



February 04, 2021

Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

SENT VIA ELECTRONIC MAIL TO 2020-ANPR-1033@cfpb.gov.

Re: Advance Notice of Proposed Rulemaking Regarding Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Docket ID CFPB-2020-0034)

Investnet Yodlee (“Yodlee”) welcomes this opportunity to provide its perspective in response to the Consumer Financial Protection Bureau’s (“CFPB” or “the Bureau”) Advance Notice of Proposed Rulemaking (“ANPR”) regarding implementation of Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”). As a data aggregator that has been enabling consumers with access to their financial data globally across a vast spectrum of different types of financial accounts for the past two decades, and whose relationships with large financial institutions are subject to examination by the U.S. Federal banking agencies, Yodlee appreciates the opportunity to share its expertise and insights as the Bureau explores how best to expand consumer financial data access while ensuring consumer safety and protection.

For clarity, our use of terms herein rely on the definitions provided under the Dodd-Frank Act and the ANPR itself.

About Yodlee

Yodlee is the global market leading platform provider for consumer permissioned financial data access. For the past twenty years, Yodlee has provided consumer-permissioned account aggregation capabilities with hosted solutions and commercial APIs on a business-to-business basis to customers around the world. We are proud to count 15 of the largest 20 U.S. financial institutions as our customers. Both traditional financial institutions and non-bank financial technology firms ("Fintech") use Yodlee’s platform to allow consumers to access and share their financial data across a myriad of legally permissible use cases. All of this is done in an effort to give consumers options for improving their own financial wellness as only those individuals themselves can truly appreciate. In this way, the Yodlee platform has been used to access over 470 million financial accounts and given consumers the choice to engage with financial



management, advice, and lending solutions they themselves have selected as best suited to help them achieve their financial goals.

As the leading enabler of consumer financial data access, Yodlee has been integrally involved in the Bureau's exploration of consumer-authorized data access and Section 1033 of the Dodd-Frank Act for the last several years. When the CFPB began in 2016 to undertake a series of public events aimed at "learning more about consumer and third-party account access" and "supporting the ability of consumers to access and share personal information about their own financial lives with others where they believe it is in their interest to do so,"¹ Yodlee actively participated in the Bureau's process. Yodlee was invited to join a November 2016 CFPB field hearing on the subject in Salt Lake City as a panelist, submitted comments to the Bureau's request for information released in tandem with the hearing, and has regularly provided its perspective to the CFPB's Office of Innovation for the last several years, including most recently in February of 2020. Yodlee also participated in the Bureau's recent symposium – a precursor to this ANPR – which focused on the merits of a rulemaking under Section 1033 of the Dodd-Frank Act.

Key Principles

We appreciate the Bureau's approach to date in allowing the market to develop without direct regulatory intervention and thus fostering the evolution of an authorized data access ecosystem that market participants have worked together to create. This approach has seen the relevant stakeholders come together in an effort to ensure consumer financial data sharing in a safe and secure manner that provides for a consumer protective ecosystem. Moreover, the Bureau's methodical study of the consumer-permissioned data access environment has allowed the market to transition to newer, safer, and more efficient technologies to enable consumer financial wellness.

Against this backdrop, the timing of the Bureau's decision to move forward with an ANPR pertaining to Section 1033 of the Dodd-Frank Act could not come at a better juncture for the industry, and most importantly the consumer. Should the CFPB ultimately promulgate a final rule on this score, the Bureau has the potential to usher in a regime in which consumers have an absolute right to access and permission access to their banking and other financial transaction information safely and securely in real time. This right will enable consumers to improve their financial wellbeing by use of the innovative new tools and services powered by advances in technology and research over the past decades. Unfortunately, this is not a ubiquitous outcome for consumers today despite industry's collaborative efforts. A combination of areas, including regulatory ambiguity, legal requirements, and, in some cases, competitive concerns, has created a system in which some consumers have more utility over their own financial data than others. A rule implementing Section 1033 of the Dodd-Frank Act is, in our view, an appropriate remedy to address this uneven playing field. Furthermore, the codification of applicable parameters for and supervision of certain market participants has the potential to solidify a new era of consumer

¹ Project Catalyst Report: Promoting Consumer-friendly Innovation: Consumer Financial Protection Bureau (2016).



financial wellbeing and to serve as the standard that burgeoning international markets around the world look to as they wrestle with similar questions.

Yodlee's decades-long tenure in this industry and aforementioned experience as an entity examined by U.S. Federal banking agencies since 2003 has provided us with a unique viewpoint that we hope will prove useful for the Bureau as it considers development of regulations implementing Section 1033 of the Dodd-Frank Act. Based on our experience enabling consumer-permissioned data access globally over the last two decades, Yodlee's perspectives regarding key areas on which we believe the Bureau should focus as it considers a rulemaking implementing Section 1033 of the Dodd-Frank Act can be summarized in the following dependent and interconnected key points, which are further elaborated and clarified in the responses to the specific topic areas included herein:

- 1) Holders of consumer financial data, including financial institutions and other providers, must unequivocally provide consumers with the non-proprietary data elements that are available to them today either online or in print, or that become available in the future online or in print, both to the consumer directly and also to any authorized entity acting at the direction of such consumer.
- 2) To ensure consumer protection, the financial data ecosystem must move away from credential-based "screen scraping" as quickly as possible through a managed transition period. The reliance on credential-based access represents a significant vulnerability to the safety, security, data minimization needs, and consumer understanding of data control and privacy.
- 3) The Bureau should use its authority to bring under its supervision all data aggregators and authorized entities accessing consumer financial data directly from data holders. These entities – including Yodlee – clearly meet the threshold of "larger participants" in the financial services ecosystem. A supervisory regime for authorized entities accessing consumer financial data directly from data holders would allow the Bureau to publish an examination manual for data aggregators to follow, bringing uniformly applied consumer protections to the marketplace. These requirements should be aimed at ensuring that the consumer can safely and securely interact with Fintech offerings and not be concerned with whether they are protected in the event of any incurred losses by their use of such service.
- 4) The Bureau should continue to allow the industry to develop and implement technology standards, as well as the ability to execute bilateral data access agreements for data that is outside the scope of a promulgated data right as described above.

By promulgating a rule implementing these key points, we respectfully submit that the Bureau can best achieve the intent of Section 1033: consumer data accessibility within a safe and secure ecosystem designed to foster and support innovation while protecting consumers as they leverage these tools to achieve their own self-defined goals for financial wellness.



Access Scope and Consumer Protection

In the United Kingdom and European Union, Open Banking and the Revised Payment Services Directive (“PSD2”) were contemplated as frameworks to both enable and, importantly, to uniformly protect consumers as they chose from a variety of registered service providers throughout the regulated financial ecosystem. This is a fundamental underpinning of a well-functioning open finance system. The bedrock of a consumer-directed regime must be sufficient consumer protection paired with customers’ ability to select the service provider of their choosing in a well-regulated, innovative, technology-enabled ecosystem. The United States’ patchwork of state-led data privacy and portability regimes, the fragmentation that exists at the federal level of government, where jurisdiction over financial products and services is divided among several different government agencies, and a lack of a clear legal right for consumers to access and permission access to their own financial data has created obstacles to enabling a true open finance regime in the United States.

The Bureau asks in its ANPR whether it is necessary to create protected classes of financial data to provide for a regulatorily-prescribed customer data access right. Yodlee suggests that not only would consumers be well served if the Bureau were to ultimately promulgate a rule implementing a customer data right under Section 1033 of the Dodd-Frank Act that did so, but that such an action represents the only pragmatic way to ensure that all consumers have the same financial opportunities regardless of the financial institutions with which they choose to do business. Efforts within the financial services industry to achieve this outcome on its own, though they have progressed within the last 24 months, are simply moving too slowly to achieve this outcome. To wit: Yodlee has spent significant time and energy negotiating and executing bilateral data access agreements with many of the largest financial institutions in the United States but sees no easy means of executing similar agreements with the thousands of smaller financial institutions across the country. Moreover, even if we could, bilateral data access agreements lack uniformity from one institution to another and are completely opaque to consumers. The disparate outcomes for consumers based on what data their financial institution makes available under these bilateral data access agreements – or whether their financial institution has struck any agreements at all – provides a compelling case for the Bureau to implement a customer data access right under its Section 1033 authority.

Yodlee has since its inception held the view that a consumer should have full utility over any non-proprietary element of data held about them by a financial institution that they have created in the course of being a customer of that institution. In the current environment, we therefore propose that the Bureau assert in any final rule implementing Section 1033 of the Dodd-Frank Act that any data element that is available to consumers through their online banking portal or that is included on a paper statement should be considered within the scope of the rulemaking and considered a protected data field. The Bureau should also clearly define what constitutes a proprietary data field, as industry has thus far failed reach a generally accepted consensus on this important question. From Yodlee’s perspective, any data element available on the direct access interface should also be available on an authorized access interface.



Once a consumer financial data right is instituted, to provide for consumer protection in this open finance environment, Yodlee would underscore a recommendation it has provided to the Bureau repeatedly over the last several years. To help provide for strong consumer protection in an open finance ecosystem in the United States, Yodlee is a proponent of requiring data aggregation firms to adhere to the data protection and privacy requirements of the Gramm-Leach-Bliley Act and to submit to supervisory oversight by the appropriate federal agency or agencies. Such a requirement should improve regulatory oversight of the consumer financial data ecosystem, and also should require that data aggregators exert governance over the customers on their platforms through the application of third-party partner risk management-like standards.

Authorized Data Access Ecosystem Participants

Along with several other federal agencies, including the Department of the Treasury,² the Bureau has in recent years repeatedly noted that greater competition among providers of financial services can significantly expand access to these services for consumers and has emphasized that products and services built atop consumer-permissioned data have significantly contributed towards a more competitive financial marketplace. As a leading enabler of consumer-permissioned data access in a number of jurisdictions globally that have already enabled open banking frameworks, Yodlee can attest firsthand to the important role that the competition fostered by a consumer-centric financial data ecosystem can play to enable improved access to financial services.

The Bureau has the opportunity to address several key issues currently facing the industry that, if left unresolved, have the potential to limit the consumer benefits that this ecosystem can or even already does provide today. We suggest that the Bureau must adopt a supervisory regime for data aggregators that today are not currently subject to much-needed uniform standards. Banks, credit unions and other providers of core transaction accounts in their role as data holders are subject to a litany of prudential regulations, including, for example, the Fair Credit Reporting Act (“FCRA”). A number of these regulations are specifically intended to ensure customer safety and security for those data holders’ customers. Unfortunately, the lack of clarity with respect to the application of these concepts on the other covered persons in the marketplace has created a situation in which disparate obligations and rules applicable to only the existing subset of data holders is causing harm and increased cost both real and yet unrealized to the consumer.

As the covered data holders explicitly subject to existing laws have worked with other industry participants to harmonize the means and rules of access, they understandably have also sought to codify duties and obligations on the other market actors who are connecting to their systems to ultimately provide financial data at request of the consumer. The absence of clarity with respect to what types of obligations and responsibilities sit with each data user downstream has caused absorption of risk and liabilities on these other market participants that runs the risk of stifling

² Phillips, C. S. A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation: Department of the Treasury (2018).



innovation and limiting competition in the best of cases, and collapsing the entire data access ecosystem in the worst. Any result on this inevitable spectrum obviously would have dire detrimental impact on the consumer. The Bureau has the opportunity through promulgation of a rule implementing Section 1033 of the Dodd-Frank Act to meaningfully change the course of this outcome. Unfortunately, guidance published by other prudential regulators in this space to date has only served to exacerbate the likelihood of this potential outcome by increasingly placing responsibility for oversight of the permissioned data access marketplace on data holders.³

While the prudence of applying these types of rigors on data aggregators is obvious, the only way for existing regulated data holders to satisfy their own regulatory obligations is manifesting itself in the current market through absorption of the requisite requirements on those seeking consumer data access. In the absence of regulatory obligations on data aggregators across the entire chain of market participants, data holders are requiring as a precondition of establishing connectivity with their institution that data aggregators agree contractually to absorb financial liability associated with any and all risks which could manifest through the release of consumer financial information across the downstream ecosystem.

Asking data aggregators to exercise requisite diligence on each data user downstream absent clear examination guidance is untenable and ineffective given the large and growing number of Fintech market participants. Faced with these unevenly applied contractual obligations, each data aggregator has necessarily implemented its own process of governance and oversight of the data users on its platform. With our decades of experience being subject to our own regulatory obligations in this market, it has given us an appreciation for how the existing frameworks can actually be leveraged to meet and ultimately uplift all market participants without undue burden on any one particular subgroup.

Nascent Fintech providers are currently ill-equipped to understand, let alone implement needed precautionary customer protections in the current market. That leaves data aggregators with few choices. The most conservative approach would be to enable simply those customers who are already subject to an existing licensing regime that they can place reliance upon to ensure such customer acts in accordance with such regulations and has a level of sophistication to conduct itself in a manner that does not create undue liability for providing aggregation services to that entity. To address demand from consumers requesting services from other types of Fintechs not already subject to regulatory guidelines, the aggregator must create its own framework that allows them to comfortably absorb responsibility for the oversight and ongoing compliance of its data user customers. All of this is occurring without any actual legal guidance or applicable regulatory obligations for the Fintechs themselves. Obviously expecting the currently unsupervised community of aggregation providers to pivot and appreciate what this actually means and appropriately apply it to the ecosystem is a risky proposition.

By leveraging liability requirements in data access agreements, the ecosystem today is addressing compliance requirements by forcing data aggregators to indirectly satisfy the existing

³ See, for example, <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-10.html>.



framework of laws. It does not take much imagination to see that this scenario places the consumers' data and their only manner of redress for bad actors and personal loss on an unsupervised and potentially uneducated entity who may be ill equipped to deal with this obligation in the normal course. Allowed to continue to play out in this manner, the data user population will ultimately be limited to those that the data aggregator can place a level of certainty in their rigors of compliance, otherwise the risk of enabling will not overcome the liabilities faced in the event of failure. Alternatively, in the absence of Bureau intervention, a data aggregator may decide to become the centralized repository of consumer financial information on behalf of its data user customers instead of from the actual original data holder. This outcome is worse from a consumer protection and data security perspective and hinders consumers' transparency into who holds their data and how it is being used.

Standard Setting

As referenced earlier, Yodlee is an active conduit of consumer-permissioned financial data in a number of other jurisdictions that have implemented open finance frameworks globally, including the U.K. Through this first-hand experience, and as a Founding Board Member of the Financial Data Exchange ("FDX") – a consortium of organizations throughout the financial services ecosystem developing and implementing new application programming interface ("API") standards for financial data sharing – we have gained significant experience regarding how best to utilize technology solutions to deliver the best and safest consumer experience in open finance frameworks. Based on this experience, we respectfully offer that we do not believe that the Bureau or any other regulatory agency should set forth prescriptive technology standard requirements in the consumer financial data access market in the United States and should instead set forth the criteria under which technology solutions could be accredited under the rule. These criteria should include, among other areas, specific consumer consent guidelines and security reliability metrics and could leverage work already undertaken by the Federal Financial Institutions Examination Council.

There are a number of reasons for this recommendation. First, the United States, like many other jurisdictions around the world, has a large base of consumers and small businesses that are already reliant on existing data access technologies to power the financial tools on which they depend. Yodlee alone already provides access for approximately 25 million consumers to data-driven financial services products and tools, as compared to, for example, the U.K., which just a few months ago celebrated two million API calls through its Open Banking rails in one month.⁴ Accordingly, any prescribed technology standard presents the very real risk of threatening the ability of the tens of millions of Americans who already depend on tools that rely on consumer-permissioned data access to continue to benefit from them. Additionally, unlike the U.K. or Australia, the U.S. financial services market is large and diverse, with more than 5,000 Federal Deposit Insurance Corporation insured banks alone.⁵ By contrast, in the U.K., where one standardized API was mandated under its Open Banking system, there are only approximately 40

⁴ <https://www.openbanking.org.uk/insights/two-million-users/>.

⁵ <https://www.fdic.gov/bank/statistical/stats/2020jun/industry.pdf>.



banks.⁶ Even in this much smaller market, only the largest nine banks have actually implemented and deployed the U.K.'s Open Banking API.

Technology standards is one area in which industry has seen meaningful progress in the U.S. over the last several years. The rise of the FDX API standard will facilitate meaningfully more permissioned financial data sharing through APIs as opposed to legacy technologies. A legally binding consumer financial data right has the potential to make this industry-led progress even more meaningful, however, as deployments of APIs at financial institutions would become more uniformly robust with regard to data fields considered in scope. Additionally, any final rule implementing Section 1033 of the Dodd-Frank Act should provide for flexibility with regard to the technology standards that can be deployed. Competition in these technology standards will drive both innovation and flexibility that presents the potential to make it easier and less expensive for small financial institutions to comply with a financial data right.

Consumer Control and Privacy

The consumer's ability to control the flow of their financial data is central to the functioning of any open finance framework and is rightly a focus of the Bureau's ANPR. To provide for this outcome, Yodlee offers that any Section 1033 rulemaking must require clear, uniform minimum consent standards with which all stakeholders must comply to ensure that consumers understand precisely what data they are providing to a third-party service provider. These consent requirements should also provide for the consumer's ability to revoke that consent at any time. Moreover, a supervisory framework under which data aggregation platforms are subject to regulatory supervision, as suggested above, would provide for significant safeguards against the misuse of consumer data.

With that said, Yodlee would offer that it is working with its financial institution partners to deliver improved customer control and transparency with regard to consumer-permissioned financial data sharing, even in the absence of a Bureau rulemaking. A key component of many of the bilateral data access agreements that Yodlee has executed with large financial institutions is the creation of data consent dashboards hosted by the institutions that provide to their customers an overview of the data connections they have established to their financial accounts, along with the ability to revoke consent for these connections. Though this unquestionably provides for improved consumer control, it remains an imperfect solution: consumers typically hold accounts at a number of financial institutions and, accordingly, must navigate through several different dashboards to capture the totality of the third parties to which they have granted data access.

The CFPB should also consider including the concept of data minimization into any final rule implementing Section 1033 of the Dodd-Frank Act. While Yodlee believes every piece of a consumer's financial data should be made available for that consumer to share with third parties of their choosing, not all data is necessary for every use case. As a responsible party in the ecosystem, Yodlee's view is very straightforward: only the data that is necessary to provide the

⁶ <https://www.ecbs.org/banks/united-kingdom/>.



use case for which the consumer has provided their consent should be collected and used in connection with that use case. However, this position should not be construed to imply that the firm holding the data is permitted to unilaterally minimize the data available for the consumer. In a holistic consumer-centric ecosystem, the consumer is empowered to determine what data to share with what party to power the use case of their choosing, and their consent cannot be overridden.

Lastly, the potential for bad actors to get access to customer data will always exist, regardless of the security controls any system implements. A key component of a well-designed open finance system is a requirement for shared responsibility across the system, assuring the consumer or small business that, in the event they have lost funds as a result of a data breach, the party responsible for that breach will be responsible for making them whole. In this regard, too, a supervisory regime for data intermediaries such as Yodlee presents significant policy advantages. Yodlee respectfully suggests that the CFPB consider requiring data aggregators and the clients on their platforms to hold minimum levels of cyber liability insurance and capital commensurate with the potential risk the use cases present to consumers in the event of a data breach. As the issue of liability has emerged as a central question in bilateral data access negotiations ongoing in the marketplace, Yodlee further recommends that the Bureau work with its peer regulatory agencies to modernize existing regulatory requirements, including Regulation E, to make clear the agencies' expectations with regard to how financial responsibility for fraudulent withdrawals from financial should be remedied under an open finance framework.

Conclusion

Yodlee is heartened by both the Bureau's continued focus on facilitating an ecosystem in which consumers are in full control of their financial data and the deliberative effort that led to the publication of the ANPR. While the market has evolved considerably since the CFPB first engaged on the question of consumer financial data access in 2016, limitations exist with regard to the ability of the market alone to foster a fully consumer-centric data ecosystem. We believe that a carefully crafted rule implementing Section 1033 of the Dodd-Frank Act has the potential to address these market shortcomings and to improve competition and, along with it, consumer financial access and inclusion.

Thank you in advance for your consideration of this submission, and for your continued work on this critical issue.

Sincerely,

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