Formerly The Financial Clinic

February 4, 2021

Submitted via email: 2020-ANPR-1033@cfpb.gov

Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Re: Docket No. CFPB-2020-0034: Advance notice of proposed rulemaking

Consumer Access to Financial Records

To Whom It May Concern:

Change Machine, an organization committed to addressing the economic realities of the most disadvantaged groups, submits comments in response to the Advance Notice of Proposed Rulemaking (ANPR) on the implementation of Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Change Machine builds financial security for low-income communities through people-powered technology. We champion the aspirations of individuals who are economically disadvantaged by oppressive public policies and practices. Their success means success for all. Grounded in the expertise and solutions of financial coaches and customers, our technology products reach social service organizations and public agencies nationwide, transforming how they work with people to achieve their financial goals. Our data and research shape lasting change that addresses the economic effects of slavery and patriarchal policies, removes barriers to financial security, and shrinks the gender and racial wealth gap.

Since our founding in 2005, our products and practices have set the national standard for financial coaching. Over 6,000 practitioners across 46 states have used our platform to build their practice, connect with each other, and amplify their impact. The innovative platform provides practitioners with educational materials to deepen their expertise, hosts a nationwide learning community for coaches to exchange insights, and facilitates data collection and management for researchers to better understand the impact of coaching on financial well-being. In 2015, our financial coaching framework was rigorously evaluated in the field's first randomized controlled trial (RCT), commissioned by the Consumer Financial Protection Bureau (CFPB) and led by the Urban Institute. The study conclusively demonstrated the impact of our work. On average, trial participants who received our intervention significantly increased their savings, reduced their debt, and improved their credit scores. Today, we are committed to achieving impact at scale by embedding our framework into social service organizations across the United States.

We applaud the enhanced leadership role that the CFPB is taking in this sphere as it implements Section 1033 of the Dodd-Frank Act. Section 1033 requires covered financial services providers to "make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person."[1]

In issuing its ANPR, the CFPB is seeking input on how to develop regulations that will affect American consumers and financial institutions, whether they are traditional institutions, fintechs, or other internet-only entities. A 2019 Federal Reserve report noted that the number of core non-cash payments, comprising debit card, credit card, ACH, and check payments reached 174.2 billion in 2018, an increase of 30.6 billion from 2015.[2] The value of these payments totaled $97.04 trillion in 2018, an increase of $10.25 trillion from 2015. Furthermore, the value of remote general-purpose card payments reached nearly equal the value of in-person general-purpose card payments, driven in part by growing e-commerce card payments and the use of cards for recurring bill payments.

This ANPR illustrates an understanding of the importance of consumer data for both consumers and businesses, whether they are financial institutions or internet-related companies. We interpret the questions posed by the CFPB as being pro-innovation and

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[1] Consumer Financial Protection Bureau, *Advance Notice of Proposed Rulemaking on the implementation of Section 1033*, *available at* *files.consumerfinance.gov/f/documents/cfpb_section-1033-dodd-frank_advance-notice-proposed-rulemaking_2020-10.pdf*

[2] Federal Reserve, *The 2019 Federal Reserve Payments Study*, 2019, *available at* www.federalreserve.gov/paymentsystems/2019-December-The-Federal-Reserve-Payments-Study.htm

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recognize that the ease of sharing this consumer data has already developed into an ecosystem. At the same time, we acknowledge a need to balance these results with real limitations on who should be able to access consumer data, how long access should be permitted, and under what conditions. This regulatory focus was growing exponentially even before COVID-19 due to rapid growth in the virtual fintech world. The COVID-19 pandemic has only accelerated its importance. In today's increasingly virtual and cashless economy, we are seeing broad trends that expedite the need for regulation, which is especially important to protect Black and Brown households with low- to-moderate incomes from wealth extraction and data misuse. It is pivotal that consumers understand the implications of sharing their personal information. This is particularly important for those who may be interacting with financial institutions in a digital platform for the first time and may be more vulnerable to scams or predatory practices.

Below, we offer our recommendations as an interested organization that serves low-income consumers and therefore must use consumer financial information to assist them in reaching their goals. Our interest also extends to the protection of financial information, as we observe that the consumers we serve increasingly lack full knowledge and control of the complicated ways in which their data is used. As a nonprofit social enterprise, we believe it is critical that the implementation of new regulations meets the needs of the financially vulnerable, those on the losing side of the digital divide, and the millions who have little choice but to consent to the transfer and sharing of their consumer data in order to conduct essential financial transactions.

The modern accumulation of data occurs on such an incomprehensible scale that it can be difficult to see how it affects consumers on an individual level. Credit reports demonstrate how much consumer information and data can be held by a single data holder. Alex (whose name has been changed to protect privacy) is a Change Machine customer who is married and has a stable job. Observing the credit profile for Alex, we can note identifiable information such as name, date of birth, social security/ITIN, addresses, and work history. Alex also has an active credit history dating back to September 1988. They have a total of six active accounts, which range from student loans to credit cards, and two additional accounts in collection. The oldest account, a student loan, dates back to 2010 and the most recent was initiated in 2019. We are also provided balance amounts, a history of late payments, and credit limits. With proper data analysis, we can begin making inferences about the consumer such as their gender and marital status. However, data algorithms assume that this data is accurate, which makes correcting errors an uneven terrain. Even if that data was confirmed by Alex, data algorithms decontextualize the data and do not reflect the complexities of Alex's experience.

By speaking with Alex, we learn that they do not recognize one of the accounts in collection. The account happens to be a medical bill. What the data does not demonstrate is that Alex is disabled and has recurring medical expenses. Data regarding the account in collections decreases Alex's credit score. While Alex pays their medical bills, they do not know that they qualify for additional assistance to help with medical expenses. This financial assistance would ultimately ease their financial situation. Alex's poor credit score has led to higher interest rates on credit accounts and an inability to refinance their car payment. The result is that data about Alex, which could be accessed to connect the consumer with financial assistance, is instead used in a manner that negatively impacts their monthly cash flow. In contrast, this data will serve as a simultaneous source of income and innovation for the data holder. While this example may be anecdotal, these circumstances arise all too often and are responsible for the propagation and reinforcement of financial inequities.

GOALS OF REGULATION

The traditional argument in support of limited regulation of authorized data access is that customers share data with fintech providers and, in exchange, receive new products and services. In short, customers agree to share their data because the information contained therein can help create products that are tailored to their financial needs. Without proper regulation, however, systems can misuse the information. If consumer information falls into the wrong hands, it can be shared with various parties, such as telemarketers and scammers. Notably, consumers run the risk of having these parties use their information to make purchases and debit their accounts. For individuals who may already be struggling financially, these debits may leave them without cash and potentially even in debt.

We encourage the CFPB to adopt a set of "Data Equity Principles" that establish explicit goals for the use and disclosure of consumer information that: (a) protect those most vulnerable to data usage abuses and to whom the greatest harm could occur and (b) prioritize the use and disclosure of consumer data to explicitly support their financial security rather than to increase the financial security of companies or other actors.

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Data Equity Principle 1: Data's primary use should be building financial security through pro-poor financial products. Low-income people face particular financial transaction needs (e.g., income volatility, liquidity pressures, hidden fees) that are best served by financial products carefully designed to address those needs. Our data shows that low-income consumers have credit card interest rates that are approximately 3.6% higher than the national average.[3] This draws into question whether consumer data is being used to make innovative financial products that are fine tuned to meet the needs of low-income customers. It also suggests that sharing consumer financial data is rewarding for some and damaging for others. If collected data is not used to design or improve financial products for a customer, then it is important that those profiting from customer data offer monetary recompense. Consumer data is monetized in a variety of ways; it may be exchanged for monetary value and utilized to generate revenue for data brokers. Equity demands that consumers be given a financial benefit in return for their data in the form of either wealth-generating products or direct payments.

Data collection and sharing has proved fruitful across different sectors. The information acquired by companies allows them to build consumer profiles that serve to target their marketing, leading to greater profits. While there are obvious advantages of consumer data uses that benefit the consumer, such as preventing or quickly notifying identity theft attempts, it is not being utilized to its full potential. Data analysis that focuses on customer needs can help address issues such as the root causes of financial insecurity and consumer information gaps. For instance, data can provide insights about individuals' understanding of financial systems and how they could better process and retain this information. Moreover, it can help facilitate interventions for consumers who are falling behind or at risk of falling behind on payments. Data analysis that prioritizes consumer needs can serve to build out products that are meant to help the consumer succeed.

Data Equity Principle 2: Consumers, particularly low-income consumers, are more likely to be unaware of how their information is used and disclosed to third parties. Consumers may not have a comprehensive understanding of how their data is held, transferred, protected, and used. When assessing consumers' understanding of the movement, use, and storage of their authorized data, our financial coaches note widespread limitations in

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[3] G.19 Statistical Release, Federal Reserve, *Consumer Credit*, Nov. 2020, *available at* www.federalreserve.gov/releases/g19/current/

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consumer knowledge. Although some may know that their information will be shared with third parties, most are not aware of specific information regarding those third parties or how their data is being used. The ways that data is used and the monetary value associated with certain data may change significantly after a customer's initial authorization. It is important to ensure that consumers have a thorough understanding of the value of their data and how it will be used before consenting to share it with a financial service provider. Without a comprehensive understanding, neither choice nor consent can be authentic.

Data Equity Principle 3: Data uses can exacerbate existing racial and gender wealth gaps. The lack of data regulation presents unique dangers for Black and Brown households. Communities of color already face a financial system rife with implicit bias and racism that makes access to credit difficult; inaccurate data reporting can further exacerbate this issue. Financial shocks may result in an immediate need for accessible credit or debt management products — often the most predatory short-term credit loans (e.g., payday lending, refund anticipation checks) where bad actors may collect personal information with few of the guardrails that larger financial institutions can afford. Black and Brown households are more likely to deal with financial shocks and are therefore more likely to be exposed to predatory actors due to a need for quick credit or cash. A Pew Charitable Trusts report in 2015 examined how families struggle to make ends meet after a financial shock including: 73% of those making $25,000 or less; 62% of Black respondents at all income levels; and 62% of Latinx respondents at all income levels.[4]

Even when authorized sources utilize financial data, a lack of regulation can result in intrusive examinations of consumer financial information that disadvantages consumers. For example, the integration of credit and financial data into employment and licensing processes supports systemic inequities that work against Black and Brown women. The American Association of University Women found that women hold two-thirds of the nation's student loan debt and that Black women hold the highest amount of student loan debt.[5] Consequently, employment and licensing for various professions can be difficult to obtain when applicants are evaluated on their financial well-being and credit history rather than relevant job qualifications. The very fact that credit reviews have been normalized in the hiring processes for jobs that do not

[4] Pew Charitable Trusts, *The Role of Emergency Savings in Family Financial Security How Do Families Cope With Financial Shocks?*, 2015, available at www.pewtrusts.org/~/media/assets/2015/10/emergency-savings-report-1_artfinal.pdf

[5] American Association of University Women, *Deeper in Debt: Women and Student Loans*, 2017, *available at*, www.aauw.org/app/uploads/2020/03/DeeperinDebt-nsa.pdf

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require skills in financial management is an overreach resulting from a lack of sufficient regulations to protect consumer privacy. Regulation must protect consumers from data uses that support systemic racial and gender inequities.

Data Equity Principle 4: The increasing commodification of consumer data should not be wealth-extracting. Customer data is extremely valuable, as exemplified by the $200 billion data broker industry.[6] In the past, companies paid heavily to buy access to data, such as purchasing lists of magazine subscriptions for individual consumers, or paying participants in focus groups to detail their shopping habits. Today, the price of accessing this data has decreased dramatically. However, we do not see the benefits of this increased access to data in terms of financial services that better serve the most vulnerable individuals. In order to promote equity and balance power in the data industry, the financial benefits produced by access to consumer data must be transferred to the consumers from which it is derived.

One method of reshaping consumers into indirect financial beneficiaries of their data is through taxation. Opponents of a data tax argue that it's difficult, if not impossible, to accurately assign a monetary value to consumer data and to the innovative products that businesses develop with said data. While this is true, it fails to account for two major uses of consumer data: the use of data in online advertising and the direct sale of consumer data to other parties. In fact, in 2018, the European Commission proposed a corporate tax reform that would institute an interim tax of 3% on revenues generated from these activities specifically.[7] In the United States, even a tax rate of 1% on the $200 billion data broker industry would generate around $2 billion in annual revenue. This could then be spent on "improving privacy of our information on the internet, countering identity theft, and improving connectivity and internet literacy" as we collectively strive for a more equitable internet.[8]

Data holders, who collect and generate consumer information, should also be mandated to provide consumers with information on the monetary value of their data. These values should be presented both as a projection and as an updated valuation on a regular basis. An example

[6] WebFX, W*hat Are Data Brokers- And What Is Your Data Worth?*, March 2020, *available at* www.webfx.com/blog/internet/what-are-data-brokers-and-what-is-your-data-worth-infographic/
[7] European Commission, *Fair Taxation of the Digital Economy*, March 2018, *available at* ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en
[8] Madsbjerg, Saadia, *It's Time to Tax Companies for Using Our Personal Data*, N.Y. Times, Nov. 14 2017, *available at* www.nytimes.com/2017/11/14/business/dealbook/taxing-companies-for-using-our-personal-data.html

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would include a section of the annual privacy and terms of use policy that details what forms of data are being collected from the consumer, how the company will use each piece of data, and the value of that data if the company had to purchase it on the open market rather than the consumer authorizing direct access. This valuation could also inform the monetary value that should be paid to consumers when their data is used to generate value for a company, such as the development of new products.

DATA ACCOUNTABILITY GUIDELINES

We strongly encourage the CFPB to consider how to create rules and accountability measures for financial institutions that are aligned with these Data Equity Principles, including:

Consent must be legitimate and meaningful. We must consider if there is legitimate consent from consumers who decline a company's data use policies when this decision may make them ineligible for the product or services they are seeking. To achieve true consent, regulation must ensure that consumers receive full information in a simple format that is easy to read and in plain language. It is also important for this information to be shared in a variety of languages and formats, including visualizations and audio recordings. A lack of clarity related to financial services and data sews seeds of distrust between customers, financial service providers, and financial technologies. This distrust is difficult to overcome and may motivate customers to opt out of sharing data or engaging with financial technologies that are well suited to meet their financial needs and goals. The assumption of perfect information will always undermine the true power of choice.

Data holders must also recognize that consumers' lives are dynamic and therefore consent is impermanent. Irrevocable consent agreements can have detrimental impacts for those experiencing hardships. For instance, the Institute for Women's Policy Research found that domestic violence survivors often struggle with negative credit reports due to credit abuse by their partners.[9] Black and Brown households may be disproportionately represented in vulnerable groups such as those experiencing homelessness, returning citizens, or domestic violence survivors whose life-circumstances may require more entrances and explicit exits from data consent agreements to protect their personal information. Few, if any, data consent

[9] Hess, Cynthia, Ph.D., and Del Rosario Alona, M.A, Institute for Women's Policy Research, *Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors' Education, Careers, and Economic Security*, 2018, *available at* iwpr.org/wp-content/uploads/2020/09/C475_IWPR-Report-Dreams-Deferred.pdf

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agreements offer the level of flexibility needed to address these circumstances. Consequently, regulation must consider these unique needs.

Real accountability for data management is imperative. The CFPB must encourage broad-based standards within authorized data access ecosystems. Data influences access and opportunity for all. In today's world, algorithms analyze data and approve mortgages, evaluate job applications, and determine the viability of would-be entrepreneurs for small business loans. Now more than ever, consumers' data is rarely within arm's length of the consumer. Personal responsibility cannot shield consumers from the undesirable use of their data, and errors in consumer data may be replicated across an untold number of data holders without any prior relationship. This may lead to the promotion of ill-fitting or predatory products that could hurt financially vulnerable populations. Data must not be used to create processes equivalent to modern-day redlining. Regulation can be a powerful tool to prevent these risks and promote economic equity.

Consumer data must be safeguarded. This includes ensuring that the burden of correcting mismanaged and incorrect data does not fall on the consumer. The current Fair Credit Reporting Act (FCRA) requires consumers to contact the credit reporting company and the party that provided incorrect information in order to exercise their right to have errors removed. This can be a time-consuming process that sometimes requires multiple appeals and sometimes does not result in a satisfactory resolution.[10] Additionally, not all data holders are regulated by the FRCA.

Regulations should provide clear guidance on the limitations of sharing, transferring, and managing consumer data. Regulation of consumer data should encourage financial transactions that are easy to access, convenient, and efficient. However, regulation should also provide a method for consumers to explicitly limit the content and frequency of data use for all data holders. Black and Brown households may be less trustful of institutions, both financial and government, in the use and disclosure of data. Mistrust of financial service providers from Black and Brown consumers is reasonable given the financial service industry's

[10] Fair Credit Reporting Act: *Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System*: Hearing before U.S. House of Representatives Committee on Financial Services 116 Cong. (2019) (Testimony of Edmund Mierzwinski Senior Director, Federal Consumer Programs U.S. Public Interest Research Group), *available at* www.congress.gov/116/meeting/house/108945/witnesses/HHRG-116-BA00-Wstate-MierzwinskiE-20190226.pdf

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long history of using wealth extraction and discriminatory practices against Black and Brown communities. Even if companies are legally prohibited from these practices, the legacy of prior abuse and wealth extraction by the financial industry remains intact, and its presence is evidenced by the persistent racial wealth gap in the United States. This knowledge is enough to keep many Black and Brown consumers from using mainstream financial products that could otherwise save time and money. Black and Brown consumers may fear that their data is used to discriminate against them, target them for predatory financial products, enforce previous debts, or even open up exposure to immigration-related issues. An FDIC survey of unbanked households found that a mistrust of banks was the second most common reason that consumers avoid banking, surpassed only by a lack of finances.[11] For a financial system to be inclusive, it is imperative that we prioritize addressing these concerns.

The CFPB can address this lack of trust by promoting full transparency in consumer data. Full transparency requires consumers to receive detailed information about the present and future uses of their data. Consumers must be informed of who uses their data, for what purpose, and what financial gain is projected or received for the exchange or use of each piece of data. Only this level of transparency will begin to repair the broken trust that exists between Black and Brown low-income consumers and the financial system.

CHANGE MACHINE RECOMMENDATIONS

CFPB regulation must build stronger data limitations that allow consumers greater control over their information including:

- Data holders must be required to track how consumer data is being used and disclosed to third parties and provide clear information about the monetary value and movement of data to the consumer.
- Data holders must provide the aforementioned information in the preferred language of the consumer and in various formats (including visualizations).
- Data holders should limit the use of data to direct transactional relationships between the consumer and the primary company; and only permit data uses that are essential to maintain that relationship.
- Data holders must provide consent agreements that are limited by time, include periodic renewals, and offer clear paths to revoke or adjust permissions.

[11] Economic Inclusion, *FDIC National Survey of Households Use of Banking and Financial Services*, EconomicInclusion.gov, 2019, *available at* economicinclusion.gov/surveys/2019household/

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- Data holders must be held responsible for correcting errors and ensuring the consumer is not subjected to fees for said corrections.
- Data holders must be held financially accountable through substantial fines for the economic ramifications that can result from inaccurate consumer data leading to negative financial profiles (e.g., credit reports, ChexSystems, insurance clearinghouses).
- Data holders must offer monetary restitution to consumers who suffer from data inaccuracies on their credit reports.
- Additionally, the CFPB should convene a task force that explores options for data holders to pay individuals directly for their consumer information.

CONCLUSION

Despite the challenges and lack of clarity that consumers may face when accessing products, digital financial tools are becoming increasingly popular among communities of color. As detailed by Roll Call, 59% of Black, 63% of Latinx, and 70% of Asian respondents reported using "some" digital financing tools.[12] As fintech continues to transform the financial and digital economies and mature as a sector — whether it's partnering with traditional financial institutions or upending entire industries — it is imperative that the fintech sector emerges as a leader on the issue of equity, especially at a time when households and businesses are more reliant on the digital economy than ever. Social service organizations will be crucial to the endeavor of increasing equity in fintech. These organizations contribute subject matter expertise and a valuable vantage point on behalf of the communities they intimately know, serve, and advocate for. Social service organizations can and should be meaningful participants in the work of financial equity because they are committed to helping individuals use the fintech tools at their disposable responsibly and for their own benefit.[13]

It is critical that the CFPB take the necessary measures to ensure that past inequitable trends are not repeated. The digital financial world has an opportunity to rectify the mistakes of

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[12] Lewis, Keith, *FinTech Works to Elevate Minority Leaders as Users Diversify*, RollCall.com, 2020, *available at* www.rollcall.com/2020/11/17/fintech-works-to-elevate-minority-leaders-as-users-diversify/
[13] Grote, Mae Watson, *From Inclusion to Equity: Making Fintech Work for Low-Income Consumers,* 2020, *available at* change-machine.org/from-inclusion-to-equity-making-fintech-work-for-low-income-consumers/

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previous financial systems, but that will not be possible without proper regulation that maintains an equity lens.

Signed,

Amina Kirk
Assistant Director of Policy

cc: Federal Trade Commission

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