December 29, 2023

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

RE: Required Rulemaking on Personal Financial Data Rights
(RIN 3170-AA78)

Dear Director Chopra,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. ("Association") appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("Bureau's") proposed Required Rulemaking on Personal Financial Data Rights. The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 3.6 million consumer members. The Association has developed these comments in consultation with our members.

The Association's High-Level Comments

- The Association opposes the Bureau's proposal because it goes beyond any reasonable interpretation of Section 1033 of the Dodd-Frank Act and would impose substantial, unnecessary costs on credit unions. Consumers already have easy online access to their credit union account data. We urge the Bureau to withdraw this proposal and go back to the drawing board.

- If finalized, the rule would create significant cybersecurity vulnerabilities and regulatory burdens for credit unions by creating backdoors into depository institutions' core banking systems that could be exploited by hackers.

- The proposed rule is not consistent with the plain language of Section 1033 of the Dodd-Frank Act or Congress's intent in adopting that provision. Congress never intended to create an "open banking" system, rather, it only anticipated financial institutions providing consumers with access to consumers' own account data.

- The proposal also would give fintechs a new competitive advantage that would allow them to ride credit unions' rails for free while sticking credit unions with the bill for implementation costs as well as ongoing cybersecurity, fraud, and other operational expenses.

The Association's Detailed Comments

The Association strongly echoes the comments submitted by the Credit Union National Association (CUNA) and the National Association of Federally-Insured Credit Unions (NAFCU) that this proposed rule is not a reasonable interpretation of its statutory authority in Section 1033 of the Dodd-Frank Act and would impose substantial and unjustified compliance burdens and cybersecurity risks on credit unions and other depository institutions. We urge the Bureau to withdraw this proposal and develop a new rule that is more consistent with the unambiguous language of Section 1033 and will better protect both credit unions and consumers.

1. *The Proposed Rule Is Unnecessary and Would Create an Unlevel Competitive Playing Field that Advantages Fintechs at Credit Unions' Expense*

Credit union members already have convenient access to their account information through credit unions' online and/or mobile banking platforms, making this proposal redundant. In addition, numerous laws—such as Regulation E, the Truth In Savings Act, the Gramm-Leach-Bliley Act, the Right to Financial Privacy Act, and so forth—already protect consumers' rights with respect to their credit union accounts and data, however, these consumer protections do not necessarily apply to the financial technology ("fintech") companies.

The proposal would also give fintechs a new competitive advantage by allowing them to ride credit unions' rails for free via unpaid access to credit unions core banking systems through a backdoor, including the ability for fintechs to transact on accounts held by the credit union without meaningful oversight. Credit unions, however, would nevertheless be responsible for implementation costs related to creating these backdoors into their core systems, as well as ongoing cybersecurity, fraud, and other operational expenses.

The Bureau should develop a new proposal that is more in-line with congressional intent and will not create an unlevel competitive playing field that disadvantages credit unions. Fintechs have not invested in creating depository institution operational infrastructures the way credit unions have. Fintechs should not be allowed to ride our rails for free.

2. *The Proposed Rule Violates the* Chevron *Doctrine Because It Conflicts with Unambiguous Provisions of Section 1033*

Most fundamentally, however, Congress did not intend to mandate an "open banking" system to benefit fintechs when it adopted Section 1033 of the Dodd-Frank Act in 2010 even though that would be the result of the Bureau's proposal if it is finalized. The key provisions of Section 1033 read:

> "Subject to rules prescribed by the Bureau, a covered person [such as a credit union] shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to

> the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers… The Bureau, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section."

The final part of the statutory provision quoted above—"standardized formats for information, including through the use of machine readable files, to be made available to consumers…"—clearly gives consumers access to their own data. Nowhere in Section 1033, however, does it mention requiring credit unions to give fintechs direct access to credit unions' core banking systems.

This means that the Bureau's proposal is an invalid interpretation of Section 1033 under Step One of the Chevron Doctrine. Congress would have expressly mentioned credit unions giving fintech companies direct access to their core banking systems in Section 1033 had Congress intended to authorize the type of "open banking" system that the Bureau's rule would impose.

Put another way, Congress only intended to give consumers access to their own data, not mandate "open banking". Congress also did not intend to force credit unions and banks to create a backdoor into their core banking systems—at their own expense—in order to grant third-party fintechs virtually unfettered ability to transact on the consumers' credit union accounts without meaningful oversight by the credit union.

The proposed rule is therefore not a reasonable interpretation of Section 1033 pursuant to Step One of the Chevron Test based on traditional interpretative cannons such as giving each provision of a statute meaning and expressio unius est exclusio alterius ("the expression of one is the exclusion of the other"). See, e.g., Indep. Ins. Agents of Am. v. Hawke, 211 F.3d 638, 643-45 (D.C. Cir. 2000) ("In addition to the canon of avoiding surplusage, expressio unius est exclusio alterius also points to the conclusion that Congress did not intend for all national banks to have insurance powers under § 24 (Seventh).").

We urge the Bureau to withdraw this fundamentally flawed proposal and develop a new rule that is consistent with the unambiguous provisions of Section 1033.

3. *The Proposal Rule Would Create Significant Cybersecurity, Fraud, and Other Operational Costs for Credit Unions That Would Not Be Recouped*

The proposal, if finalized, would also impose significant fraud, cybersecurity, and other operational risks and expenses on credit unions without providing a reasonable mechanism for credit unions to recoup these new losses. Among other things, credit unions would need to pay to upgrade their core banking systems in order to create the backdoor that Bureau's proposal would require them to implement at their own expense.

Hackers will sooner or later learn how to access these backdoors and will then likely be able to take over potentially unlimited numbers of consumers' accounts at once, if not an institution's entire core banking system, causing significant fraud losses to depository institutions and their insurers that could even bring down even the largest commercial banks in just one incident. The potential for large-scale operational losses resulting from cybersecurity breaches is a safety and soundness concern that the Bureau's proposal does not sufficiently consider.

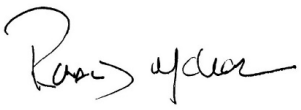
In addition, despite the fact that the fintechs would be the entity transacting on the consumer's credit union account, the credit union would remain liable under Regulation E and other laws for fraud and other errors created by these fintechs' actions.

Credit unions should not be held liable for the actions of third parties that the credit union does not have a contractual relationship with. The Bureau's suggestion in the proposal that credit union would be able to recoup these fraud losses through tort litigation ignores the fact that tort litigation is not a cost-effective way to recoup run-of-the-mill fraudulent transactions that are typically only three- or four-figures each but can add up quickly. A credit union suing a large fintech company over fraudulent transactions would require potentially seven-figures in legal fees that the credit union may not be able to recoup under tort law even if its lawsuit were ultimately successful following years of protracted litigation.

The proposal, if finalized, would therefore require credit unions and their insurers to absorb the increase in fraud resulting from this rule as a practical matter. Most financial institutions would ultimately have no choice but to pass on these new costs to consumers in the form of higher fees and interest rates. We urge the Bureau to withdraw this proposal and develop a new rule that is more consistent with the unambiguous language of Section 1033 and will better protect both credit unions and consumers.

Thank you for the opportunity to comment on the Bureau's proposed Required Rulemaking on Personal Financial Data Rights. If you have any questions or desire further information, please do not hesitate to contact the Association at (508) 481-6755 or govaff-reg@ccua.org.

Sincerely,



Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.
rmclean@ccua.org