



# CONSUMER FINANCIAL DATA RIGHTS GROUP

May 1, 2018

## **ELECTRONICALLY SUBMITTED**

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

Re: Request for Information Regarding Bureau External Engagements (Docket No. CFPB- 2018-0005)

The Consumer Financial Data Rights Group (the “CFDR Group”) seeks to promote the voice of consumers and small businesses in the financial services system, defending their right to access and share their financial transaction data, while advocating for a fair and balanced system that puts these consumers and small businesses at the heart of the financial ecosystem.<sup>1</sup> Members of the CFDR Group believe that everyone should have access to innovative, technology-based products and services that improve their financial lives. These products, powered by unfettered, permission-based access to financial data, require a free and open system to deliver on their powerful promises of a more inclusive financial services industry.

The CFDR Group appreciates the Bureau of Consumer Financial Protection’s (the “Bureau”) interest in assessing the effectiveness of its external engagement strategies with a broad range of interested parties and considering what, if any, changes might improve such engagement. We are pleased to respectfully offer our thoughts, informed by our member companies’ years-long histories with the Bureau, for your consideration. As discussed in greater detail below, our comments emphasize two central points:

- In addition to preventing fraud and predation in consumer financial services, the Bureau should maximize the use of its statutory authorities to collaborate with FinTech companies to foster innovation by empowering consumers to utilize technology-based tools that will allow them to improve their financial wellbeing, which the Bureau has done and should continue to do through initiatives sponsored and overseen by Project Catalyst and other offices within the Bureau;

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<sup>1</sup> The CFDR GROUP’s website is [www.consumerfinancialdatarights.org/](http://www.consumerfinancialdatarights.org/).

- The Bureau should make greater use of forward-looking guidance and rulemaking rather than fact-specific enforcement actions or nonbinding principles to more clearly and consistently communicate to market participants its regulatory expectations.

I. Project Catalyst’s Collaborative Approach to Regulating Innovative Technologies is a Model for Other Agencies.

The Bureau is well aware that advances in technology have already changed and continue to change the provision and consumption of consumer financial services. Today’s FinTech innovations are taking place with such pace that they challenge the regulatory framework—not just specific regulations themselves, but also the foundations of our regulatory architecture. Moreover, some innovations call into question which agency is or ought to be the primary regulator of a FinTech application.

The various Federal financial regulators have at a minimum shown significant and sincere interest in monitoring and learning about the FinTech community; some have been exceptional in their support of it because they see the obvious consumer benefits technology has to offer. The CFDR Group commends the Bureau for its establishment, funding, and staffing of Project Catalyst, an office within the Bureau designed specifically to study, support, and promote innovation in the consumer financial services landscape. Specifically, Project Catalyst is the touch point for the Bureau’s No-Action Letter policy formalized in 2016, which provides a pathway for market disrupters to seek assurances from the Bureau that new technology does not run afoul of consumer financial protection law. Project Catalyst was also primarily responsible for the creation of the CFPB Financial Well-being Scale and played a significant role in the development of the Bureau’s “Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation” document published in October 2017. Though, as we will discuss, these non-binding principles have not had a meaningful impact in the market, member-companies of the CFDR Group were provided with several opportunities to deliver their perspectives and share their expertise with the Bureau as it crafted the principles. These engagements included formal, traditional forums, such as submitting comments in response to the Bureau’s Request for Information on Data Access and testifying at the Bureau’s field hearing on consumer access to financial records in Salt Lake City. Both Project Catalyst and the Bureau’s business liaison also regularly engaged bilaterally with the CFDR Group, the FinTech community more broadly, and traditional financial institutions throughout the process of drafting the data sharing and aggregation principles. We would respectfully submit that the Bureau’s engagement model with industry with regard to consumer and small business data access should serve as a model for other agencies.

Project Catalyst is the embodiment of the Bureau’s recognition that the innovative, market-driven products and services can provide enormous benefits to consumers and small businesses and that regulatory challenges presented by FinTech require a deep study before government acts. For its part, the OCC has created an Office of Innovation to perform a similar function; the CFDR Group hopes that other regulators will soon follow suit and create similar offices with visibility at the highest levels of leadership within their agencies and are empowered to be agents for modernization and innovation. The CFDR Group looks forward to a continued productive and collaborative relationship with the Bureau through Project Catalyst.

II. FinTech Innovations Will Serve More Consumers and Improve Financial Wellbeing if the Bureau More Clearly Articulates the Rules of the Road.

Today's diversity of FinTech applications means that FinTech implicates dozens of public laws and hundreds of regulatory frameworks, many of which are administered and enforced by the Bureau. After all, the Bureau was designed under the Dodd-Frank Wall Street Reform and Consumer Protection Act to be the central repository of consumer financial protection policy for the Federal government. FinTech is by its nature disruptive not only to incumbent institutions and processes but also to existing regulation. Rather than perceive these regulatory challenges as a threat to existing regulation, the CFDR Group encourages the Bureau and other regulators to view the immense opportunities FinTech presents to consumers and small businesses as tools to increase access to financial services, lower fees and to improve their financial wellbeing. The CFDR Group believes that the regulatory agencies can best foster these consumer-centric innovations by pursuing policy agendas that protect and empower consumers and small businesses by ensuring continued safe and secure access to their financial data so that they can take advantage of innovative products and services without significant restriction.

The CFDR Group has enjoyed a collaborative relationship with Project Catalyst on forward-looking initiatives. We would encourage the Bureau to take additional steps to integrate subject matter experts and staff from other divisions of the Bureau more closely into the work of Project Catalyst, increasing the benefits of this engagement for both industry and the Bureau.

At times, the Bureau has been opaque about how it creates regulatory policy and how it communicates its expectations to the innovator community. In some cases, the Bureau has used enforcement actions, consent orders or non-binding principles statements to signal its expectations. Enforcement actions, however, are fact-specific, making it difficult for non-parties to the action to discern how closely they must adhere to the terms of the consent order. Non-binding principles, such as the data sharing principles the Bureau released in October 2017, by their nature do not require any market participant to adhere to them. The net result of this inconsistent approach has been to create uncertainty, leading to different interpretations of Bureau enforcement actions and principles and different policies and business practices at regulated institutions, which, in turn, can lead to different outcomes for consumers and small businesses.

The Bureau's creation of the No-Action Letter policy was a positive step in fostering a more collaborative regulatory process for new technology. The CFDR Group encourages the Bureau to go further and make greater use of formal guidance and, where appropriate, rulemaking to communicate to the regulated community its expectations, especially about the application of older regulations to new and evolving products and services, such as financial data access. These expectations should be promulgated clearly and uniformly across the industry to ensure consistent application of the Bureau's intent. In so doing, the Bureau should use Requests for Information, roundtables, and open stakeholder meetings to ensure that it has all the data it needs to craft regulatory solutions that balance consumer and small business access to products with the important protections needed for these stakeholders. The CFDR Group stands ready to work with the Bureau in this regard, as it has done successfully in recent years with Project Catalyst.

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The CFDR Group commends the Bureau for its outreach to the public as it considers how best to use external engagement with stakeholders. We have enjoyed a productive working relationship with Project Catalyst and believe innovation could be unleashed even further if the Bureau were to signal the rules of the road uniformly and with greater clarity. We look forward to working with the Bureau to empower consumers and small businesses to utilize technology tools that will allow them to improve their financial wellbeing while helping the Bureau fulfill its statutory mandate to protect consumers. Should the CFDR Group be able to provide any additional information, I hope you won't hesitate to contact me at (202) 876-2995 or sboms@allonadvocacy.com.

Sincerely,



Steven Boms  
Executive Director  
Consumer Financial Data Rights Group

