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Chairman Mike Crapo and Ranking Member Sherrod Brown  
Senate Committee on Banking, Housing and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510  
MARCH 15, 2019

Senators Crapo and Brown,

Thank you for the opportunity to provide feedback on these important issues that are at the heart of Plaid's work. We are a technology company that serves as a major connector between banks and the financial applications and services that hundreds of millions of consumers have come to rely on in the modern financial era. Our mission is to democratize financial services through technology by helping consumers and businesses use their own financial account data to improve their financial lives and pursue greater economic opportunity.

Account connectivity, often referred to as data aggregation, is not new. In fact, consumers have been linking financial accounts since the onset of internet banking. The proliferation of mobile phone-based applications such as savings and budgeting apps and peer-to-peer payments has rapidly expanded the number of consumers and businesses relying on account connectivity over the past several years. Account connectivity is the infrastructure backbone underlying much of that fintech wave.

Policymakers have recognized the incredible potential of this technology to expand consumer choice through access to new innovative products, increase transparency and competition, and give consumers more control over their financial lives. The Consumer Financial Protection Bureau issued non-binding principles for consumer-authorized data sharing, noting that the Bureau "advocates strongly for consumer control of the consumer's data and transparency."<sup>1</sup> Then-Director Richard Cordray noted in a speech "that data access makes it possible to realize the many benefits of competition and innovation."<sup>2</sup> These benefits were further acknowledged in the Treasury Department's 2018 report on nonbanks and innovation. Secretary Steven Mnuchin identified the need for "a regulatory environment that supports responsible innovation," and the report highlighted the benefits of consumer-permissioned data to consumers and businesses and suggested that "with sustained commitment to the principle that consumers should be able to freely access and use their financial account and transaction data, Treasury believes

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<sup>1</sup> CFPB Outlines Principles For Consumer-Authorized Financial Data Sharing and Aggregation (October 17, 2017), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-outlines-principles-consumer-authorized-financial-data-sharing-and-aggregation/>

<sup>2</sup> Prepared Remarks of CFPB Director Richard Cordray at the LendIt USA Conference (March 6, 2017), available at <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-lendit-usa-conference/>



that improved approaches to data aggregation that will benefit consumers and financial institutions alike are surely attainable.”<sup>3</sup>

We agree with the Committee that “the collection, use and protection of personally identifiable information and other sensitive information” warrants close examination. As the Committee considers how existing laws and regulations -- such as the FCRA -- “should work in the digital economy” we believe modern technology provides an opportunity to pursue a new approach to data. Whereas the FCRA envisioned a world in which data is collected without a consumer’s involvement or permission, technology now exists that can enable consumers to exercise much greater control over their data, including the ability to “permission” their data only to parties they choose.

In the RFI you inquire about credit bureaus, data brokers and other organizations that interact with personal data. At least two factors are important in assessing and differentiating among these stakeholders: (1) whether a consumer consents to the collection of data and (2) whether a consumer’s data is shared with organizations with whom they have no direct relationship. Credit bureaus are best known for their activities in the first category, collecting the credit data of consumers without their consent and making that data available to prospective lenders. Data brokers are known for their activities in the second, selling vast types and amounts of consumer data to businesses with whom a consumer may have no direct relationship. Some brokers also collect data without consumer consent. Plaid represents a new approach enabled by modern technology, helping a consumer access their own data only when they chose to do so, and sharing it only with the companies they select. This is a consumer-permissioned model, in which consumers control what they do with their data.

An approach that centers on individual “control” is consistent with the type of rights Americans have indicated they believe they should have. Plaid conducted a nationally representative survey between December 15 and 20, 2018 that found:

- 70 percent of respondents believe they should have the right to access their data, or give permission for someone else to access their data, without paying a fee, but only 33 percent believe they currently do have that right.
- 64 percent of respondents believe they should have the right to give access to their data to anyone they want, without restriction, but only 39 percent believe they currently do have that right.
- 71 percent of respondents believe they should have the right to share the rates and fees they are paying on a credit card or other financial

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<sup>3</sup> U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation (July 2018), available at <https://home.treasury.gov/news/press-releases/sm447>



product with competitors to see if they can get a better rate, but only 42 percent believe they currently do have that right.

- 73 percent of respondents believe they should have the right to withdraw consent of a company to access their data with the push of a button, but only 38 percent believe they currently do have that right.

We believe the ability of individuals to exercise control over their data should be a defining characteristic of any solutions that emerge to fix the current system and are grateful for the opportunity to respond to the questions below.

**1 / What could be done through legislation, regulation, or by implementing best practices that would give consumers more control over and enhance the protection of consumer financial data, and ensure that consumers are notified of breaches in a timely and consistent manner?**

The United States need not adopt a prescriptive regulatory mandate like the Second Payment Services Directive (PSD2) in Europe, but additional legislative and regulatory clarity in key areas could help establish the conditions upon which industry can better compete to develop the best solutions for consumers to exercise control over their data. To that end, we believe additional clarity in the following areas would give consumers more control over and enhance the protection of their financial data:

- Congress should reaffirm the right of consumers to access their account data through third parties. In its report the Treasury Department notes the ambiguity surrounding this issue, but argues that Section 1033 of the Dodd-Frank Act should be “interpreted to cover circumstances in which consumers affirmatively authorize, with adequate disclosure, third parties such as data aggregators and consumer fintech application providers to access their financial account and transaction data from financial services companies.” Congress should resolve this ambiguity--or press the CFPB to do so.
- Policymakers should also make clear that Section 1033 gives consumers the ability to use third parties to share with other entities any information the consumer would be able to see when they log into their own account or review their printed statements.
- Plaid believes that legislation clarifying reasonable and uniform data breach notification requirements, as supported by several members of the Committee, would provide helpful baseline standards that will benefit consumers in the event of data breaches.

**2 / What could be done through legislation, regulation, or by implementing best practices to ensure that financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) provide adequate disclosure to**



**citizens and consumers about the information that is being collected about them and for what purposes?**

Consumer permission is the backbone of account connectivity. However, industry disclosure practices can and should be improved. At Plaid, consumer permission and control are core principles. Unlike many other service providers who rely on personal or financial data, our account connectivity services require consumers to affirmatively provide or permission access to their account information to the company they want to share it with. (See answer to Question 4.)

Most importantly, consumers should understand: What data is being shared? For what purpose? And what ability do they have to direct what happens to their data? At Plaid, we have developed simple, plain-English disclosures and privacy policies designed to help consumers understand which information is collected and how it is used, shared and stored. We have previously discussed the potential benefits of Schumer-box-like disclosures for consumer data access,<sup>4</sup> and believe Plaid--and the rest of the industry--should continue to develop and test more effective consumer disclosures.

Finally, disclosure is also important when consumers decide to modify their consent. Consumers should know, for example, that they may lose access to a product, or service may be impaired, if they de-link their account(s).

While we believe disclosure can and should be improved, we also believe technology may provide new avenues for better achieving the goal of helping individuals understand the implications associated with sharing their data. For example, digital delivery channels such as mobile phones can enable just-in-time delivery of key information to individuals when they need it most. Measures to improve the transparency or digestibility of the information individuals receive, however, should not be seen as a substitute for giving individuals more control over their data, such as the ability to actively manage how their data is used.

**3 / What could be done through legislation, regulation, or by implementing best practices to give citizens and consumers control over how financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) use consumer data?**

The best way for individuals to exercise control over their own financial data is for them to have clearly articulated legal rights associated with that data. Dodd-Frank Section 1033 establishes a fundamental right for consumers to access and share their account information, and companies like Plaid help

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<sup>4</sup> Banking needs a 'Schumer box' for data sharing (October 25, 2018), available at <https://www.americanbanker.com/opinion/banking-needs-a-schumer-box-for-data-sharing>



facilitate that right by building the technology allowing consumer-permissioned data access. But Congress, federal agencies, and the industry can do more to clarify and supplement that right.

“Control” means that consumers should be able to decide how their data is treated, without depending on unrealistic expectations that individual consumers must intimately understand the technology in order to manage their data. Congress or the applicable regulatory agencies can help consumers do this by clarifying that consumer permission should be tied to the services the consumer requests or purposes for which they are specifically informed when they grant access. Affirmative permission (not fine-print click-through) should be required in order to sell account data, even in aggregated form, to any parties the consumer doesn’t have a direct permissioning relationship with. To do otherwise would breach the trust consumers place in fintech providers. Static disclosure, such as a Schumer box when initially seeking customer consent, is important. But ongoing control will require development of more dynamic controls, which should give consumers the ability to manage their data. Some banks are working on solutions that would be hosted by each bank, but that is not a holistic solution for the consumer unless all of his or her linked accounts reside at that bank. Plaid is committed to enabling greater consumer awareness and control over how their data is used.

**4 / What could be done through legislation, regulation, or by implementing best practices by credit bureaus to protect consumer data and to make sure that information contained in a credit file is accurate?**

As mentioned above, Plaid relies on a consent-based permissioned model, whereby consumers specifically authorize the sharing of financial accounts they select with the recipients they choose. This is distinct from prevailing models that operate without consumer consent. We believe Congress and regulators should continue to ensure space for innovative models that prioritize consumer consent and control as the means for serving the best interest of consumers, who can check the accuracy of their data before sharing it.

**5 / What could be done through legislation, regulation, or by implementing best practices so a consumer can easily identify and exercise control of data that is being (a) collected and shared by data brokers and other firms and (b) used as a factor in establishing a consumer’s eligibility for credit, insurance, employment, or other purposes.**

The use of financial account data to facilitate loan underwriting is a relatively recent application of consumer data access. Used to verify income or assets (e.g., Fannie Mae’s “Day-1 Certainty” program) or to facilitate underwriting on the basis of “cash flow” data, expanding access to borrowers with low or no credit scores or history, account connectivity is modernizing how—and how quickly—lending decisions can be made.



Policymakers should prioritize a holistic regulatory framework to support secure data access, protect privacy and put consumers in control of their own data. Simply applying existing regulations like the FCRA to new use cases without full consideration of the implications may impede innovation without actually providing additional consumer protection.

The CFPB has jurisdiction over both the FCRA and Dodd-Frank Section 1033, and is well positioned to provide guidance for consumer permissioned data sharing that strengthens consumer protection, improves consumer choice, and facilitates innovation. As Congress works to consider what protections should apply to traditional consumer bureaus and data brokers, it should bear in mind that data access providers working under 1033 don't fall into these two categories -- even when the data is used to facilitate lending decisions. The permission-based model used by Plaid and other firms in this space enables individuals to permission their data as they see fit. Congress should look to the CFPB to clarify that the FCRA isn't a barrier to consumers using a service like Plaid to share their data, provided consumers are given sufficient transparency about and control over sharing their own financial information.

We thank the Committee for prioritizing this issue and seeking public comment. We would welcome the opportunity to meet with you and your staff, respond to any questions you might have, or provide additional information.

Sincerely,

A handwritten signature in black ink that reads "John Pitts". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

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John Pitts  
Plaid Policy Lead