



October 18, 2021

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Docket No. OP-1752  
FDIC RIN 3064-ZA26  
Docket ID OCC-2021-0011

To Whom It May Concern:

The Financial Health Network -- a trusted resource for business leaders, policymakers, and innovators united in a mission to improve financial health for all -- is submitting this comment in response to the agencies' invitation to comment on proposed interagency guidance for managing risks associated with third-party relationships, issued on July 19th 2021. The Financial Health Network has long believed that interagency guidance is needed, particularly in light of recent evolutions within the financial data ecosystem. Indeed, in early 2020 we called upon the Consumer Financial Protection Bureau (CFPB) to work with the prudential regulators to issue guidance that provides clarity as to when "data aggregators", an increasingly important group of data intermediaries, are subject to oversight as third party service providers.<sup>1</sup>

However, while we are in agreement that changes in the financial data ecosystem create new information security risks, we also believe it is critical that the agencies treat this issue separately from more general issues around third-party risk management and coordinate closely with the CFPB to ensure that final third party risk management guidelines do not undermine other important policy goals. In particular, we encourage the agencies to work closely with the CFPB to ensure that the final guidance neither hinders consumers' right to access their data under Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, nor undermines fair competition in financial services by endowing depository institutions with the

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<sup>1</sup> Murphy, [Testimonial: CFPB Consumer Access to Financial Records Symposium](#), February 2020

ability to limit their competitors' access to consumer data when such access has been authorized by the consumer. In light of growing evidence of the deleterious effects of market power and the President's recent Executive Order on Promoting Competition in the American Economy, we believe that special care must be taken to ensure that regulatory guidance does not unintentionally entrench the largest market participants.

As a part of our work within the financial services sector, we have long been engaged with innovative firms offering novel products and services that enable consumers to build financial health. Though the offerings of such firms vary widely, many of them share a common need to access consumer financial data. Without access to consumer financial data, financial technology firms would not be able to help their customers comparison shop, reduce exposure to overdraft fees, optimize bill payments, facilitate savings, or expand access to credit. However, despite the potential benefits that innovative firms can derive from access to consumer financial data, this evolution of the financial data ecosystem does not come without risks. As we discussed in a recent comment letter to the CFPB and a detailed legal and regulatory analysis in collaboration with FinRegLab, Flourish Ventures, and Mitchell Sandler, changes in the financial data ecosystem and corresponding mismatches with consumer financial protection law may expose consumers to risks involving data inaccuracy, transaction liability, data security, lending discrimination, and invasions of data privacy.<sup>2</sup>

We believe that regulatory action is needed to mitigate the risks to consumers and financial institutions presented by the evolving financial data ecosystem, including interagency guidance on third party risk management. However, we do not believe that such guidance can or should endeavor to address the broad range of issues that exist in the financial data ecosystem on its own, particularly when the CFPB appears to be on the cusp of a formal rulemaking process on Section 1033. Below, we briefly discuss two dangers we believe the agencies should be mindful of as they finalize their guidance.

1. **Anti-Competitive Incentives:** While the agencies may determine that data aggregators fit the third party service provider framework under certain conditions -- most clearly when banks contract with aggregators to obtain data for the banks to use in delivering products or services to their customers -- the agencies cannot lose sight of the fact that data aggregators are typically service providers to competitors of the data holder, and are often acting at the direction of a consumer exploring alternatives to the products offered by the data holder. As such, data holders have interests beyond data security concerns, and may have reason to abuse any risk management obligations that were to be imposed on them in order to box out a potential competitor. Indeed, if data holders

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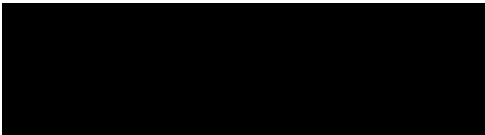
<sup>2</sup> Murphy & Tescher, [Comment Letter: Consumer Access to Financial Records](#), February 2021; Financial Health Network, FinRegLab, Flourish Ventures, & Mitchell Sandler, [Consumer Financial Data: Legal and Regulatory Landscape](#), October 2020

were held to have risk management obligations even when they do not have a business relationship with a data aggregator, they may be incentivized to block that data aggregator from accessing a consumer's data, even if the consumer has directed the aggregator to do so. Additionally, in the absence of CFPB action effectuating Section 1033 so that the obligation of financial institutions to share data at the direction of a consumer is made clear, there is also a danger that imposing risk management obligations on financial institutions when there *is* a business relationship with the aggregator will give data holders too much leverage as they negotiate bilateral contracts with data aggregators. This, in turn, may constrict the flow of data and prevent new entrants from competing with the data holder.

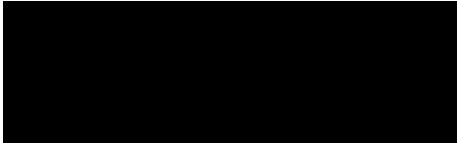
2. **Impeding Technological Progress:** While there is broad agreement that the financial data ecosystem needs to move away from credential-sharing and screen-scraping, and toward the establishment of more secure application programming interface (API) connections between data aggregators and data holders, there is a danger that imposing risk management obligations on financial institutions once they have established an API connection (and thus a "business relationship") with an aggregator will discourage them from establishing API connections in the first place. Given the data security risks associated with credential-sharing and screen-scraping, such discouragement would seem to be counterproductive to the agencies' goals.

In light of these dangers and the CFPB's apparent interest in undertaking a rulemaking on Section 1033 -- which may be able to more directly address some of the issues in the financial data ecosystem -- we encourage the agencies to sever the issues involving data aggregators from the broader set of risk-management concerns and to coordinate closely with the CFPB to ensure that final guidance on data sharing and data aggregators does not unintentionally undermine fair competition, data security, or the rights Congress conferred on consumers under Section 1033.

The Financial Health Network thanks the agencies for this opportunity to provide written comments, and looks forward to working with the agencies as they seek to mitigate risks to consumers and financial institutions.



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