

Institute for Local Self-Reliance's Comments on the Required Rulemaking on Personal Financial Data Rights

Submitted to Consumer Financial Protection Bureau

December 20, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Re: Comments on the Consumer Financial Protection Bureau's Required Rulemaking on Personal Financial Data Rights [Docket No. CFPB-2023-0052]

Dear Director Rohit Chopra,

Thank you for the opportunity to offer comments on the Consumer Financial Protection Bureau's (CFPB or the Bureau) proposed rule on Personal Financial Data Rights published on October 19. The Institute for Local Self-Reliance (ILSR) has for nearly five decades been one of the leading organizations advocating for thriving, diverse, equitable communities. Our research examines how policy can structure and strengthen our democracy and local economies. A significant part of this work includes advancing policies that create a financial system that works for all of us. This means fostering a diverse banking ecosystem with banking institutions of all sizes, including, especially, those that are locally owned and community-scaled.

The Personal Financial Data Rights proposed rule takes important steps toward establishing consumer financial protections in open banking.¹ Open banking is a new and rapidly growing banking model that enables consumers to share their financial data. The CFPB's proposed rule establishes important guardrails giving consumers and businesses more control and privacy over their financial data, while also establishing interoperability among traditional banks and other banking models.

You have noted that the proposed rule is designed to "jumpstart competition" and lessen concentration in the financial sector, where "a handful of very large banks and financial firms control much of the market."² We strongly agree that today's banking sector is too concentrated and, as a result, is failing to serve the needs of businesses, consumers, and communities. We also agree that the U.S. urgently needs a regulatory framework for open banking. We support the principles and goals in the proposed rule — including, especially, promoting competition by facilitating the ability to switch banks, safeguarding consumers' rights to their data, and holding non-bank financial entities to the same privacy and data protection standards as banks.

¹ In this letter, the term "open banking" is used in the same way as CFPB's *Federal Register* notice. It refers to the network of entities sharing personal financial data with consumer authorization.

² "Prepared Remarks of CFPB Director Rohit Chopra on the Proposed Personal Financial Data Rights Rule," *Consumer Financial Protection Bureau*, October 2023. <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-the-proposed-personal-financial-data-rights-rule/>

However, we are concerned that, without additional provisions in the rule and/or other regulatory steps, open banking on its current trajectory is likely to enhance the position of powerful incumbents rather than decentralize our financial system. While facilitating open banking may loosen the grip of the largest banks, absent additional measures, it does not necessarily follow that smaller, relationship-oriented and place-based financial institutions will gain competitive opportunities. Instead, we worry that dominant players in this space, such as Visa, Intuit, and PayPal, will gain more ability to exploit and enlarge their market power — an outcome that is not consistent with the CFPB’s aims or the public interest. Additionally, we question whether the prohibition on fees, as currently drafted, strikes the right balance in terms of fairness and promoting competition.

I. Today’s Consolidated Banking System Fails to Meet the Needs of Local Businesses and Communities

Nearly every sector of the economy has become dominated by a few large corporations and financial institutions. There are only a handful of banks in the U.S. that hold most of the country’s assets. These “megabanks” — Wells Fargo, Citigroup, Bank of America, and JP Morgan Chase — are too powerful and fail to meet the financial needs of local businesses and communities, particularly in rural and Black and brown communities. Community banks are crucial institutions for fostering vital local economies, but they have been vanishing for the past three decades. This has deprived communities of a critical source of financing for local businesses and development and contributed to the spread of banking deserts. We applaud you for your recent speech dedicated to uplifting the value of community banks and their relationship banking model.³ You noted in that speech that, in 1984, the U.S. had nearly 18,000 banking institutions. By 2022, that number had declined to fewer than 5,000. Lack of community banks has been linked to fewer business startups, fewer firms in operation, and fewer new jobs.⁴

Until the 1980s, the U.S. had a banking system comprised mainly of small, local banks that focused on serving their local communities, together with a mix of regional and national banks. The U.S. banking sector carried out key functions to support a growing economy. It provided a safe place to deposit money, facilitated payments, and extended credit to help people make major purchases and start businesses. There is a wealth of research on the ways policy choices cemented racial hierarchies through explicit and implicit rules locking out Black and brown communities from shared economic prosperity. However, the early 20th century system in many respects was more stable and better served consumers because of a series of New Deal policies that empowered federal agencies and states to regulate banks and ensure they served their local communities.⁵

In the last five decades, Congress and federal regulators began eroding these policies. They allowed banks to branch across state lines with no limits.⁶ Congress also overturned the Glass-Steagall Act expanding the scope of what banks could do by allowing commercial and

³ “Prepared Remarks of CFPB Director Rohit Chopra in Great Falls, Montana on Relationship Banking and Customer Service.” *Consumer Financial Protection Bureau*, June 2022. <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-in-great-falls-montana-on-relationship-banking-and-customer-service/>

⁴ “Fighting Monopoly Power: Banking.” *Institute for Local Self-Reliance*, July 2020. <https://ilsr.org/fighting-monopoly-power/banking-monopolies/>

⁵ *Ibid.*

⁶ “Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.” *Federal Reserve History*, September 1994.

investment banking under one roof.⁷ Regulators rubber-stamped bank mergers and underenforced the Bank Merger Act, enabling more consolidation and exacerbating the decline of community-oriented banking.⁸

Today's highly concentrated banking system has real consequences. It serves those with the most wealth and power, while most consumers, but particularly rural and Black and brown communities, are left behind. Our banking system is more prone to instability as seen in the Silicon Valley Bank collapse. Consumers are gouged by high fees and other predatory practices by megabanks. Small businesses and consumers do not have access to the credit they need. Furthermore, a growing number of communities across the country do not have access to physical banks, effectively residing in banking deserts.

II. As Local Banks Disappear, Consumers are Losing Access to Relationship Banking and Increasingly Depend on Absentee Online Providers for Loans, Payments, and Other Financial Services

Last year, you gave an important speech about the importance of relationship banking and the risks of a financial services sector wholly disconnected from place.⁹ You noted that the CFPB wants institutions of all sizes to foster an inclusive relationship banking model that meets consumers' reasonable expectations of good customer service.¹⁰ You noted that consolidation and new banking models happened at relatively the same time as many communities, particularly in rural communities, lost access to local banks.¹¹ When the banks shuttered, nothing replaced them. The Bureau found many communities have no bank branches. In rural communities the issue is particularly pronounced: sixty-five percent of banking deserts and 81 percent of potential banking deserts are in rural areas.¹²

With few in-person banking options, consumers and small business are turning to online banking, mobile payment services, and fintech to meet their banking needs, which rely on open banking technologies. Venmo (a popular mobile payments service), Mint (a personal financial management app), Coinbase (cryptocurrency exchange platform), Bluevine (fintech company targeting small business banking and lending services), and Robinhood (a popular trading app) are a few banking services that use open banking. Often, these third-party apps rely on fourth parties. For example, Plaid built the technology that lets Venmo, Robinhood, and Coinbase connect to banks and access customers' financial data.¹³

⁷ "Glass Steagall Act & the Volcker Rule." *Institute for Local Self-Reliance*, October 2010.

⁸ "Assistant Attorney General Jonathan Kanter Delivers Keynote Address at the Brookings Institution's Center on Regulation and Markets Event "Promoting Competition in Banking." *Department of Justice*, June 2023. <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-keynote-address-brookings-institution>

⁹ "Prepared Remarks of CFPB Director Rohit Chopra in Great Falls, Montana on Relationship Banking and Customer Service." *Consumer Financial Protection Bureau*, June 2022. <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-in-great-falls-montana-on-relationship-banking-and-customer-service/>

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ CFPB's *Federal Register* notice describes APIs as interfaces use a secure token to enable the direct transmission of structured machine-readable data. This interface promotes standardization and reduces risks of inaccuracies and security breaches. APIs have encryption, two-factor authentication, and access controls to limit the data that third-party providers can access.

Open banking and access to online providers gives small businesses access to different types of services, such as credit and a consolidated place to check and manage finances. However, evidence shows that online banking platforms and fintech companies are often a subpar option for new and growing small businesses. A recent survey conducted by the Federal Reserve found that only twenty-nine percent of the small businesses surveyed said they were satisfied with online lenders compared to nearly eighty percent reported being satisfied with their experience with a small bank.¹⁴ More than 60 percent of the small businesses surveyed reported challenges with high interest rates and unfavorable repayment terms with online lenders.¹⁵

Local banks are more effective at meeting the financial needs of the small businesses in their communities. Unlike big banks, their business model depends on making productive loans, which ties their success to the prosperity of their community. They do a better job of judging and managing risk because they understand the unique dynamics of the local economy. They provide superior service, including offering flexible underwriting criteria and lower rates, supporting small businesses in periods of change, and providing greater stability in downturns. This enables a broader range of entrepreneurs to start businesses.

III. Establishing a Regulatory Framework for Open Banking that Fosters Community-Rooted Institutions and Lessens the Power of Dominant Incumbents

In Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress tasked the CFPB with ensuring consumers' right to access and transfer their financial data. Furthermore, President Biden's Executive Order on Promoting Competition in the American Economy urged the CFPB to commence this rulemaking in order "to facilitate the portability of consumer financial transaction data so consumers can more easily switch financial institutions and use new, innovative financial products."¹⁶

We commend the CFPB for the steps it has taken with this rulemaking. However, we are concerned that without additional provisions in the rule and/or other regulatory steps, open banking on its current trajectory is likely to enhance the position of powerful incumbents. While facilitating open banking may loosen the grip of large banks, absent other regulatory measures, it is unlikely to expand competitive opportunities for smaller, relationship-oriented and place-based financial institutions. Instead, we worry that the market will tilt in favor of large players in this space, including Visa, Intuit, and PayPal, enabling them to further enlarge their market power.

Recent acquisitions expose the trend toward consolidation in open banking, which will likely undermine the Bureau's goals to "jumpstart competition" with this rulemaking. These examples are not comprehensive, but spotlight a concerning trend.

- ***PayPal's Acquisition of Venmo.*** In 2013, PayPal, the leading online payment company, acquired Venmo. According to a Pew Survey, 57 percent of U.S. adults use PayPal, while

¹⁴ "2023 Report on Employer Firms: Findings from the 2022 Small Business Credit Survey." *FED Small Business, Twelve Federal Reserve Banks*, March 2023. <https://www.fedsmallbusiness.org/survey/2023/report-on-employer-firms>

¹⁵ *Ibid.*

¹⁶ "Executive Order on Promoting Competition in the American Economy." *White House*, July 2023. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

30 percent used Venmo.¹⁷ Venmo operates as a subsidiary of PayPal, but the two companies integrate their services to offer payment solutions for businesses and consumers. PayPal's former Chief Financial Officer John Rainey claimed the company is "natural consolidator" in digital payments and is willing and able to buy more companies in the online payments space. He claimed, "by no means are we done yet on acquisitions — we have a pretty aggressive appetite in terms of acquiring other companies."¹⁸

- ***Intuits Acquisitions of Mint and Credit Karma.*** In 2009, Intuit, a business software conglomerate and owner of TurboTax, acquired Mint. Mint was one of the earliest and most popular personal finance apps, but as recently as last month, Intuit announced it is shutting down Mint and encouraging users to switch to Credit Karma — a platform Intuit acquired in 2020 that offers free credit scores and helps users track their money.¹⁹ According to the *New York Times*, this news causes an outcry from Mint users, some were reportedly especially upset that Credit Karma would not offer the same budget tools.²⁰
- ***Visa's Attempted Acquisition of Plaid and Successful Acquisition of Tink.*** Visa, the largest credit card company, attempted to acquire Plaid for \$5.3 billion in 2020.²¹ The Department of Justice Antitrust Division (DOJ) sued to block the merger, and a year later Visa and Plaid announced that the companies had terminated their merger agreement.²² The DOJ's complaint demonstrates the Biden Administration's commitment to blocking anticompetitive acquisitions of nascent competitors by dominant firms, but this attempted acquisition is further evidence that major financial services firms are intent on using mergers to control opening banking and ensure that these new technologies enhance rather than challenge their dominance. Visa did not give up its pursuit of acquiring companies providing the underlying technology for open banking. In 2021, Visa successfully acquired Plaid's European counterpart, Tink, for \$2 billion.²³ Like Plaid, Tink is a fintech company that enables businesses to access account data, initiate payments, and verify customer identity. It brands itself as "Europe's leading open banking platform."
- ***Mastercard Acquires Fincity to Advance Open Banking.*** In 2020, Mastercard, Visa's competitor and second largest payments processor, acquired Fincity — a fintech firm that helps banks share customer data with other financial firms.²⁴ Mastercard has

¹⁷ "Payment apps like Venmo and Cash App bring convenience – and security concerns – to some users." *Pew Research Center*, September 2022. <https://www.pewresearch.org/short-reads/2022/09/08/payment-apps-like-venmo-and-cash-app-bring-convenience-and-security-concerns-to-some-users/>

¹⁸ "PayPal's acquisition spree put it in an 'unrivaled' position." *Yahoo!Finance*, October 2018.

<https://finance.yahoo.com/news/paypals-acquisition-sprees-puts-unrivaled-position-181950256.html>

¹⁹ "Mint, One of the First Budgeting Apps, Is Shutting Down." *New York Times*, November 2023.

<https://www.nytimes.com/2023/11/03/business/mint-app-closing-intuit.html#:~:text=Intuit%2C%20the%20owner%20of%20widely.and%20%24200%20billion%20in%20transactions.>

²⁰ *Ibid.*

²¹ "Plaid valuation tops \$13 billion in first funding after a scrapped \$5.3 billion merger with Visa." *CNBC*, April 2021.

<https://www.cnn.com/2021/04/07/plaid-hits-13-billion-valuation-in-the-wake-of-scrapped-visa-deal.html#:~:text=Early%20last%20year%2C%20Visa%20agreed,Visa%20scrapped%20its%20takeover%20efforts.>

²² "Justice Department Sues to Block Visa's Proposed Acquisition of Plaid." *Department of Justice*, November 2020,

<https://www.justice.gov/opa/pr/justice-department-sues-block-visas-proposed-acquisition-plaid>

²³ "Visa Completes Acquisition of Tink." *Visa Press Release*, March 2022. <https://usa.visa.com/about-visa/newsroom/press-releases.releaseId.18881.html>

²⁴ "Mastercard to Acquire Fincity to Advance Open Banking Strategy." *Mastercard Press Release*, June 2020.

<https://www.fincity.com/in-the-news/mastercard-to-acquire-fincity-to-advance-open-banking-strategy/>

increasingly invested in this space, including the 2019 launch of a set of comprehensive open banking solutions in Europe. The DOJ approved this merger the same year.²⁵

The Bureau points to the concern of greater consolidation in open banking in the proposed rule, specifically noting Visa's intention to acquire Plaid and Tink, and Mastercard's acquisition of Fincity to advance open banking strategies."²⁶ The Bureau rightly notes the risks associated with the acquisition when it states that these efforts "indicate the potential for incumbents to mitigate or neutralize competitive threats from open banking, demonstrating the need for strong rules to protect the openness of the system."²⁷

However, the Bureau does not go far enough to indicate what more it will do, along with other regulators, to curb this trend. We encourage the Bureau to look closely at ways it can modify this rule, and propose additional rules, to ensure that the Personal Financial Data Rights rule leads to more competition and opportunities for place-based community banks to succeed.

IV. The Rule's Prohibition on Fees and Questions of Fairness

Banks and other providers subject to the rule would have to make personal financial data available, at no charge to consumers or their agents, through dedicated digital interfaces that are safe, secure, and reliable.²⁸ We agree with the CFPB's position that consumers' financial data belongs to consumers and they should have access to this data without having to pay high junk fees. We also agree that if fees are not regulated, big banks and large incumbents are likely to levy high fees on consumers and rival providers to thwart competition.

However, we question whether the rule as drafted strikes the right balance of fairness. Requiring banks, particularly community banks, to provide this financial data in a secure way will entail additional costs to stand up and maintain this service. Requiring smaller banks to provide this service for free to fintech and online banking entities, which are not similarly restricted in their ability to monetize that data, and which have much lower barriers to enter the market and attract customers, raises questions of fairness in our view.

We encourage the CFPB to look closely at this issue and to consider whether the rule as written is the right pathway. Data access could facilitate competition and innovation in consumer financial services, depending on how data sharing practices develop and how the regulatory framework is structured.

In closing, we applaud the CFPB for this rulemaking and the opportunity to comment. The banking system is rapidly moving toward open banking models and this rulemaking is an important step to ensure this transition is shaped by active public policymaking.

Thank you for the opportunity to share our views.

Sincerely,

²⁵ "DOJ Approves Mastercard's \$825M Acquisition of Fincity." *PYMNTS*, November 2020.

<https://www.pymnts.com/news/partnerships-acquisitions/2020/doj-approves-mastercard-fincity-acquisition/>

²⁶ "A Proposed Rule by the Consumer Financial Protection Bureau: Required Rulemaking on Personal Financial Data." *Federal Register*, October 2023, page 9. <https://www.federalregister.gov/documents/2023/10/31/2023-23576/required-rulemaking-on-personal-financial-data-rights>

²⁷ *Ibid.*

²⁸ *Ibid.* § 1033.301(c), pages 227 - 230

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