



*Submitted electronically*  
July 14, 2023

Consumer Financial Protection Bureau  
Comment Intake, Request for Information Regarding Data Brokers  
c/o Legal Division Docket Manager  
1700 G Street, N.W.  
Washington, D.C. 20552

**Re: FTA Comment on CFPB Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information**  
(Docket No. CFPB—2023—0020)

The Financial Technology Association (FTA)<sup>1</sup> appreciates the opportunity to provide feedback on the Consumer Financial Protection Bureau’s (CFPB) request for information (RFI) on data brokers and other business practices involving the collection and sale of consumer information. The RFI defines data brokers as “firms that collect, aggregate, sell, resell, license, or otherwise share consumers’ personal information with other parties” and, among other things, indicates that data aggregators could be covered under this definition.<sup>2</sup> As described in the CFPB’s press release announcing this RFI the goal of the inquiry is to “seek[] information about business practices employed in the market today to inform the CFPB’s efforts to administer the law, including [a] planned rulemaking under the FCRA”<sup>3</sup>

FTA members provide various types of financial products and services, including data aggregation or consumer-permissioned collection and sharing of data with a third party. Data aggregators empower consumer choice by providing *them* with the ability to control and share their financial data in order to more conveniently and efficiently view and manage their money and shop for new, more tailored, and lower-cost financial products and providers. Unlike data brokers, this sharing is consumer permissioned and FTA members, including data aggregators, do not sell financial information. They also do not have the ability to correct the information that is shared with the data provider. Therefore, we believe that data aggregation is significantly different from data

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<sup>1</sup> The Financial Technology Association represents 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.

<sup>2</sup> 88 Fed. Reg. 16952.

<sup>3</sup> CFPB, “CFPB Launches Inquiry Into the Business Practices of Data Brokers,” March 15, 2023; *available at* <https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-inquiry-into-the-business-practices-of-data-brokers/>.



brokering and should not be conflated in any upcoming Fair Credit Reporting Act (FCRA) rulemaking given its focus on the reporting and accuracy of financial information.<sup>4</sup> Instead, we support the CFPB’s efforts to implement Section 1033 of the Dodd-Frank Act to establish a formal open banking regulatory framework in the United States, with attending compliance, data security, and privacy standards. We believe that the statutory authority granted to the CFPB under Dodd-Frank provides the agency with significant latitude to properly regulate consumer-permissioned data sharing and we encourage the CFPB to proceed with its rulemaking efforts in this regard and in turn narrow its data broker definition for the purposes of its FCRA rulemaking to increase the predictability of the application of any attending requirements for covered entities and consumers.

**I. Consumer-permissioned sharing, typically referred to as data aggregation, is significantly different from and should not be associated with data brokerage as the consumer is authorizing the collection and transmission of their information.**

Consumer-permissioned sharing is a critical component of the U.S. economy and allows fintech companies to offer consumers tailored and improved services, with a recent survey of Americans finding that 73% say fintech gives them more control over their finances and 68% say it helps them reduce financial anxiety.<sup>5</sup> It is also an important tool for the unbanked and underbanked as it increases access to credit through identity verification, increases data sources, such as rental, utility, or tax payment history, and can facilitate no-fee salary advances. Finally, this technology also helps safeguard the financial system, including through enhanced fraud mitigation tools facilitated by robust identity verification capabilities.

Such activities are significantly different from the collection and sale of information undertaken by data brokers. Government agencies have long recognized a separation between data brokers and data aggregators, and therefore have adopted narrower definitions of data broker than are set forth in the CFPB’s RFI. For example, in California, “data broker” refers to a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship.<sup>6</sup> In Vermont, a “data broker” is a business, or

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<sup>4</sup> The purpose of the Fair Credit Reporting Act (FCRA) is to “require that *consumer reporting agencies* adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter (emphasis added).” 15 U.S.C. §1681(b).

<sup>5</sup> Plaid, 2020 Fintech Report: The Fintech Effect (2020); *available at* <https://plaid.com/documents/the-fintecheffect-2020-consumer-report.pdf>.

<sup>6</sup> See Cal. Civ. Code § 1798.99.80. “Data broker” does not include any of the following: (1) A consumer reporting agency to the extent that it is covered by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.); (2) A financial institution to the extent that it is covered by the Gramm-Leach-Bliley Act (Public Law 106- 102) and implementing regulations; and (3) An entity to the extent that it is covered by the Insurance Information and Privacy



unit or units of a business, separately or together, that knowingly collects and sells or licenses to third parties the brokered personal information of a consumer with whom the business does not have a direct relationship.<sup>7</sup> In both cases, data aggregators are not directly covered by the definition, and in the case of Vermont, they are expressly excluded. No other law has sought to define data brokers in such an expansive manner and doing so will not benefit consumers who rely on consumer-permissioned sharing for various financial products and services.

In addition, data aggregators consider themselves subject to the Gramm-Leach-Bliley Act and therefore adhere to applicable requirements. As part of members' efforts to uphold these standards as well as customer norms, FTA recently published data privacy principles that reflect member values of promoting consumer trust and transparency, along with financial inclusion and robust competition to lower costs and improve financial services. These principles for engaging with consumers include: (i) full transparency regarding how data is collected and used, (ii) consumer control of personal data, (iii) provider use of data for stated and transparent purposes, as would be consistent with data minimization principles, (iv) plain language disclosures, and (v) nondiscrimination.<sup>8</sup>

Ultimately, the focus of the FCRA and its implementation is on consumer report users and credit reporting agencies. As data aggregators are neither and already comply with existing privacy and security requirements, we encourage the CFPB, in any future rulemaking, to narrow its definition of data broker, which would increase the predictability of the application of any attending requirements for covered entities and consumers.

## **II. Given the consumer-permissioned nature of data aggregation, the FCRA should not apply and the CFPB should narrow the definition of data broker in any future rulemaking.**

As discussed above, the purpose of the FCRA was to ensure the accuracy and fair reporting of financial information. Therefore, it is unclear as to the exact statutory authorities the CFPB would leverage to support its current broad definition of data broker or how it would be applied to data aggregators that facilitate consumer-permissioned sharing of financial information and do

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Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code).

<sup>7</sup> See 9 V.S.A. § 2430. The definition expressly excludes entities that engage in developing or maintaining third-party e-commerce or application platforms or providing publicly available information related to a consumer's business or profession. It also excludes any one-time or occasional sale of assets of a business as part of a transfer of control of those assets that is not part of the ordinary conduct of the business; or a sale or license of data that is merely incidental to the business.

<sup>8</sup> Financial Technology Association, *FTA Privacy Principles for the Future of Finance*, available at <https://www.ftassociation.org/fta-privacy-principles-for-the-future-of-finance/>.



not have the ability to correct the financial data the consumer authorizes for sharing. Therefore, in order to more closely align with the remit of the FCRA, we would recommend that the CFPB define a data broker as an entity that sells, resells, or licenses data only and is covered within the scope of the FCRA's focus on accurate and reliable credit scores. We also would recommend a clear exemption for entities that receive data that is voluntarily shared by a consumer, again, because such activities were not contemplated by the FCRA and such entities would be directly covered by any final 1033 rule promulgated by the CFPB.

Such an approach would make the application of the definition more workable and predictable for covered entities and ensure that no conflicts arise between already established legal precedents and any new definition. Furthermore, such a definition would positively impact consumers as it would continue to facilitate consumer-permissioned data collection and sharing that helps individuals access lower-cost or tailored financial services products and providers and generally manage their money.

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FTA appreciates the Consumer Financial Protection Bureau's consideration of its comments and would be happy to discuss the issues raised in this letter further. Please contact the undersigned at [penny@ftassociation.org](mailto:penny@ftassociation.org) for additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Penny Lee', with a stylized, flowing script.

Penny Lee  
Chief Executive Officer  
Financial Technology Association