



December 29, 2023

Via Email Submission to 2023-NPRM-Data-Rights@cfpb.gov

The Honorable Rohit Chopra

Director of the Consumer Financial Protection Bureau

Comment Intake – Financial Data Rights
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments on CFPB’s Proposed Rule to Implement Section 1033 of the CFPA
Docket No. CFPB-2023-0052; RIN 3170-AA78

Dear Director Chopra,

The [Data Catalyst Institute](#) (DCI) is grateful for the opportunity to provide feedback on the Consumer Financial Protection Bureau's (CFPB) notice of proposed rulemaking (NPRM) to implement Section 1033 of the Dodd-Frank Act. As a Washington, D.C.-based research organization, DCI analyzes complex issues at the intersection of innovation, business, law, and public opinion. Through our original research and unique community of experts, we contribute to the global [discourse on data policy, economics, and best practices](#).

Introduction

In response to the NPRM, DCI convened over a dozen independent economics, law, consumer advocacy, and financial technology experts for a virtual “working group” to explore the NPRM’s potential impacts on consumers, innovation, competition, and small and medium-sized businesses (SMBs). Working group experts agreed that the NPRM has the potential to solidify and improve the current practices in open finance and support further investment and innovation for consumers and small businesses. However, they also agreed that the CFPB could improve the NPRM and better support consumers, small businesses, innovators, and competitive markets by expanding the scope of covered data; establishing protections against anticompetitive behaviors that threaten to undercut market entrants; not overly restricting data that

allows for innovators and upstarts to build better products to compete with incumbents; and accepting Application Programming Interface (API) standards that benefit the broad public interest. Specifically:

- The CFPB could champion the digital banking needs of SMBs because SMBs have financial management needs similar to consumers'.
- The CFPB could broaden the scope of covered data to include small business data, government benefit accounts, brokerage information, payroll information, and other data sources that consumers and SMBs use day-to-day.
- The CFPB should address and mitigate the risks posed by anticompetitive practices from dominant banks, which have the potential to significantly undermine the NPRM's pro-competition objectives.
- The CFPB should further guard against data providers and their third-party service providers charging fees for data, which would suppress innovative open banking use cases.
- The CFPB should promote standard-setting organizations (SSOs) that are fair and transparent.
- Consumers and small business owners should have a voice in SSOs to guard against dominant players using SSOs to advance their agendas.
- The CFPB should recognize the critical role of secondary data in developing new and innovative products and services.
- The CFPB should accept industry-supported API standards, like FDX's standard, to bolster customer protection and foster innovation.
- The CFPB should provide a reasonable API implementation schedule that allows small banks to compete with larger institutions to the best of their ability.

Accordingly, DCI's comments are organized into five sections:

- 1. The NPRM Benefits Consumers, But The CFPB Should Broaden the Scope of Covered Consumer Data**
- 2. Open Banking Should Include Small Business Account Data**
- 3. The CFPB Must Guard Against Anticompetitive Practices and Ensure Standard-Setting Organizations Are Fair and Balanced**
- 4. The NPRM's Data Use Restrictions Will Hinder Innovation, Consumer Choice, and Competition**
- 5. The CFPB Should Accept Industry-Supported API Standards**

Our analysis provides suggestions to bolster the financial sector's competitive landscape. By doing so, DCI strives to create tangible benefits for SMBs and consumers, paving the way for a more equitable and dynamic financial future.

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SECTION 1: THE NPRM BENEFITS CONSUMERS, BUT THE CFPB SHOULD BROADEN THE SCOPE OF COVERED CONSUMER DATA

1.1. The CFPB's Proposed Open Banking Rule Empowers Consumers To Control Their Financial Data.

DCI believes the NPRM enhances consumers' access to financial information, enabling them to better evaluate their spending, savings, and credit opportunities. The NPRM empowers consumers to oversee and regulate third-party access to their data. Consumers win when they understand the purpose of data connections and can revoke access when necessary. With [billions of instances of consumer-authorized third-party access to accounts annually](#), the proposed rule's emphasis on consumer control and security is vital to empowering consumers and promoting informed decision-making.

Furthermore, sharing financial data with alternative service providers aids underbanked consumers who typically do not qualify for traditional bank loans and are often targeted by predatory lenders. The proposed rule levels the playing field for consumers with limited access to credit, such as immigrants without a U.S. credit history, who can use services like [Nova Credit](#) (a prior [SBREFA](#) participant) to improve their loan terms.

Lastly, the proposed rule standardizes connecting data from various accounts and income sources, providing a complete view of a consumer's financial situation. Interconnected data helps consumers access tailored financial products, especially for those with multiple income streams or those considered underbanked who could benefit from importing a 360-degree view of their financial activities.

1.2. The CFPB Should Expand the Consumer Data Scope to Include More Products Consumers Use.

While the NPRM will empower consumers by enhancing their control over their financial data and enabling them to make better financial choices, the scope of covered data is limited to certain types of consumer accounts. The NPRM does not explicitly include the below data types, risking their exclusion from future open banking use cases:

1. Non-credit card Regulation Z products like mortgages, auto, student, and personal loans
2. Asset accounts such as brokerage and retirement accounts
3. Government benefit accounts

The Bureau should explicitly state that Section 1033 encompasses Regulation Z-covered products, including mortgages, auto, student, and personal loans, for which many financial institutions already facilitate direct and authorized third-party access to consumer data. Additionally, the CFPB should consider the benefit of covering payroll data so consumers can optimize when and how they are paid. Holistic access is crucial for consumers to compare rates and save on fees and interest. Implementing

Section 1033 regulations for these accounts would not require the Bureau to extend its supervisory reach or engage in overly complex inter-agency coordination.

For asset accounts beyond the purview of Regulation E, such as brokerage and retirement accounts, the Bureau needs to clarify if they could be included under Section 1033 in upcoming regulatory updates. Because many data providers already merge brokerage and retirement account data with Regulation E-covered accounts, expanding the NPRM to include additional account types will unlikely burden these providers. Such integration is crucial for streamlining the customer experience and ensuring uniform access to financial data across various account types.

Finally, incorporating government benefit accounts into the proposed rule ensures all consumers enjoy the benefits of open banking. Over 41 million Americans receive benefits through Electronic Benefit Transfer (EBT) accounts, and many of these recipients are unbanked or underbanked.¹ Including EBT accounts would enable these individuals to access services that assist in managing benefits, tracking balances, and optimizing their use. There's no mandate for EBT processors to provide electronic data access, but including these accounts under the proposed rule would safeguard consumers' ability to use services that manage their EBT funds effectively.²

The decision to limit the proposed rule's scope to only some covered accounts puts at risk certain data sharing on which consumers presently rely. Some market participants could seek to charge for or hinder access to data not covered by the rule, harming consumers. If the Bureau does not expand the scope of the NPRM to include additional consumer or commercial categories, then, at a minimum, the Bureau should make clear that Section 1033 principles apply to all consumer financial data and reassure the market that additional rulemaking will take place to clarify additional classes of data.

SECTION 2: OPEN BANKING SHOULD INCLUDE SMALL BUSINESS ACCOUNT DATA

2.1. Include Commercial Financial Data in the NPRM to Help Small Businesses Manage Their Finances and Operations.

While the NPRM presents significant benefits for consumers by enhancing their control and access to financial data, the CFPB should consider expanding the scope of the NPRM to include SMB data and the financial products and data-oriented services they use, such as business loans, merchant accounts, and cash management tools. Ensuring that SMBs have the same level of access to their financial data as individual consumers aligns with the spirit of Section 1033, as intended by Congress to empower financial data control and accessibility for all.

¹ Long, Cindy, Administrator, Food and Nutrition Service in Food and Nutrition Equity. "SNAP Emergency Allotments are Ending." USDA, FEB 2023. <https://www.usda.gov/media/blog/2023/02/08/snap-emergency-allotments-are-ending>.

² Propel. "A Year in the Life of SNAP Households." 2020. <https://www.joinpropel.com/year-in-review-2020>.

SMB Importance By The Numbers
<ul style="list-style-type: none"> • SMBs account for 40% of U.S. GDP • Sole proprietors represent 86.5% of the 33.2M American SMBs • Most “sole props” are modest “mom-and-pop” shops that earn an average of \$70,300 per year³ • 41% of SMB owners are foreign born⁴ • SMBs employ 62 million consumers, 46% of all private sector employees⁵ • 88% of SMBs utilize services where customers link their accounts⁶ • Goldman Sachs reports 70% of SMBs report financial challenges, especially in accessing capital⁷

According to [Mastercard’s research](#), 96% of America’s 33 million SMBs connect financial data, and 88% rely on open banking applications to manage their business finances.⁸ Open banking has transformed most SMBs, offering them a range of services that streamline operations and boost financial capabilities. Open-banking products are reshaping consumer interactions with SMBs and breaking down traditional barriers. Payment services like Toast and Square enhance the consumer experience and improve transaction efficiency. Beyond simple payments, Mastercard’s survey reports that 85% of SMBs anticipate open banking will offer more customized recommendations to optimize their business finances

and operations. The Bureau must support including commercial financial data in the NPRM to help SMBs manage their finances and grow their businesses.

In principle, there should be no difference between the data available to small businesses directly and what they are permitted to share via an authorized third party.⁹ For example, consider the case of a small retailer.¹⁰ Under the current system, sales records, expense management tools, inventory tracking systems, tax remittance records, and data from other mission-critical tools live across various systems, formats, and

³ Borzykowski, Bryan. "This is how much to pay yourself if you run your own business." CNBC. MAR 2020. <https://www.cnbc.com/2020/02/28/this-is-how-much-to-pay-yourself-as-a-business-owner.html>.

⁴ US Chamber of Commerce. “Small Business Data Center.” <https://www.uschamber.com/small-business/small-business-data-center#:~:text=Data%20from%202023%20SBA%20Office,businesses%20generated%20nearly%20%245.9%20trillion>.

⁵ SBA Office of Advocacy. 'Frequently Asked Questions About Small Business.' MAR 2023. <https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf>.

⁶ Mastercard, 2022

⁷ Goldman Sachs. 'New Survey Data: Small Business Owners Raise Alarms Over Difficulty Accessing Capital.' 12 SEP 2023. <https://www.goldmansachs.com/citizenship/10000-small-businesses/US/voices/news/september-12-2023-press-release.html>.

⁸ Mastercard NAM Research & Insights. "Empowering Small and Mid-sized Business Growth by Unleashing Its Data" MasterCard, 2022. https://prod-finweb-frontend.s3-us-west-2.amazonaws.com/wp-content/uploads-new/2023/02/13153930/2022_Empowering_SMB_Growth_by_Unleashing_Its_Data.pdf.

⁹ Though there is a clear distinction barring small businesses from using commercial credit products for “personal, household and consumer purposes,” the same is not true for data analytics, marketing, e-commerce, payment, budgeting, and accounting tools that many businesses depend on day-to-day.

¹⁰ DCI research demonstrates that SMBs, [including those in rural regions](#), often employ a blend of online and offline sales strategies, [leveraging digital tools](#) to compete with larger companies and succeed in the marketplace.

standards that are not interoperable. Compiling, decompiling, and reconciling this data to a monthly snapshot for reporting, insights, or securing a loan for business expansion or inventory purchasing is cumbersome and cost- and time-prohibitive.

2.2. Include Commercial Financial Data in the NPRM to Help Small Businesses Access Better, More Inclusive, and More Competitive Financial Products.

Including SMB data in open banking regulations is vital for fostering competition and innovation in the financial sector. Facilitating access to a comprehensive range of financial data can improve SMBs' ability to secure financing, manage cash flow, and make informed financial decisions to compete better.¹¹ Enhanced customer access can lead to better credit terms, more competitive interest rates, and tailored financial products that cater specifically to the needs of SMBs.

A 2022 [McKinsey & Company study](#) found that SMBs that engage with digital banking services are more likely to secure loans than those not utilizing data-enhanced financial tools.¹² The report highlights the essential role of efficient data sharing in creating an equitable and competitive banking environment for SMBs. For example, [FinRegLab's research](#) highlights the significant impact of utilizing alternative commercial data from non-bank third parties in SMB credit underwriting. Their research reveals that when SMBs share their bank account transactions and cash flow data with outside providers, it effectively complements traditional credit reports, offering a more comprehensive view of their creditworthiness.¹³ Ongoing research programs with FinRegLab and the U.S. Department of Commerce's [Minority Business Development Agency](#) (MBDA) use open banking methodologies to access non-traditional SMB data sources to help mission-based lenders improve credit access for minority-owned SMBs.¹⁴

¹¹ Govindarajan, Vijay; Lev, Srivastava, and Enache, "The Gap Between Large and Small Companies Is Growing. Why?." Harvard Business Review, AUG 2019. <https://hbr.org/2019/08/the-gap-between-large-and-small-companies-is-growing-why>.

¹² McKinsey & Company. "How banks can reimagine lending to small and medium-sized enterprises." MAY 2022. <https://www.mckinsey.com/capabilities/risk-and-resilience/our-insights/how-banks-can-reimagine-lending-to-small-and-medium-size-enterprises>.

¹³ The FinRegLab. "The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings." JULY 2019. <https://finreglab.org/cash-flow-data-in-underwriting-credit-empirical-research-findings>.

¹⁴ The FinRegLab, PR Newswire. "FinRegLab to Evaluate Data to Increase Credit Access for Minority Business Enterprises and to Scale Lending by Mission-based Lenders." SEP. 2023. <https://www.prnewswire.com/news-releases/finreglab-to-evaluate-data-to-increase-credit-access-for-minority-business-enterprises-and-to-scale-lending-by-mission-based-lenders-301920305.html>.

As the CFPB considers its obligation to financial inclusion, the Bureau should also evaluate research from New York University that underscores the pivotal role of third-party non-bank fintech lenders in providing Paycheck Protection Program (PPP) loans to businesses owned by Black and Hispanic individuals.¹⁵ PPP demonstrates the potential of open banking connected fintechs to reach underserved and underbanked small business communities.¹⁶

2.3. Include Commercial Financial Data in the NPRM to Help Small Banks Compete and Better Serve Small Business Use Cases and Innovations.

Small banks (community, rural, online-only banks) would benefit considerably from accessing customer-permissioned data that larger banks typically hold. Yet, SMBs' access to their financial data and banking experiences varies significantly across large financial institutions. While some large banks share data upon request, the terms and conditions of data access across all large banks differ dramatically. This inconsistency allows large banks to manipulate the market to keep SMBs from switching banking providers, often to the detriment of their own SMB customers. For instance, incumbents might obscure critical data points, such as credit pricing, hindering the competitive capabilities of upstart market entrants or small banks that want to serve SMBs.

SMB data access is crucial in leveling the competitive credit delivery and underwriting field. For instance, AI-driven open banking data computations could provide SMBs with sophisticated, bespoke insights and advice, revolutionizing traditional underwriting. This evolution would enable small banks to better assist SMBs in areas like cash flow optimization and personalized financing - areas frequently dominated by the largest national and international banks.

Smaller banks may also leverage SMBs' open banking data and partner with fintechs to expand their offerings and meet SMBs' demands. Mastercard's SMB survey found that 80% of SMB owners already use digital channels for sourcing capital, and 86% say they are "looking for faster and easier access to capital for [their] business."¹⁷ Small banks can leverage tech-enabled partnerships to offer cutting-edge digital services for customers holding consumer and SMB accounts. Access to SMB data could give these smaller banks a competitive edge in meeting SMB's digital expectations and securing valuable consolidated account relationships traditionally dominated by large retail banks.

¹⁵ As the CFPB considers reasons to include SMBs in future open banking rulemakings, DCI suggests considering how open banking can close the notable disparities in business ownership, with caucasian individuals owning a higher proportion of businesses than other ethnic groups. Gender-wise, men are more likely to own businesses than women, but the gap has narrowed over the years, with an increasing number of women entrepreneurs entering the fray. LendingTree. 'Business Owner Demographics: Gender, Race and More.' NOV 2022. <https://www.lendingtree.com/business/business-owner-demographics/>

¹⁶ Howell, Sabrina; Kuchler, and Stroebel. "Which Lenders Had the Highest Minority Share among Their Payment ... - NYU." New York University, DEC, 2020. https://pages.stern.nyu.edu/~jstroebel/PDF/HKS_PPP_Minority.pdf.

¹⁷ Mastercard, 2022

Small banks face significant competitive risks if third-party services favor large financial institutions. Research indicates that more than 69% of customers would contemplate switching banks if they could not link all their accounts to third-party services.¹⁸ Many financial institutions already have systems that can adapt to include SMB data without imposing significant additional burdens. Technically, these institutions treat SMB accounts similarly to consumer accounts, suggesting that integrating this data into open banking frameworks is a natural progression. DCI foresees a future where open banking drives innovation tailored to SMBs and their local bankers. SMBs' success in utilizing open banking is vital for broader economic growth and innovation, reinforcing their role as a cornerstone of the American economy.

2.4. The CFPB Can Help SMBs Continue to Benefit From Open Banking, Leading to More Competitive Financial Services and Products.

The CFPB can continue to boost future innovations and competition by incorporating SMB data in upcoming regulations, enabling innovators to develop new budgeting tools, cash flow management software, and personalized financial advice for SMBs. Further integrating SMBs into the open banking ecosystem can help them overcome operational and financial challenges, such as:

- **Reducing Missed and Late Payments:** Enabling an SMB's customer (a consumer) or their authorized third party to access necessary account and payment information helps prevent delayed or missed payments. This 360-degree financial view reduces late payment fees and diminishes the need for short-term cash flow borrowing.
- **Reducing Overdraft Penalties:** By sharing account balances with authorized third parties, SMBs can optimize the timing of payments and significantly lower the risk of overdraft fees.
- **Lowering the Cost of Credit:** Expanded access to personal and commercial financial data empowers sole proprietors or LLC members to effectively compare loan rates, which can lead to reduced borrowing costs.
- **Increasing Credit Application Approvals:** Lenders increasingly use permissioned banking information for underwriting. Expanding access to this data could lead to more credit approvals for SMBs and consumers.
- **Reducing Fraud:** Enhancing data access to verify payment recipient information reduces SMBs' and consumers' exposure to fraudulent transactions.

¹⁸ Plaid. "The Fintech Effect: Fintech's Mass Adoption Moment." <https://plaid.com/the-fintech-effect-2021-mass-adoption/>.

SECTION 3: THE CFPB MUST GUARD AGAINST ANTICOMPETITIVE PRACTICES AND ENSURE STANDARD-SETTING ORGANIZATIONS ARE FAIR AND BALANCED

3.1. Limit At-Large Anticompetitive Behavior That Harms Customers.

The CFPB must ensure customers can access their same data in a similar format and within the same time frame, whether directly from their bank or through a third-party service. Ensuring equal treatment through the law or industry standards fosters fair competition among big and small firms and sets consistent customer expectations. However, while the NPRM aims to promote customer-centric competition, incumbent banks' interests often diverge from competitive market objectives. The inclination to suppress market forces restricts innovation and limits consumer and SMB customer choices, ultimately degrading the customer experience due to a reduced incentive to meet customer needs.

Several incumbent institutions and their preferred agents or vendors have implemented practices that hinder customer data access. These include imposing data access charges, compelling new providers and customers to use preferred intermediaries, severing data connections, and disrupting payment channels for consumers and SMBs, such as [Venmo](#). These actions result in significant customer inconvenience and dissatisfaction. Rather than allowing customers to seamlessly connect bank accounts to their chosen payment platforms via third-party connections, some incumbents [restrict permissioned data access](#) unless routed through a preferred [bank-owned intermediary](#). Such restrictions by large companies curtail customer freedom and stifle market competition. For instance, several participants in a recent DCI-hosted open banking roundtable raised concerns about recent practices by [Akoya](#), a bank-owned third-party consortium, that charges both data providers and data recipients for access.¹⁹ The CFPB should implement clear and robust enforcement mechanisms to monitor dominant banks and their service providers who may attempt to exploit the NPRM's goal of fostering competition. Ongoing monitoring is essential to maintain a fair, competitive, and customer-friendly financial services landscape.

The NPRM rightly acknowledges that data such as financial transactions and bank balances belong to the customer, allowing them to choose where and how they bank and how their data is used. Consequently, it is essential that customers not bear the costs of accessing their own data. The NPRM should clarify that the final regulation prohibits fees for this service. As seen in other industries, allowing for data access fees, false security narratives, or “[favored service provider](#)” practices could stifle market competition and impede innovation. The CFPB should clarify that every third-party service provider, whether working with a bank or another data custodian, should adhere to the final regulation to safeguard customer data rights.

With respect to SMBs, DCI is concerned that large banks could interpret a narrow consumer implementation of the regulation as permissive of restricting data or imposing commercial data access

¹⁹ Akoya also raises unique concerns given the company's ownership by large institutions that hold disproportionately large quantities of consumer financial data.

fees on SMBs. If data providers can charge for commercial data access, it could severely harm competition and SMBs' interests. Data providers might set exorbitant access fees, making it financially unfeasible for third-party business models, leading to limited choice and an oligopoly because only a few players can afford access. Additionally, data providers could vary their fees based on how much a particular use case threatens their business model. For instance, a lender might charge a higher fee for sharing interest rate information, discouraging market transparency and suppressing competing credit providers. A future that allows data providers to impose data access charges for SMBs introduces new costs for authorized third parties. Consumers (SMB customers) would likely pay the penalty through higher prices for SMB products and services or limited access to these services. The CFPB can limit these anticompetitive fee practices by including SMB-covered data in future rulemakings.

3.2. Standards-Setting Organizations Must Be Fair and Transparent.

DCI supports the NPRM's proposed standard-setting organization's mission to promote fair and transparent technical standards across all financial institutions. However, the NPRM must clarify how the CFPB expects the organization to set and enforce standards, especially when market incentives do not encourage compliance. Dominant banks could use standard-setting organizations to consolidate market power in favor of large banks' offerings due to their existing customer relationships, data stores, and regulatory status. For instance, some large banks advocate for strict regulations centralizing data control with major banks or their preferred third party providers, arguing they can best protect financial data.²⁰ Such data centrality could limit customers' choices and favor big banks' products over competitive small banks and innovative upstarts.

[The Federal Trade Commission \(FTC\) acknowledges this delicate balance between interoperability, data security, and privacy.](#) Interoperability, which allows different products and services to work together seamlessly, is crucial for customer choice and competition, as seen in everyday technologies like web browsers and email services. The FTC, recognizing both the benefits of interoperability and the importance of digital privacy and security, is vigilant in scrutinizing claims that restrict interoperability under the guise of privacy or security, ensuring that such claims are not merely pretexts for anticompetitive behavior. The CFPB should encourage similar thinking and ensure standards-setting organizations support technology-neutral policies allowing customers to link financial data across accounts and financial providers.

Finally, the CFPB should clarify mechanisms for ongoing reviews and ensure that standard-setting organizations uphold fair practices and avoid biased standards or conflicts of interest that could harm customers. Equal treatment of all financial institutions, large or small, and interoperable data standards are essential for fair market competition and consistent customer experiences.

²⁰ Mikula, Jason. "Fidelity & PNC Lead Akoya's Open Banking Land Grab. CFPB's Chopra Not Amused." Fintech Business Weekly, Oct 1, 2023.

3.3. Promote Diverse Representation in Standard-Setting Organization Membership.

Standards-setting organizations must include significant “end-user” customer representation to guard against dominant players using the organizations to advance anticompetitive agendas. Diverse members ensure that the standards are attentive to the varied needs of all stakeholders, thereby promoting an equitable and inclusive financial environment. DCI cautions the CFPB not to sideline concerns and opportunities for America’s SMBs in open banking standard-setting organizations. Based on the holistic comments from the Small Business Advisory Review Panel for Required Rulemaking on Personal Financial Data Rights (SBREFA), SMB and consumer voices should be present within any open banking standards-setting organization. DCI feels that a mix of consumer and SMB voices across America, like the CFPB’s Consumer Advisory Board, is vital to ensuring balanced and competitive open banking ecosystems that work for everyone.

SECTION 4: THE NPRM’S DATA USE RESTRICTIONS WILL HINDER INNOVATION, CONSUMER CHOICE, AND COMPETITION

4.1. Recommendations to Expand Secondary Data Usage to Avoid Negative Consumer Consequences and Promote Positive Industry Innovations.

The value of aggregate data comes from observing many customer data points, not just an individual’s data. The NPRM, however, restricts the use of secondary data to what is necessary for providing services. While DCI supports the Bureau's aim to prevent data misuse and protect data privacy, overly restrictive secondary data use policies could hinder fraud prevention measures and limit the opportunities for new entrants to develop innovative products. This could disadvantage customers and lead to an uneven playing field that favors established institutions and existing products. Rather, DCI recommends that the CFPB:

1. **Reaffirm That De-identified Data Carries No Privacy Implications:** The CFPB should explicitly affirm that de-identified data (which cannot be traced back to an individual) is not subject to secondary use restrictions. This aligns with the global understanding that de-identified data has no privacy implications and, therefore, is not considered personal information and should not be subject to any use restrictions.²¹
2. **Support Beneficial Secondary Data Uses:** The CFPB should allow identifiable secondary data insights for beneficial customer use cases like fraud prevention, financial literacy tools, and product research to enhance innovations like more fair credit scoring models and fraud prevention.

²¹ Recognized by the California Privacy Rights Act (CPRA) and the European Union’s General Data Protection Regulation (GDPR)

3. **Develop Opt-Out Policies:** The CFPB should formulate policies allowing customers to opt-out or limit the use of their data for secondary purposes. This empowers customers with greater control over their personal information and ensures their privacy preferences are respected.

DCI feels these clarifications will help consumers and SMBs because the current guidance on secondary data use is overly restrictive, creating an unlevel playing field that benefits incumbent financial institutions while disadvantaging new products that upstart competitors could bring to market. Specifically, incumbent banks may rely on valuable existing customer data that will advantage their ability to research and develop new products. At the same time, the proposed secondary data restrictions prevent challenger firms from using insights to develop new products that offer better loan rates, [more fair credit models](#), financial advice, or innovative refinancing products.²²

Using secondary data wisely is compatible with the CFPB's goal of a more inclusive, fair, and competitive financial market. For instance, secondary data insights can power financial literacy and product comparison tools that help customers understand and shop for financial products.²³ Yet, it is unclear if the rule would allow lenders to use aggregate customer data to reduce redlining or permit Community Development Financial Institutions (CDFIs) or non-profits to use identifiable customer data to guide consumers or SMBs away from predatory products.^{24 25}

DCI also cautions the CFPB against claims from large incumbent banks that retaining secondary data for fraud prevention [clashes with privacy and security standards](#). The NPRM might limit how third-party vendors use open banking data to shield SMBs and consumers from fraud. Aligned with [fraud researchers at McKinsey](#), DCI supports using identifiable secondary data to allow data aggregators, fintechs, banks, and other third parties to build fraud prevention tools with customer consent. Such an approach could lead to innovations that reduce SMBs' risk of cyber threats and fraud while minimizing the risk of data breaches, thereby preventing economic losses for consumers, SMB retailers, and financial institutions.²⁶

²² "[N]ew credit model outperforms the credit score in predicting delinquencies and charge-offs, that is, it identifies significant differences among all borrowers, even those with low credit scores." Di Maggio, Marco, Dimuthu Ratnadiwakara, and Don Carmichael. "Invisible Primes: Fintech Lending with Alternative Data." FDIC, FEB 2022. <https://www.fdic.gov/analysis/cfr/consumer/2022/papers/ratnadiwakara-paper.pdf>.

²³ Change-machine.org empowers social service and non-profit organizations to build financial security for low-income communities with technology.

²⁴ Fairplay AI uses open banking data to integrate credit scoring fairness indicators into credit decision-making processes. Their solutions use aggregated customer data to enhance credit scoring performance and fair and equitable outcomes in lending, providing tools for fair lending analysis, customer composition analysis, redlining mapping, and proxy detection to identify and mitigate biases against protected classes. Their tools also help in re-underwriting declined loans to find potentially good applicants that primary models might have missed.

²⁵ "Increasingly, credit unions are providing affordable small-dollar loans in economically distressed areas that typically have high concentrations of payday lenders. In St. Louis, for example, St. Louis Community Credit Union, a CDFI, provides low interest short term loans, called payday alternative loans (PAL), in addition to support services geared towards improving financial literacy, and thereby reducing the overall reliance on payday loans." Derrick Rhayn. "Nonprofit Credit Unions Provide Alternatives to Payday Loans." Nonprofit Quarterly, APR 2018. <https://nonprofitquarterly.org/nonprofit-credit-unions-provide-alternatives-payday-loans/>.

²⁶ In the case of small businesses, data security is not just a priority but a necessity. SMBs often lack the resources to deploy advanced cybersecurity measures, making them vulnerable to cyber threats. The CFPB's focus on secure data-sharing methods in the NPRM adequately aligns with the National Cybersecurity Strategy's goal of protecting small and medium-sized businesses.

In addition, permissive secondary data use policies could create opportunities for new firms to develop products to fight organized financial crime, money laundering, and terrorist financing. Allowing for secondary data research and development opportunities across the financial ecosystem supports compliance with sanctions and other regulatory requirements, safeguarding the integrity of the American financial system.

Finally, to maintain public trust and comply with privacy regulations, any secondary data use must be transparent and consensual. The NPRM should clarify that identifiable data can be used for secondary purposes only with the customer's informed and explicit consent. Consumers and SMBs should be able to disconnect data and later opt-out of secondary uses. The final regulation should clarify data retention policies and data minimization standards, ensuring the minimum amount of data is stored and used.

Secondary data is crucial for improving services, account security, and spurring financial innovations. The final regulation should differentiate identifiable and de-identified (anonymized) data, clarify how identifiable data may be used, and ensure customers give informed, opt-out consent, which is commonplace and accepted standard in many industries, including other areas of financial services.

SECTION 5: THE CFPB SHOULD ACCEPT INDUSTRY-SUPPORTED API STANDARDS

5.1. DCI Urges The CFPB To Accept Industry-Supported API Standards That Contemplate:

1. The NPRM's covered data scope
2. Data outside the NPRM's scope, including SMB, EBT, brokerage, and payroll data
3. Beneficial secondary data use cases
4. Industry-led security standards
5. Reasonable implementation timelines that are mindful of costs to ensure that smaller banks can effectively manage these requirements without compromising their ability to compete with larger institutions.

Industry-supported API standards, like [FDX's standard](#), can enhance:

- **Customized Financial Solutions:** Enable developers and aggregators to meet the varied data management needs of consumers and SMBs, such as payroll, budgeting, and accounting, thereby facilitating more streamlined and efficient operations.
- **Innovation and Competition:** Encouraging a wide range of API use cases for consumers and SMBs fosters innovation and stimulates competition among fintechs, small banks, and credit unions.
- **Collaborative Development:** Industry-supported API standards allow for collaboration between fintechs, banks, core service providers, and other financial service providers, leading to integrated, comprehensive financial management solutions.
- **Global Competitiveness:** Aligning with global financial technology and privacy trends prepares American financial providers for international standards and opportunities, enhancing their global competitiveness and market access.

CLOSING THOUGHTS

The Data Catalyst Institute (DCI) wishes to reiterate our support for the open banking rulemaking set forth by the Bureau. The NPRM's emphasis on data portability and interoperability codify best practices in open banking technology and the financial ecosystems, benefiting both consumers and SMBs. Our comments highlight the critical need for an expansive approach to open banking, encompassing more consumer and commercial small business data. By extending the NPRM's coverage to include broader consumer and SMB data, the Bureau will align with the spirit of Section 1033 and catalyze economic growth and future innovation in the financial sector.



The CFPB must be cautious of dominant actors' desires to suppress innovation and control standard-setting organizations at the expense of new competitors and the banking public. Consumers and small businesses should be parties to standard-setting organizations to ensure open banking remains competitive and effective for all stakeholders. Finally, balancing data protections with permissive secondary uses and industry APIs will protect the public from fraud and advance new financial innovations and open banking use cases.

In closing, DCI supports the Bureau's efforts and looks forward to seeing these initiatives come to fruition. We are committed to assisting in any capacity to ensure the successful implementation of an open banking regulation. We are confident that the Bureau's thoughtful consideration of these recommendations will result in a more robust, dynamic, and inclusive financial environment for all stakeholders.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark D. Drapeau'.

Mark D. Drapeau, Ph.D.
Editor In Chief
Data Catalyst Institute

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DCI looks forward to a future where open banking empowers consumers and small businesses, fostering a vibrant and equitable financial landscape. If you have any questions, please contact Dr. Mark Drapeau at mark@datacatalyst.org.