May 27, 2021.
[10] *See* "Statement of Karen Harbin President and CEO of Commonwealth Credit Union on behalf of America's Credit Unions," https://docs.house.gov/meetings/BA/BA20/20240712/117514/HHRG-118-BA20-Wstate-HarbinK-20240712.pdf, July 12, 2024.

consumer elects to permission the sharing of their financial data held in a Regulation E or Regulation Z asset account. Many of our member companies within FDATA North America will become authorized third parties under the CFPB's Section 1033 rulemaking framework and will be compliant with all of the rule's expectations for authorized third-parties. We believe this will be the case for the overwhelming majority of fintech platforms, given that so many fintech use cases ultimately rely on a connection to a checking, savings, or credit card account. Given this reality, and the comprehensive set of regulatory expectations with which these platforms will soon comply, bank-fintech arrangements—especially those that exclusively enable a fintech to access bank-held data at the consumer's request—should not be subject to the agencies' existing TPRM framework.

The CFPB's Section 1033 rule will require any third-party entity that relies on consumer-permissioned data to become an authorized third party. As a result, the agencies should anticipate that a large number of fintechs will ultimately be required to comply with the Bureau's comprehensive framework for authorized third parties, which will ensure that any fintech accessing customer information held by a bank in a checking, savings, or credit account does so in a regulated manner, with privacy, security, and consumer protection in place. Under the Section 1033 rule, fintechs will be required to obtain explicit consumer consent before accessing financial data held by a financial institution, ensuring that consumers are fully informed and have control over their financial information. Authorized third parties will be required to adhere to certain data security measures and data privacy standards. The Section 1033 regulation will require clear and conspicuous disclosures to consumers regarding how their data will be used, maintaining accountability through defined regulatory obligations. These requirements will collectively create a secure and regulated environment for fintechs, and leave no doubt for consumers as to whose customer they are and who has access to their data.

The final CFPB Section 1033 rule should address the risks outlined in the RFI that pertain to consumer-permissioned data sharing by enhancing consumer protection and standardizing data security, data privacy, disclosure, and consent processes. The rule's strict data security and explicit consent requirements mitigate potential risks related to data breaches, privacy violations, and unauthorized data usage, directly addressing the agencies' concerns referenced in the RFI pertaining to consumer data protection and privacy. By requiring clear disclosures and informed consumer consent, the final CFPB Section 1033 rule will reduce end-user confusion and the potential for misleading representations, thereby addressing the concerns referenced in the agencies' RFI regarding consumer understanding and control over their financial data. Furthermore, the forthcoming Section 1033 regulation will mitigate oversight and accountability risks by setting clear standards for data access, including requirements for data providers to establish and maintain developer interfaces, which must follow specific security standards and ensure data is accessible in a structured, reliable manner. These provisions should help ensure that both fintech and bank partners operate within a consistent framework that reduces compliance ambiguities and operational risks. Overall, the Bureau's final Section 1033 rule will provide a well-rounded regulatory framework that mitigates several of the risks identified in the RFI, facilitating a secure, compliant, and consumer-centric ecosystem in which bank-fintech arrangements will operate. In light of these specific safeguards, we urge the agencies to refrain from considering any changes to their TPRM guidance until the rule is fully implemented and a thorough review of its impact can be conducted to assess whether any outstanding perceived risks are not addressed by the final rule.

Conclusion

Thank you for your consideration of our comments in response to the agencies' RFI on bank-fintech arrangements. As a trade association representing a diverse group of financial technology firms, FDATA North America is dedicated to advocating for the continued growth and innovation that bank-fintech partnerships bring to the financial services industry and the benefits they provide to consumers and SMEs. We strongly encourage the agencies to recognize the substantial benefits that these partnerships provide, particularly in the context of the forthcoming CFPB Section 1033 final rule, which will establish a regulated framework for fintechs accessing consumer-permissioned data. The agencies should clearly articulate that bank-fintech arrangements in which a third party is accessing consumer-permissioned data in compliance with the CFPB's Section 1033 regulation are out of scope of the agencies' TPRM framework. Moreover, given that many fintech companies will become authorized third parties under this rule, it is crucial that the agencies allow time and assess the fintech industry's compliance with the provisions of the Bureau's Section 1033 rule before moving forward with any amendments to their TPRM guidance for other types of bank-fintech arrangements.

We appreciate the opportunity to share our perspective on this important topic and encourage the agencies to reach out if further information or insights from FDATA North America could be of value.

Sincerely,

[redacted]

Steven Boms
Executive Director
FDATA North America