



May 29, 2020

Comment Intake  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

**SENT VIA ELECTRONIC MAIL TO 2020-RFI-Taskforce@cfpb.gov.**

**Re: Request for Information to Assist the Taskforce on Federal Consumer Financial Law,  
Docket No. CFPB-2020-0013**

Dear Task Force on Consumer Financial Law Members,

Envestnet Yodlee (“Yodlee”) welcomes this opportunity to provide its perspective in response to the Consumer Financial Protection Bureau’s (“CFPB” or “the Bureau”) Taskforce on Federal Consumer Financial Law’s (“the Taskforce”) request for information pertaining to the harmonization and modernization of federal consumer financial laws. As a firm that has been enabling consumer financial wellness globally across the vast spectrum of different types of financial accounts for two decades, Yodlee appreciates the opportunity to share its insights, particularly focused on the critically important areas of expanding consumer financial access and enabling, safely and securely, the utility of consumer financial data.

Yodlee is the leading financial data aggregation platform provider globally with twenty years in the industry. Yodlee provides consumer-permissioned account aggregation capabilities with hosted solutions and commercial APIs on a business-to-business basis to customers around the world, including 15 of the top 20 U.S. financial institutions. These customers offer data from Yodlee’s platform to retail consumers through the customer’s own financial wellness, affordability check, verification and other solutions, which provide a single platform for consumers to track, manage, and improve their financial health across a host of different banks and financial institutions, as well as through platforms that provide financial advice and lending solutions. Across our platform, more than 25 million consumers are able to utilize their own financial data to access financial products and services that assist them in improving their financial wellbeing.

As the leading enabler of consumer financial data access, Yodlee has been integrally involved in the Bureau’s exploration of consumer-authorized data access and Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”) for the last several years. As the Taskforce will be aware, the CFPB begun in 2016 a concerted public effort focused on “learning more about consumer and third-party account access” and “supporting the



ability of consumers to access and share personal information about their own financial lives with others where they believe it is in their interest to do so.”<sup>1</sup> To inform the Bureau’s consideration of the policy questions surrounding this important issue, Yodlee participated in the CFPB’s November 2016 field hearing on the subject in Salt Lake City, submitted comments to the Bureau’s request for information released in tandem with the hearing, and has regularly provided its perspective to the CFPB’s Office of Innovation for the last several years.

Yodlee strongly believes in the democratization of data: the notion that consumers have an absolute right to access and permission their banking and other financial transaction information safely and securely in real time to reap the benefits of the innovative new tools that advances in technology have enabled. Amidst growing economic uncertainty driven by the COVID-19 pandemic, Americans’ financial positions are increasingly tenuous. Even before the crisis, the Federal Reserve routinely concludes that a large number of Americans – four in ten – could not afford an emergency \$400 expense without taking on additional debt or liquidating assets.<sup>2</sup> The only sustainable path toward improving Americans’ financial lives is one that allows Americans to leverage intuitive, powerful technology applications, provided by their existing financial services providers or third parties, that rely on permissioned access to their financial information to help them improve their financial wellbeing.

## **Statutory and Regulatory Background**

Congress presciently granted the CFPB with the authority required to enable consumer-permissioned data access under Section 1033 of the Dodd-Frank Act a decade ago.<sup>3</sup> The statute provides that, “subject to rules prescribed by the Bureau,” an entity that holds financial data about a consumer shall make that data available to the consumer, “including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.”<sup>8</sup> The statute further provides that “[t]he information shall be made available in an electronic form usable by consumers,” and that the Bureau may consider, when contemplating a rule under Section 1033, whether to standardize the format by which such data is made available.

Despite its focus, beginning in 2016, on the authority granted to it by the Congress under Section 1033 of the Dodd-Frank Act, CFPB action related to consumer financial data access has thus far been limited to the publication in 2017 of nonbinding “Consumer-Authorized Financial Data Sharing and Aggregation Principles.”<sup>4</sup> In the absence of legally binding guidance or a formal rulemaking, industry participants, including aggregators, financial institutions, and financial

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<sup>1</sup> Project Catalyst Report: Promoting Consumer-friendly Innovation: Consumer Financial Protection Bureau (2016).

<sup>2</sup> Report on the Economic Well-Being of U.S. Households in 2018 - May 2019, Report on the Economic Well-Being of U.S. Households in 2018 - May 2019 (2019). Retrieved from <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm>

<sup>3</sup> U.S.C. § 5533(a). Section 1033.

<sup>4</sup> Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation, Consumer Financial Protection Bureau (2017).



technology firms have attempted to address the issues related to consumer financial data access on their own, it is clear that policy intervention is warranted.

Other agencies within the federal government have been engaged on this important issue as well. Yodlee contributed its perspective to the Department of the Treasury as it drafted a report in 2018 that determined that the definition of “consumer” under Section 1033, consistent with the definition of the term throughout the Dodd-Frank Act, “is best interpreted to cover circumstances in which consumers affirmatively authorize, with adequate disclosure, third parties such as data aggregators and consumer fintech application providers to access their financial account and transaction data from financial services companies.”<sup>5</sup> Additionally, as a Federal Financial Institutions Examination Council supervised Technology Service Provider, Yodlee regularly engages with its lead examining agency, the Office of the Comptroller of the Currency, on issues related to consumer data access and data security.

### **Expanding Access and Consumer Data**

The Taskforce rightly notes that greater competition among providers of financial services can significantly expand access to these services for consumers and asks how third-party applications both affect competition and raise potential new consumer protection risks that regulators should consider. As a leading enabler of consumer-permissioned data access in a number of jurisdictions globally that have enabled open banking frameworks, Yodlee has seen firsthand both the important role that competition can play to enable improved access to financial services as well as the key considerations that policymakers should contemplate with regard to the consumer protection in such regimes.

There has been significant research undertaken demonstrating that increased competition in the financial services marketplace expands access to critical financial products and services. The Bank for International Settlements<sup>6</sup>, the University of Pennsylvania’s Wharton School of Business<sup>7</sup>, and the World Bank<sup>8</sup> have, among many other organizations, documented the potential of open finance ecosystems to drastically improve access to financial services.

In the United Kingdom and European Union, Open Banking and the second payment services directive (“PSD2”) were contemplated as frameworks to both enable and, importantly, to uniformly protect consumers as they chose from a variety of registered service providers throughout the regulated financial ecosystem. One of the core principles of PSD2 and, by

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<sup>5</sup> Phillips, C. S. A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation: Department of the Treasury (2018).

<sup>6</sup> Philippon, T. On Fintech and Financial Inclusion, Bank for International Settlements (2019).

<sup>7</sup> (2019, October 10). Retrieved April 22, 2020, from <https://knowledge.wharton.upenn.edu/article/can-fintech-make-the-world-more-inclusive/>

<sup>8</sup> How Fintech is Reaching the Poor in Africa and Asia, How Fintech is Reaching the Poor in Africa and Asia (2017).



extension, of the U.K.'s Open Banking, is the notion that the consumer should be uniformly protected from potential harm regardless of whether they choose to do business with a third-party provider or with an incumbent financial institution. To provide for this essential consumer protection, the U.K. Open Banking framework requires that any entity that interacts with a consumer's data must be registered with and overseen by the U.K.'s competent regulatory authority, the Financial Conduct Authority.

This is a fundamental underpinning of a well-functioning open finance system. The bedrock of a consumer-directed regime must be sufficient consumer protection paired with customers' ability to select the service provider of their choosing in a well-regulated, innovative, technology-enabled ecosystem. The United States' patchwork of state-led data privacy and portability regimes, the fragmentation that exists at the federal level of government, where jurisdiction over financial products and services is divided among several different government agencies, and a lack of a clear legal right for consumers to access and permission access to their own financial data has created obstacles to enabling a true open finance regime in the United States.

To help provide for strong consumer protection in an open finance ecosystem in the United States, where a legal data access right has been established, Yodlee is a strong proponent of requiring data aggregation firms to adhere to the data protection and privacy requirements of the Gramm-Leach-Bliley Act and to submit to supervisory oversight by the appropriate federal agency or agencies.

To be clear: Yodlee unambiguously supports the creation of a well-managed, fully regulated open finance regime in the United States as it strongly believes that consumers should have full utility over their financial data and the ability to take advantage of technology-based tools to help them manage their financial wellbeing in each segment of the financial services industry and across the various financial accounts they hold. Moreover, increased competition within the financial services sector fosters enhanced consumer financial access to valuable products and services that can improve their financial wellness. Participation by financial technology companies in the Paycheck Protection Program – the assistance program for small businesses and their employees established by the Coronavirus Aid, Relief and Economic Security Act – served as a recent example of improved and increased financial access through competition in the financial services ecosystem. But action by the Bureau is required both to enable such a regime and to assert appropriate consumer protections under it.

### **Application of the Fair Credit Reporting Act**

The Taskforce poses several questions regarding various requirements under the Fair Credit Reporting Act ("FCRA") and the important balance between consumer protection and facilitation of underwriting for access to capital. The FCRA statute provides, among other things, that applicants who receive adverse credit decisions must be notified of the reason for the action, as well as the sources of information used in making the decision.<sup>9</sup> The intent of the FCRA is to

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<sup>9</sup> 15 U.S.C. § 1681m.



afford consumers the opportunity to understand what elements of their credit profile were used in assessing their creditworthiness, to provide an opportunity for them to understand what elements of their credit report led to a decision to deny them access to credit, to provide consumers with dispute rights if the accuracy of this information appears incorrect, and to create documentation standards designed to eliminate discrimination in lending decisions.

The FCRA applies to credit reporting agencies who “assembl[e] or evaluat[e] consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties...”<sup>10</sup> Although the plain language of this definition appears to apply to data aggregators, ambiguity exists regarding the question of whether the FCRA applies in instances in which consumers are merely delegating access to transaction data, which they control at all times, that might be used in credit decisions. This ambiguity – and different interpretations of the FCRA’s applicability in such circumstances – can in some instances represent an obstacle to consumers’ ability to utilize their own financial data to benefit their financial wellbeing.

The FCRA was designed to address situations where a third party, which has no direct relationship with a consumer, collects information about that consumer and passes that information to others for purposes of making credit decisions. In this context, the FCRA aims to protect consumers by providing a legal regime to allocate error costs where the consumer does not have a direct contractual relationship with the party transferring his or her information, and to implement remedies where the data collected or transferred by the third party is incorrect.

By contrast, there exists complete consumer transparency and agency in instances in which consumers directly grant permission to access financial transaction data that is passed to lenders. To grant consent, consumers provide a means of authentication to the account that holds their financial transaction data, which significantly decreases the risk of error in that information. Moreover, because the transaction data is available to the consumer at all times through the online portal of their financial institution, they have the ability to review it and identify to their financial institution any transaction errors at any point in time.

While Yodlee acknowledges the concerns the FCRA seeks to address, many of these concerns do not arise when consumers affirmatively consent to the transfer of their financial data, have access to that data, and can verify the accuracy of that data; however, it is important that some elements that embody the spirit of the FCRA be required as part of a consumer-permissioned transaction data underwriting regime. In particular, Yodlee would submit that the Bureau consider requiring that consumers have the ability to request and receive a full disclosure of the information being provided in a cash flow underwriting environment, as well as requiring that enablers of such underwriting processes clearly provide consumers with tools to assist them with disputes related to data accuracy.

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<sup>10</sup> 15 U.S.C. § 1681a(f).



## **Conclusion**

Yodlee comments the Taskforce for the comprehensive review it is undertaking to harmonize and modernize consumer financial laws. Given the growth, particularly in the last decade, of technology-driven financial services and products in the marketplace, we would respectfully offer that special attention should be paid to the need for – and any restrictions to – consumers' ability to access and utilize their own financial data to improve their financial wellbeing and take advantage of tools that can meaningfully support their financial health.

Thank you in advance for your consideration of this submission.

Sincerely,

*Chad Wiechers*

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Envestnet Yodlee