

Financial Data Exchange Response to Required Rulemaking on Personal Financial Data Rights Consumer Financial Protection Bureau (CFPB)

Financial Data Exchange, LLC (FDX)¹ is pleased to provide this response to the Consumer Financial Protection Bureau (CFPB) Notice of Proposed Rulemaking for the Required Rulemaking on Personal Financial Data Rights² on October 19, 2023, to implement Dodd-Frank Act Section 1033 (the “**Materials**”). This is an important milestone for Open Banking/Open Finance and will help resolve some of the ambiguities in the financial services ecosystem. FDX appreciates the significant work that the CFPB has undertaken to promulgate new rules on Dodd-Frank Act Section 1033 as part of the proposed rulemaking. FDX shares the CFPB’s goal of the establishment of fair, open, and inclusive financial technical standards. FDX appreciates the CFPB’s ongoing dialogue with industry stakeholders and the opportunity to request additional clarifications to support successful implementation. FDX submits this response to ask for certain clarifications to the Materials as well as to obtain further information on the proposed rules (the “**Proposed Rules**”) described in the Materials (i.e., the ~300 pages of descriptive materials and inquiries accompanying the Proposed Rules).

As the leading technical standards setting organization in the industry for sharing permissioned financial data in the U.S. and Canada, FDX believes it is important to take this opportunity to respond to some of the inquiries presented in the Materials as well as seek certain clarifications. Through the development, adoption, and constant improvement of the FDX API (defined hereafter), FDX and its diverse membership have made significant progress transitioning from credential-based “screen scraping” to the FDX API, with over 65 million consumer accounts³ using the FDX API as of Fall 2023⁴ out of an estimated 100 million consumers who have authorized a third party to access their financial data⁵. Through contributions from its members, FDX has constantly improved the FDX API in order to keep up with industry trends and technological improvements. The FDX API historically has released updates twice a year since inception in 2018. The FDX API is continuously improving and adding features with scheduled updates in the Spring and Fall of each year (FDX API 6.0 is the current version as of the date of this submission). Updates are based on member prioritization surveys, feedback from members, and member requests for improvements to ensure the FDX API can assist regulated parties to comply with changes to rules and regulations. For additional information on FDX, see FDX’s SBREFA filing from earlier this year⁶ (the “**SBREFA Filing**”).

FDX appreciates the recent engagement with the CFPB, allowing FDX to share background on FDX, standards setting, and to learn more about federal agencies’ engagement with standard setting bodies as

¹ <https://www.financialdataexchange.org/>

² https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice_2023-10.pdf

³ FDX members report that they have converted over 65 million ID + Password “credential” pairs using FDX standards for the connections to secure tokens for permissioned access to their financial data. [https://financialdataexchange.org/FDX/News/Press-Releases/Financial%20Data%20Exchange%20\(FDX\)%20Reports%2065%20Million%20Consumers%20Use%20FDX%20API.aspx](https://financialdataexchange.org/FDX/News/Press-Releases/Financial%20Data%20Exchange%20(FDX)%20Reports%2065%20Million%20Consumers%20Use%20FDX%20API.aspx)

⁴ Almost all of FDX Financial Institution members are using or plan to use FDX API; more than 65 million consumer accounts are on FDX API as of Fall 2023.

⁵ 88 Fed. Reg. 74798

⁶ <https://www.financialdataexchange.org/common/Uploaded%20files/Blog%20Assets/FDX%202023%20CFPB%20SBREFA%20Response%20-%2001-25-2023.pdf>

set forth in the OMB Circular A-119⁷ which describes the six (6) attributes⁸ that a standards setting body should have in order to be recognized by federal agencies. Following those meetings, FDX has been diligently reviewing its organizational structure, processes, and procedures to determine what appropriate steps should be taken to align better with such attributes. The FDX board of directors is committed to meeting the core principles of fair, open, inclusive governance as established and further defined by the CFPB. While FDX continues to seek ways to improve its organizational structure, processes, and procedures, FDX believes that it is well positioned to work with the CFPB through the process of seeking recognition as a qualified industry standards setting body (QSSB). As the CFPB finalizes the Proposed Rules, FDX looks forward to continued dialogue with the CFPB.

About FDX

FDX has achieved significant growth and marketplace adoption since its launch just over five years ago. FDX's diverse membership⁹ has grown across every sector of the user-permissioned financial data ecosystem. FDX is an international, nonprofit organization operating in the U.S. and Canada that is dedicated to unifying the financial services industry around a common, interoperable, royalty-free standard for the secure and convenient access of user-permissioned financial data, aptly named the FDX Application Programming Interface (FDX API). FDX is currently comprised of ~220 financial data providers, data recipients, data access platforms, consumer groups, nonprofit entities, financial services industry groups, educators, and other interested parties in the user-permissioned financial data ecosystem. FDX is an independent subsidiary of the Financial Services Information Sharing and Analysis Center (FS-ISAC)¹⁰.

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FDX Informational Response

FDX's comments are guided by the following:

- FDX requests the opportunity to work with the CFPB in order to seek recognition as a QSSB. As a non-profit, industry-led technical standards body, FDX is best positioned to unify the financial services industry around common, interoperable, royalty-free technical standards for user-permissioned data sharing. Importantly, FDX's ~220 members are diverse in size and type and includes members from all sectors of the user-permissioned financial data ecosystem.
- FDX technical standards and any future technical certifications can be tailored to accommodate regulatory requirements.
- FDX is proactively undergoing a review of the Materials and conducting a gap analysis to determine if any revisions to FDX standards will be necessary under the Proposed Rules.

Standard Setting Body Characteristics and Recognition. FDX is encouraged by the CFPB's acknowledgment that working with fair, open, and inclusive standards setting bodies¹¹ is critical in

⁷ https://www.whitehouse.gov/wp-content/uploads/2020/07/revised_circular_a-119_as_of_1_22.pdf

⁸ Openness, balance, due process, appeals process, and consensus, with transparency throughout.

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<https://www.financialdataexchange.org/FDX/FDX/News/Spotlights-home.aspx?hkey=46311498-fd75-4950-a1e6-b61f448d527a>

¹⁰ <https://www.fsisac.com/who-we-are>

¹¹ <https://www.consumerfinance.gov/about-us/blog/laying-the-foundation-for-open-banking-in-the-united-states/>

ensuring safe, secure, reliable, and competitive data access. FDX supports the CFPB's aims to recognize qualified standard setting bodies (QSSBs) and certain qualified industry standards (QISs) issued by such QSSBs to help the financial industry demonstrate compliance with the use of standardized formats of data. As a prominent standard in North America with ~220 members, and over 65 million consumer accounts¹² connected, FDX intends to seek recognition as a QSSB. Furthermore, the FDX board of directors is committed to meeting the core principles of fair, open, inclusive governance as established and further defined by the CFPB.

The Proposed Rules indicate that the CFPB will look to QSSBs that, among other things, have the following attributes:

- **openness;**
- **balance;**
- **due process;**
- **an impartial appeals process;**
- **consensus**
- **transparency;** and
- the body has been **recognized by the CFPB** within the last three years as an issuer of qualified industry standards.

FDX is committed to embodying these attributes as they are consistent with existing guidance on Federal use and development of voluntary consensus standards and align with our own governance pursuits as an organization to represent the entire open banking ecosystem. The FDX board of directors is committed to meeting the core principles of fair, open and inclusive governance as well as the above attributes. FDX is actively reviewing its structure to identify areas of improvement and welcomes ongoing discussions with the CFPB on how these attributes will be defined and implemented. FDX supports thoughtful, transparent determinations as to the frequency and duration of such recognition.

With respect to timing, FDX would like to express the following:

- FDX is committed to working with the CFPB to help better define the process and procedures to be recognized as a QSSB as well as how the standards issued by a QSSB will be recognized as a QIS. FDX supports making the standard-setting body recognition rules and procedures transparent. Transparency is essential to increase industry acceptance of any recognized QSSB.
- FDX believes that time is of the essence to recognize QSSBs in order to ensure market participants are able to timely comply with the Proposed Rules, build interoperable data sharing services, and provide consumers with the associated benefits stemming from access to data.
- The CFPB should recognize true, common, interoperable standards, as doing so will help the industry avoid too many different formats or standards. Too many standards would result in escalated compliance costs, complex and confusing compliance processes, and could fragment the market, slowing existing progress.

¹² The CFPB estimates that at least 100 million consumers have authorized a third party to access their account data. See CFPB's comments to Required Rulemaking on Personal Financial Data Rights, October 19, 2023.

- With respect to QISs issued by QSSBs.
 - FDX requests that the CFPB clarify for the financial industry that all standards that are intended to be QISs set by a QSSB will be deemed as such.
 - With respect to a QIS that specifies standardized formatting for covered data under proposed § 311(b), FDX request further clarification of the definition of “Terms and Conditions” so that QSSBs can define formats and mechanics for sharing.

Roles and Responsibilities of Standard Setting Bodies. As a technical standards setting organization, FDX has reviewed the roles and responsibilities currently practiced, those that FDX believes to be appropriate to evolve into as a QSSB, and those that FDX believes are currently beyond FDX’s scope which it does not have current plans to pursue.

- **Current Capabilities.** FDX, in its current state, performs the following functions:
 - **Data formats.** FDX provides data format standards information. FDX believes that it can, as a QSSB, define industry standard "data formats" described in the Proposed Rule. As a QSSB, the FDX API could fulfill the compliance safe harbor by providing data via a developer interface following a format set forth in a QIS (See 311(b)(1) of the Proposed Rules) which could serve as standard evidence of compliance with the Proposed Rules.
 - **Security and UX Best Practices.** As part of the FDX API, FDX provides guidelines and best practices for user experience (UX) and security. FDX believes these practices should be suggestive tools and frameworks that could help ecosystem parties with implementation but would not be appropriate for regulatory compliance, including as indicia of compliance.
 - **Additional Best Practices.** The FDX API provides far more technical specifications and best practices than the Proposed Rules provide. While some best practices will need to be updated (and some even discontinued as obsolete) based on the final regulations, FDX currently provides best practices for data scoping, consumer authorization, and consumer authentication. FDX’s API further includes technology best practices to ensure the appropriate scope of data is provided, that consumer authorization is obtained, and that consumers are properly authenticated by data providers, e.g., via OAuth protocols. FDX will evolve the FDX API specification and best practices to match the Proposed Rules’ requirements on data scope, authorization, authentication, and revocation. FDX believes these best practices should be suggestive tools and frameworks that could help ecosystem parties with implementation but would not be appropriate for regulatory compliance, including as indicia of compliance.
- **Supported Future Capabilities.** As required by the CFPB or desired by industry, there are additional areas that FDX can more fully support:

- **Certification**¹³. FDX is in the process of implementing a technical certification program. FDX believes technical certification of its API standard implementation is critical to ensure compliance with the standardized formatting for covered data via a developer interface. Technical certification is not required under the Proposed Rules, however, technical certification by a QSSB of its QIS is the only certain demonstration of standardized formatting for covered data via a developer interface. The final rules should incorporate technical certification into determinations of whether a data provider is deemed to satisfy the rules' format standardization requirements when it adopts a QIS. We believe that a mechanism to certify API instances by QSSBs or other bodies will accelerate implementations by all participants. FDX plans to make an API implementation technical certification that can demonstrate compliance with the obligation to implement a QIS.
- **Registry**. FDX currently supports a registry¹⁴ that registrants may self-report certain information to assist in data connections. This registry could be used as a repository to enable data providers to centrally disclose its developer interface documentation and other information required to be disclosed under proposed 341(a) and/or expanded to cover other matters required under the final rules for all ecosystem participants. The FDX registry may also support additional technical certifications, evidence of compliance, etc..
- **Activities that FDX does not currently intend to pursue**. If not discussed above, the additional QSSB activities referenced in the Materials are activities beyond FDX's current mandate. In particular, FDX believes that the below listed activities, which are referenced in the Materials, are better to be addressed by other parties, if necessary:
 - **Setting standardized performance metrics**. The FDX registry could serve the purpose of meeting the reporting requirements as part of the QSSB qualification. However, standardization of performance metrics (e.g., response rate, latency, uptime / downtime) should not be performed by FDX since FDX only defines technology and methods for reporting metrics.
 - **Specify authentication and data security expectations**. FDX incorporates certain external leading and established authentication and data security standards (Open ID Foundation's FAPI, OAuth2 as well as others) as best practices. As noted above, FDX believes these best practices would not be appropriate for regulatory compliance, including as indicia of compliance.
 - **Liability determinations**. FDX believes it is not in a position to determine ecosystem participants' liability for errors or other losses.

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¹³ "Certification" with respect to FDX's technical certification, means the process by which conformance to certain technical requirements are tested against specific requirements, criteria, or standards and evidenced as of the time of the date of technical certification. Accreditation (which often includes vetting third parties' security practices, or performing third-party risk assessments, etc.) differs from Certification, and while FDX technical certification could become part of an eventual accreditation system, it is currently out of scope for FDX.

¹⁴ <https://registry.financialdataexchange.org/>. See SBREFA Filing for additional information on the FDX Global Registry.

Conclusion:

FDX appreciates the significant work that the CFPB has undertaken in its preparation of the Materials and Proposed Rules. FDX looks forward to working with the CFPB to seek recognition as a QSSB. FDX wishes to reiterate the accomplishments and overall benefits of the FDX API to enable end-users to access, share, and use their own financial data in compliance with regulatory and legislative requirements.

Enabling the industry to continue to drive adoption of industry standards, such as the FDX API, will be the most efficient and inclusive path forward toward providing consumers timely, relevant, reliable, and secure access to their financial information in support of managing their financial wellness while allowing for innovation and new competitive entrants.

FDX is dedicated to unifying the financial services industry around a common, interoperable, royalty-free standard for the secure and convenient access of permissioned consumer and business financial data. Membership is open to all stakeholders and the FDX board maintains a diversity of organizations across the ecosystem. Most importantly, regardless of membership status, FDX provides free access to the API (subject to an appropriate, short, end user agreement) standard along with tools, guides and supporting materials to enable equal access and promote successful implementation. By providing free access to a common, interoperable, royalty-free standard, FDX lowers barriers for smaller financial institutions and start-ups, encouraging competition in the marketplace, and creating a more level playing field for service providers meeting the needs of traditionally underserved communities.

FDX looks forward to continued work with FDX members, financial services industry stakeholders, and the CFPB to support implementation of the 1033 rulemaking. Thank you for your consideration of our comments and please do not hesitate to reach out.