



December 28, 2023

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

Re: Required Rulemaking on Personal Financial Data Rights [Docket No. CFPB-2023-0052]

Dear Director Chopra,

On behalf of Indiana's credit unions, we are writing in response to the Consumer Financial Protection Bureau's (CFPB) proposed rule "Required Rulemaking on Personal Financial Data Rights" (proposed rule) which implements section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Indiana Credit Union League (ICUL) member credit unions represent 99% of assets and members of Indiana's credit unions, with those memberships totaling more than 2.8 million consumers and we appreciate the opportunity to comment on this important proposed rule.

While we recognize that the Dodd-Frank Act requires a CFPB rulemaking in this area, we are deeply concerned that the proposed rule goes well beyond what Congress intended when it sought to give consumers more access to their financial products or services information. We acknowledge that the Dodd-Frank Act intended to allow consumers to obtain a full range of information controlled or possessed by their financial services providers in a usable electronic format, but the idea that section 1033 of the Dodd-Frank Act requires the creation of a universal, complex, and costly information portal that can be accessed by a full range of other depository and non-depository financial services providers goes significantly further than the text of the statute or its intent. We understand that the CFPB has attempted to consider the impact of the requirements of the proposed rule on smaller financial services providers and proposes to give smaller institutions more time to comply with the proposed rules requirements. However, we believe that the proposed rule misses the mark by a wide margin in estimating the technological and financial impact it will have on nearly all credit unions and the degree to which it could make credit union services less available and more expensive to the consumers who need them the most. We have numerous concerns with the details of the proposed rule, including the need to establish clear data security standards for third parties accessing covered data and the need for the rule to provide a safe harbor for data providers, but our strongest observation about the proposed rule is that the CFPB is severely underestimating the technical challenges for implementing the system it is proposing as well as the financial impact that it will have, especially on the smallest, community financial institutions, like credit unions, that the CFPB so often cites as critically important providers in the marketplace. Because of these concerns, we strongly encourage the CFPB to postpone this rulemaking process and further engage credit unions and other community institutions to better understand the extreme impact of this proposed rule.

Beyond our overarching concerns with the breadth of the requirements being proposed and the associated costs, there are numerous issues that we believe need to be addressed in the proposed rule including the development of a qualified industry standard for data exchange, the need to scale back the categories of data required to be made available, the need for a clear allocation of liability to third parties who mishandle covered data, and other areas of concern. We understand that other commenters will cover these issues and we strongly encourage the CFPB to review and consider these comments and recommendations. If the CFPB continues down the path of creating the open banking framework being proposed, there are three areas that we strongly urge be addressed:

1. There needs to be an establishment of clear data security standards and supervisory framework for third parties that access covered data.
2. There needs to be a safe harbor for data providers that rely on the representations of third parties about their data security and risk management practices.
3. There needs to be a framework that permits data providers to charge reasonable fees for third party access to the data sharing system.

#### Third Party Data Security Standards

Credit unions are subject to robust statutory and regulatory requirements and express regulatory oversight when it comes to protecting the personal financial information of their members. Credit unions take this responsibility seriously and invest tremendous financial and personnel resources to ensure that their systems and processes are secure and protect their members. Unfortunately, most third parties that are likely to participate in the open banking system being proposed are not subject to the same high data security standards that cover credit unions and other financial services providers. What happens to credit union members' private data once it leaves the credit union is a major concern with this proposed rule. Some third parties may be subject to the Federal Trade Commission's (FTC) enforcement jurisdiction, but its data security safeguard rule is not as comprehensive as the information security standards adopted by the federal banking agencies, and the FTC does not actively supervise companies for compliance with its rules. Any data sharing rulemaking must consider the necessity of all parties involved safeguarding consumer information at the same level and under the same requirements. Requiring third parties to simply comply with the FTC's Safeguard Rule is not nearly a strong enough data security standard. All parties who collect or hold consumer's personal financial data should be held to the same standards, so we strongly urge the CFPB to adopt the Safeguard Guidelines adopted by the federal banking agencies and the National Credit Union Administration as the appropriate data security standard for third parties. Currently, there are many regulatory gaps that fintech and other companies take advantage of when providing financial services including weaker data security standards. This leads to less consumer protection and, potentially, higher risk of exploitation and fraud. The impact of these weaker standards already is felt by credit unions as they help their members navigate data breaches, fraud, and identity theft resulting from problems with non-financial institution product and service providers. Promulgating a rule creating a new, broad, open banking, data sharing system without requiring all parties to be subject to the same, high data security safeguard standards would not provide the best protections for consumers. We strongly encourage the CFPB to support the development of a national data security and privacy standard before issuing a final rule, or find separate authority to ensure that all third parties are governed by the same standards that apply to credit unions and other depository institutions.

### Safe Harbor for Relying on Third Party Representations

In addition to the need for stronger data security requirements for third parties obtaining consumers' private financial information, the rule should adopt a safe harbor for data providers that grant access to third parties that make representations about having adequate data security or risk management practices. While concerns about the data security standards of third parties operating in the proposed open banking system are paramount, a related concern is how credit unions and other data providers will be able to effectively perform due diligence on the vast array of third parties likely to participate in the system/process. We appreciate that the CFPB "recognizes that data providers have legitimate interests in making data available only to authenticated consumers and authenticated authorized third parties and in a way that avoids unreasonable risks to consumers and protects covered data" and that the proposed rule includes circumstances under which a data provider can reasonably deny a consumer or third party access to the data interface. However, we remain concerned about the risk to a credit union and its members when it grants access to a third party to the data interface based on the third party's representations of its data security standards and practices during the due diligence process and then later experiences a data breach or other incident that harms members. We strongly believe that liability for the misuse or lack of protection for a consumer's data should lie with the holder of that data and that the CFPB should clearly allocate liability in the event of a third party's loss or mishandling of data. The proposed rule should create a legal safe harbor for credit unions and other data providers from all claims from consumers and third parties relating to the transfer of covered data if the data provider relied on information provided by a third party during the due diligence process warranting its compliance with data security and risk management standards.

### Reasonable Fees for Third Party Access

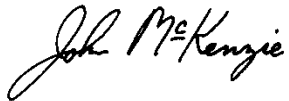
As covered earlier in our comments, the ICUL strongly believes that the CFPB has seriously underestimated the financial cost to credit unions to implement this proposed rule and the impact that these costs will have on credit unions' ability to serve their members and communities. Beyond that, the CFPB has greatly exacerbated this harmful financial impact by proposing that data providers would be prohibited from charging any fee or charge to a consumer or third party for establishing or maintaining the data interface or in connection with accessing an interface or obtaining covered data. As has been the case in other types of fee discussions, the CFPB again incorrectly focuses on what it considers the "negligible" marginal cost of providing a service, in this case providing covered data, to determine whether a fee or charge is warranted. Throughout the proposed rule, though, the CFPB acknowledges that there will be significant costs to data providers to develop and build the data interface being proposed by the rule. It is simply not reasonable for the CFPB to acknowledge an institution's likely significant operational costs related to the system it is mandating and subsequently limiting its ability to defray some of those costs by assessing a fee for access to the system. This will have a disproportionate impact on smaller financial institutions, like credit unions, that do not have the same scale and income opportunities enjoyed by large institutions that can subsidize their interface development. The creation of the open banking platform being proposed by the CFPB puts essentially all the development costs and the duty of risk management on data providers and leaves third party accessors with very little cost or burden. In our view, it is entirely reasonable for third parties to bear some of the expenses of the system by paying reasonable fees when they access a data sharing interface. The proposed rule indicates that the CFPB will continue to consider how data providers would need to defray the costs associated with developing and maintaining the data interface and we strongly recommend that the CFPB remove the

fee prohibition being proposed and permit data providers to charge reasonable fees for access to the data interface.

On behalf of Indiana's credit unions and their members, the ICUL strongly urges the CFPB to delay this rulemaking process and take more time to fully understand the breadth of the impact of this proposed rule on credit unions. We believe that the open banking/data sharing system that the proposed rule creates goes far beyond what Congress intended when it passed the Dodd-Frank Act and that the negative impact of the technical and financial challenges on credit unions created by the proposed rule are being seriously underestimated by the CFPB. Beyond that, we believe that there are numerous other major concerns that need to be addressed, especially in the areas of data security standards for third parties, a necessity for a safe harbor for data providers that have performed due diligence, and a review of data providers' ability to recoup costs through assessing reasonable fees.

The ICUL appreciates the opportunity to comment on this important proposed rule. If you have any questions about our comments, please do not hesitate to contact me at [johnm@icul.org](mailto:johnm@icul.org) or (317) 594-5320.

Sincerely,

A handwritten signature in black ink that reads "John McKenzie". The signature is written in a cursive, flowing style.

John McKenzie, President  
Indiana Credit Union League