

May 27, 2021

Acting Director David Uejio
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

To Acting Director of the Consumer Financial Protection Bureau David Uejio:

We write to you as a broad coalition of organizations committed to ensuring that financial services markets remain open and competitive. It's no secret that anti-competitive behavior runs rampant throughout our economy. Although recent public scrutiny has focused on Big Tech in particular, the truth is that major corporations across sectors engage in anti-competitive behavior. From health care, to agriculture, to telecommunications, anti-competitive behavior is rampant and demands urgent government intervention to protect the interests of consumers and small firms alike.

The financial services industry is no exception, and the Consumer Financial Protection Bureau (CFPB) stands to play a crucial role in combating pervasive anti-competitive behavior within the sector. Since the agency was established in 2011, the CFPB has helped secure billions of dollars in relief for consumers through vigilant enforcement. After four years of the Trump administration, in which the CFPB's crucial powers to combat corporate impropriety were neglected and sabotaged, we look forward to working with your interim leadership to reinvigorate the agency's functions.

A key task for the CFPB in the months and years ahead will be putting in place consumer protections that safeguard consumers' access to their financial data and promoting competition in the financial services industry without compromising consumers' actual and robust choice, privacy, and control of their data.

As you know, Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act provides consumers with a clear and explicit right to access this information and has introduced new competition to the market, providing consumers with opportunities to more easily switch banks and access new or better products. As stated by the CFPB, "access to these data allow consumers to manage their financial accounts and can enhance consumers' control of their financial matters." However, many large financial institutions, which hold the majority of consumers' data, have too often resisted the intent of Section 1033 by creating obstacles to easy data access. At the same time, authorized data access can also create risks of consumers losing control over their data, having it used against them, and having their privacy invaded. Consumers should be able to understand and freely make choices about what data to share and with whom, and be able to stop sharing or have their data deleted at any time.

It is in this context that we applaud the agency's decision to look more closely at these issues by issuing an Advanced Notice of Proposed Rulemaking (ANPR) on Section 1033. We urge the CFPB to develop a strong rule that affirms consumers' data access rights while also building in strong protections against consumer abuse and exploitation. It is no surprise that

large financial institutions, whose bottom lines benefit from reduced competition, as well as trade associations and other organizations that represent them, have cautioned the agency against moving ahead with a formal rulemaking. It is crucial that the CFPB refuse to yield to such pressure.

A strong implementation of Section 1033 will be critical to beating back anti-competitive, data-hoarding behavior and putting safeguards in place to protect consumers' access and control over their data in their financial lives. The massive amount of consumer data that large financial institutions have accumulated gives them a significant built-in advantage over competitors. Many new market entrants rely on a consumer's ability to access and transfer their financial data to provide services, but big banks add unnecessary friction to this process to inhibit competition. Even services that do not directly compete with large financial institutions are perceived as threats to established big banks that want to control access to their customers and maximize brand loyalty. This ultimately hurts consumers, who are more likely to find themselves locked into accounts with which they are unsatisfied and unable to access the financial products of their choosing.

As a recent Huffington Post report indicated, a strong data access rule for consumers can "make it easier for them to switch between banks and other financial institutions, which could make Americans less reliant on the nation's largest and most politically powerful banks." Or, as Graham Steele of Stanford University's Graduate School of Business put it, consumer access safeguards can do "a lot to break up the Wall Street cartel and their control" of the financial landscape.

It must be stressed that concerns of anti-competitive behavior by large financial institutions are not just theoretical, as companies offering products in competition with larger data holders have complained that missing and inaccurate data, connectivity brown-outs, and stonewalling from large financial institutions have compromised their services and led to frequent business disruptions. These barriers, which are deployed in direct violation of consumer wishes, ultimately inhibit competition and harm consumers.

Big banks generally defend these tactics as necessary for consumer privacy and data security. While consumer privacy and security must be paramount, as described further below, too often their underlying motive of these institutions seems to be to secure more control of consumer data for their own purposes. Clearing House, an organization owned by the largest financial institutions in the United States, has pushed the CFPB to give large banks, which often control and hoard consumer data, the same rights as consumers in determining the trustworthiness of a third-party vendor. Clearing House has also used privacy and security concerns to demand that data holders have greater control over when, how, and what types of consumer data is shared. Similarly, PNC Bank has urged the CFPB to institute rules requiring consumers to frequently re-authorize third-party access to their accounts despite, or maybe because of, the reality that frequent re-verification disrupts service and is a nuisance for consumers.

The CFPB should guarantee that consumers are protected when their account data is accessed and used by third parties. Specifically, it should: protect the ability of consumers to make

decisions on when and how to stop sharing information; exercise supervisory authority over data aggregators and ensure application of strong protections under the Electronic Funds Transfer Act, Equal Credit Opportunity Act, and the Fair Credit Reporting Act; and put in place other guardrails that are necessary to ensure that consumers benefit and are not harmed by data for which they authorize access.

Consumer privacy and data security should not be used as a cudgel to stifle competition. The CFPB's rulemaking should implement meaningful safeguards that meaningfully protect consumer privacy and data security while allowing them to share their data safely and securely to access different financial products and services available to them in the marketplace to meet their needs.

Thank you for working on this important issue, and we urge you to put in place a strong Section 1033 rule that both promotes competition and protects consumers.

Sincerely,

American Economic Liberties Project
American Family Voices
Americans for Financial Reform Education Fund
Blue Future
Consumer Action
Demand Progress Education Fund
Institute for Local Self-Reliance
Jobs with Justice
People's Parity Project
Progress America
Progressive Change Campaign Committee (PCCC)
Public Citizen
Revolving Door Project
Social Security Works
The Other 98%
Tzedek DC
U.S. PIRG
Working Families Party