June 28, 2021

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller
of the Currency
400 7th St. SW, Suite 3E-218
Washington, DC 20219

Ms. Ann E. Misback
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

Mr. James P. Sheesley
Assistant Executive Secretary
Attn: Comments-RIN 3064-ZA24
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke St.
Alexandria, VA 22314-3428

Re: Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning

Agency/Docket Numbers:

Docket ID OCC-2020-0049

Docket No. OP-1743

Docket No. CFPB-2021-0004

Docket No. NCUA-2021-0023

RIN 3064-ZA24

The Financial Data and Technology Association of North America ("FDATA North America") appreciates the opportunity to submit comments to the multi-agency Request for Information ("RFI") released by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC"), the Bureau of Consumer Financial Protection ("CFPB"), and the National

Credit Union Administration ("NCUA") (jointly, "the agencies") regarding Financial Institutions' Use of Artificial Intelligence ("AI"), including machine learning ("ML").

As nations around the world adapt to modernized open finance regimes in which the consumer and small business have the unfettered ability to access and share their financial data with the companies of their choosing, financial institutions and service providers are quickly embracing AI to attract and retain their customers, expand access to credit and improve financial access, and combat financial crime. FDATA North America and our member companies are encouraged by the agencies' RFI on this important topic and offer herein our perspectives regarding the importance of embracing new technologies that improve customer experience and foster innovation.

About FDATA North America

FDATA North America was founded in early 2018 by several firms whose technology-based products and services allow consumers and small businesses to improve their financial wellbeing. We count innovative leaders such as the Alliance for Innovative Regulation, APImetrics, Betterment, BillGo, Codat, Direct ID, Equitable Bank, Envestnet Yodlee, Experian, Fiserv, Flinks, Interac, Intuit, Kabbage, Mogo, Morningstar, M Science, MX, Petal, Plaid, Questrade, Quicken Loans, SaltEdge, Trustly, ValidiFi, VoPay, Wealthica, Xero, and others among our members.

We are a regional chapter of FDATA Global, which was the driving force for Open Banking in the United Kingdom, and which continues to provide technical expertise to policymakers and to regulatory bodies internationally that are contemplating, designing, and implementing open finance frameworks. With chapters in North America, Europe, Australia, South America, and India, FDATA Global has established itself as an expert in the design, implementation, and governance of open finance standards and frameworks globally since its inception in 2013.

As the leading trade association advocating for customer-permissioned, third-party access to financial data, FDATA North America's members include firms with a variety of different business models. Collectively, our members enable tens of millions of American consumers and small business ("SMB") customers to access vital financial services and products, either on their own or through partnerships with financial institutions. Regardless of their business model, each FDATA North America member's product or service shares one fundamental and foundational requisite: it depends on the ability of a customer to actively permission access to some component of their own financial data that is held by a financial institution.

Although many of our members are not insured depository institutions subject to federal regulation and supervision, they have operational similarities to banks due to their close and long-standing banking relationships. As third-party service providers to large financial

institutions, they are subject to vendor due diligence and are required to be compliant with third-party risk management guidelines issued by the prudential regulatory agencies. Furthermore, as financial services companies, they are subject to myriad state laws and regulations.

AI Development is Hampered by Lack of Open Finance

Like the broader economy, the banking and financial services industry is currently experiencing unprecedented change fueled by digital innovation. As the world adapts to the new digital age, customers are increasingly becoming more reliant on third-party financial technology tools to manage their finances and improve their financial wellbeing. Modernized ecosystems, from the United Kingdom to Australia, have embraced this evolution through formal, regulatorily-implemented open finance frameworks. The benefits of such systems to greater financial access and inclusion are evident. For example: fintech participation in COVID-19 financial relief programs for SMBs, including the Paycheck Protection Program ("PPP"), was instrumental to extending access to critical assistance for minority borrowers.[1]

These ecosystems are empowering their consumers and SMBs to own, control, and share their financial data, thereby creating new opportunities and business models that benefit all users of the system. The heart of open finance is the structured sharing of data by consumers and SMBs with, and between, their financial service providers, based on the individual needs of and consent by the end user. Executed properly, open finance preserves the security and stability of the financial system while empowering customers to use their own data to improve their financial wellbeing.

FDATA North America is a strong proponent of a legally binding open finance framework in the United States, under which the consumer or small business is in control of their financial data and is enabled to provide consent through clear and universally applied requirements. This framework fosters a competitive financial marketplace in which consumers can freely choose the financial products and services providers of their choice to improve their financial wellbeing. Unfortunately, the current system in the United States allows financial institutions to retain full control of their customers' account data. This often makes it difficult for consumers to share their information with third-party tools that can assist them in managing their finances—even though they choose to—since financial institutions can ad-hoc restrict or even prohibit third-party access. In the United States, lack of a uniform customer financial data right has in some cases hampered the ability of third parties to more broadly deploy AI-enabled technologies in the financial ecosystem, largely because AI-powered tools require robust, permissioned data sets in order to deliver improved products and services to consumers and SMBs.

[1] Howell, S. T., Kutchler, T., & Streobel, J. (2020, December 10). *Which lenders had the highest minority share among their Payment Protection Program (PPP) loans?*

This archaic system stifles innovation to the detriment of consumers and small businesses. It means fintech firms and data aggregation platforms must painstakingly negotiate with financial institutions to gain access to the information they need, despite clear customer consent to the data. Since this system is governed by a patchwork of disparate bilateral agreements between financial institutions, aggregators, and fintech firms regarding customer-permissioned data access, a consumer's or SMB's ability to take advantage of third-party tools is almost entirely dependent on the policy of their financial institution and is dictated by bilateral access agreements to which they are not a party.

A recent study by FDATA North America of the connectivity data provided by the largest consumer-permissioned financial data aggregation firms in the United States revealed that consumers and small businesses encounter significant difficulty in taking advantage of third-party financial tools. Across multiple categories of financial institutions, customers endure connectivity failure rates of between 47.39% and 40.16% when they first attempt to link their accounts to these tools, depending on the type of financial institution they use.[2] Since AI-enabled financial services tools are only as effective as the robustness and quality of the data to which they have access, these barriers are directly limiting the potential uses of AI in the banking sector that could meaningfully expand financial access and inclusion.

Synergistic growth between open finance and AI can unquestionably lead to expanded consumer and SMB product offerings, more competition, lower prices, and more personalized financial products and services. Accordingly, our responses to the questions posed in this RFI relate to the lack of final rule promulgated under Section 1033 of the Dodd-Frank Wall Street and Reform and Consumer Protection Act ("the Dodd Frank Act"), enacted into law in 2010. The decade-long delay in this rulemaking has created significant friction in the ability of customers to access their own financial data, impeding the ability of the financial services ecosystem to roll out AI-enabled technologies more broadly.

We believe that the delay in implementation of such a rule is already hindering successful adoption of AI tools, particularly for nonbanks. Several of FDATA North America's member organizations that have executed data access agreements with large financial institutions report that the negotiations can take as long as three years to execute and often require extensive legal costs. Smaller financial institutions will not bear such costs and are thus discouraged from adopting new technology and user services. Additionally, the technology lift and technical resources required to develop independent application programming interfaces ("APIs") makes it difficult for the thousands of smaller financial institutions across the country to keep pace with the largest U.S. banks.

[2] FDATA North America Financial Data Connectivity Study, Fourth Quarter, 2019

An ongoing dependence on bilateral data access agreements therefore presents a significant challenge to smaller financial institutions that will struggle to keep pace with larger banks nationwide due to the substantial expense of negotiating bespoke agreements with any third party wishing to connect to that API. The certainty provided by a finalized Section 1033 rulemaking under the Dodd-Frank Act by the CFPB would help to break the dam of uncertainty that is hindering greater adoption of AI-enabled financial tools by consumers and SMBs.

Benefits to Broader AI Deployment in Financial Services

Consumers and SMBs enjoy a competitive market for financial services applications that use their financial data to power innovative products and services, from online lending platforms to payment and financial management applications. This competitive marketplace is essential to ensure the existence of high-quality financial products and services that improve consumers' financial lives and provide critical financial tools to SMBs, which have been particularly negatively impacted by the pandemic. As the business and technological arrangements underpinning customer-directed financial data sharing evolve, it is essential to maintain competition in the market for these data-driven financial services.

Access to credit is one element of the financial system where an open finance environment would significantly boost the ability of AI-driven tools to improve financial outcomes. Traditionally, calculation of credit risk has depended heavily on analysis of an applicant's history of paying their creditors. While this model has facilitated access to credit for many, the CFPB has repeatedly found that 45 million Americans are either entirely credit invisible or lack sufficient traditional credit history to safely access credit under this legacy underwriting regime.[3] AI-enabled credit models, fueled by customer-permissioned alternative data sets, can improve access to affordable credit for many of these so-called "credit invisible" and "thin file" Americans, relying in large part on the ability of borrowers to permission access to their financial transaction data. The sheer volume of these new data inputs makes physical human analysis cost-prohibitive and nearly impossible, necessitating the deployment of AI and ML-enabled tools in an open finance ecosystem to broadly provide access to these new credit extension models.

AI-powered financial tools also have the potential to greatly improve stakeholders' ability to thwart financial crimes. Empowering customers to clearly decide which pieces of their financial data to include in each credit application, for example, could assist cybersecurity analysts to locate the sources and causes of data breaches. By quickly identifying exactly where a data breach may have occurred, cybersecurity analysts can more quickly proceed to remediate and redress consumer harms and make the necessary software adjustments to prevent further breaches. AI and ML-enabled tools are today actively supporting efforts within the financial

[3] CFPB study shows financial product could help Consumers build credit. (2020, July 13). Retrieved from https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-shows-financial-product-could-help-consumers-build-credit/.

services ecosystem to identify fraud and illicit money movement. Open finance will facilitate broader deployment of these types of tools.

Clear insight and agency over financial data in an open finance regime also provides end users with more control over their data and awareness of how it is being used, including for AI-enabled financial products or services. Today, many large financial institutions, in partnership with data aggregation firms, have implemented customer-facing financial data dashboards. These dashboards allow consumers and SMBs to monitor, in real time, to which parties they have permissioned data access and how that data is being used, providing more control to end users, and adding a layer of data security to the ecosystem.

Modernizing the Regulatory System

FDATA North America and its member companies are strong proponents of a fairer and more inclusive financial services ecosystem. The first step in moving towards this outcome and creating a financial services system in which AI and other new technologies can be used to expand financial access and improve financial wellbeing, is the promulgation of a financial data right for consumers and SMBs. As FDATA North America has previously offered to the CFPB in its various requests for public input regarding implementation of Section 1033 of the Dodd-Frank Act, a rule implementing a legally binding financial data right that also sees supervisory oversight of data aggregators and sets minimum security thresholds for third-party financial firms is, in our view, the most effective means of accomplishing this goal. Such a regime would provide a greater level of federal oversight of nonbank fintech tools than currently exists, including those leveraging AI technologies.

As the agencies appropriately note in their joint RFI, careful consideration must be given to how AI-enabled tools can be more broadly deployed in the financial services system while adhering to the critical goals of preserving safety and soundness and protecting consumers and SMBs, particularly regarding fair lending requirements. The regulations that protect against lending discrimination are critically important to ensuring fair access to credit, but like so many regulatory requirements in the financial services spaces, were promulgated before AI was even contemplated in the context of banking. Therefore, industry participants would greatly benefit from agency guidance and a clear regulatory framework that directly addresses the application of existing statutes, including the Equal Credit Opportunity Act, to AI-enabled credit extension.

Specifically, we believe regulators should make clear: exactly what types of evidence would be acceptable to demonstrate that an AI lending model is *not* discriminating against protected classes; supervisory expectations regarding the explainability of AI models to regulators; and how third-party oversight requirements will be applied to technology partners of regulated financial institutions that deploy AI tools.

Looking Ahead

The open finance regulatory environments embraced by nations including the U.K., Australia, and Singapore are improving global competitiveness and enhancing financial inclusion among their citizenries. The U.K.'s Open Banking Implementation Entity recently announced that more than two million net new consumers across the country have adopted tools deployed under its Open Banking regime[4]. In Canada, the Department of Finance is moving forward with a deployment of open finance and is in the midst of the final element of its consultative process, which likely will culminate with the Minister of Finance tabling legislation in Parliament implementing the country's version of an open finance regime next year[5]. Likewise in Australia, a Consumer Data Right was launched earlier this year through which consumers will eventually have full utility over the totality of the data they generate. Financial data is one of the first elements of the Australian Customer Data Right ecosystem to be implemented[6].

Conclusion

Financial institutions have been operating under a regulatory framework designed well before modern AI technology existed. Although it was designed to keep banks operating safely and soundly, the existing reliance on legacy technology for compliance purposes, as well as the increased reliance of consumers on digital technology to help them improve their financial wellbeing, is hindering widespread data sharing and adoption of AI across the industry, to the detriment of consumers and SMBs.

Promulgation of a legally binding financial data right is a critical first step towards broader deployment of AI-enabled financial tools that can meaningfully improve financial access and wellbeing, along with more clarity from the agencies regarding the application of existing supervisory expectations on third-party bank partners that utilize AI-enabled tools for various financial products and services.

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[4] United Kingdom Open Banking Implementation Entity. Published September 2020. Retrieved from https://www.openbanking.org.uk/about-us/latest-news/real-demand-for-open-banking-as-user-numbers-grow-to-more-than-two-million/.

[5] Department of Finance Canada. News Release. Published January 11, 2019. Retrieved from https://www.canada.ca/en/department-finance/news/2019/01/department-of-finance-canada-launches-consultations-on-open-banking.html.

[6] Australian Competition and Consumer Commission. Published July 1, 2020. Retrieved from: https://www.cdr.gov.au/news/media-releases/consumer-data-right-goes-live-data-sharing.

Thank you for your consideration of FDATA North America's perspectives on this important subject.

Sincerely,

Steven Boms
Executive Director
FDATA North America