



July 12, 2023

Comment Intake  
Request for Information Regarding Data Brokers  
c/o Legal Division Docket Manager  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

**Re: Request for Information, Consumer Financial Protection Bureau; Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information (88 Fed. Reg. 16,951-16,954, March 21, 2023)**

To Whom It May Concern:

The Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (“CFPB”) regarding its Request for Information regarding the data broker market (the “RFI”).<sup>1</sup>

Financial data plays a critical role in the modern economy. Financial services companies use this data to provide consumers better, more tailored products and to reduce risk for consumers and the market. Data about customer usage and preferences may inform targeted offers, for example, that help provide customers the best products for their circumstances, or contribute to underwriting processes that open further opportunities to underserved borrowers.

Data brokers make these data-driven services possible and consequently play an important and established role in the financial services market, as they do in other markets. Data brokers are already subject to numerous legal requirements. While business models and relevant legal frameworks differ across the data broker industry, laws governing data brokers include the Fair Credit Reporting Act, the Federal Trade Commission Act, and the Consumer Financial Protection Act and the Gramm-Leach-Bliley Act at the federal level, as well as statutes in the individual states.

The CFPB should be thoughtful in how it approaches this market, given the innovative and dynamic application of data supporting consumer financial services. A

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<sup>1</sup> See *Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information*, CFPB-2023-0020, 88 Fed. Reg. 16951 (Mar. 21, 2023).

dramatic and unwarranted change to the existing regulatory landscape may have significant negative consequences for the data broker marketplace. This in turn may make it harder for financial services companies to offer consumers the products they want at competitive prices.

We hope the CFPB will avoid negative consequences for consumers and we appreciate that it has issued the RFI so that it can learn more about the current market. The CFPB should carefully consider the comments it receives before issuing regulations or guidance for the market: failure to do so could create confusion in the marketplace or unintentionally disrupt market practices that benefit consumers.

We particularly would ask the CFPB to consider four key points as it evaluates the information it receives in response to this RFI.

- The CFPB should focus on elements of the data broker industry that are within its statutory authority.
- The CFPB should clarify what it means by “data broker.”
- The CFPB should maintain a balanced perspective on the data broker industry.
- The CFPB should give the public an appropriate opportunity to weigh in on any regulatory action related to the data broker industry.

**I. The CFPB should focus on elements of the data broker industry that are within its statutory authority.**

The data broker industry straddles most sectors of the U.S. economy and provides important data inputs that improve retail, marketing, health, transportation, and consumer financial products. The data broker industry is subject to the authority of multiple federal and state regulators. The CFPB plays an important role in the regulation of data brokers given its responsibility to implement the Fair Credit Report Act (FCRA) and the Consumer Financial Protection Act (CFPA).<sup>2</sup> The CFPB’s

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<sup>2</sup> To be clear, the CFPB’s authority under the CFPA only reaches a company to the extent that it undertakes an activity subject to that statute. While, as we note below, the CFPB does not clearly define a “data broker,” we would expect its authority under the CFPA over “data brokers” generally to be limited to companies to the extent that they engage in “providing” – i.e., selling – “consumer report information or other account information, including information relating to the credit history of consumers,” that is “used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service,” subject to the further limitations imposed under the CFPA. *See generally* 12 U.S.C. § 5481(15)(a)(ix).

responsibility to oversee the data broker industry is still limited, however. The CFPB's authority under FCRA and the CFPB does not reach every company that sells any consumer data for any purpose, and does not reach every sector of the economy in which data brokers are active.

The CFPB should focus its regulatory activities on those elements of the data broker industry that are within its statutory authority under the FCRA and the CFPB. In doing so, the CFPB would ensure that it is acting in its areas of experience and expertise. The CFPB is more likely to produce balanced policy by acting within bounds as defined by Congress.

In contrast, the CFPB should not attempt to influence areas of the data broker industry that are outside its authority since doing so will lead to the establishment of mistaken policy that causes unintended negative consequences for consumers. The CFPB's jurisdiction is specifically defined and clearly limited. Significant categories of consumer information lie outside the CFPB's responsibility and expertise, and the CFPB should not trespass into these areas. Congress did not grant the CFPB authority over the collection or sale of data related to health services, for example, or personal location. Other regulators—including primarily the Federal Trade Commission—have responsibility for addressing the complex policy issues that are associated with the collection and sale of such data. The CFPB should leave that important work to their colleagues at other regulators who have relevant authority and expertise. Failure to do so will inevitably lead to less-informed policy judgments, not to mention legally infirm regulatory action. Likewise, the CFPB should not attempt to stretch an inapplicable legal regime to reach data uses to which it does not apply. For example, Congress enacted FCRA to apply specific rules to a particular set of entities and use cases focused on credit reporting. The CFPB should not attempt to apply such a specifically targeted statute beyond its bounds, both because it will lack legal authority to do so and because poor policy outcomes are sure to follow any attempt to impose the highly tailored FCRA framework as a rule of more general application.

## **II. The CFPB should clarify what it means by "data broker."**

Data drives the modern U.S. economy, including the consumer financial services sector. Many companies collect and use consumer financial data as they offer products, provide services, or manage risk. Those activities are already subject to numerous regulatory frameworks that protect consumers and preserve the safety and soundness of our financial system. These activities do not make those companies "data brokers" and those companies should not be subject to any forthcoming regulatory action by the CFPB related to data brokers. Most significantly:

- “Handling” consumer financial data does not itself make a company a “data broker.”
- “Collecting” consumer financial data does not itself make a company a “data broker.”

The CFPB appears to suggest companies that “sell” data are data brokers but is inconsistent in its statements. We think it important for any action focused on data brokers to be properly scoped so that the CFPB does not unintentionally apply an ill-fitting regulatory approach to activities that do not amount to data brokering or to entities that do not engage in such activities as their primary business. (The CFPB of course would maintain its existing authority over companies that engage in the collection or handling of personal information, but it should address those activities separately to avoid unintentionally trying to fit a square peg into a round hole.)

Companies should not be treated as a “data broker” if their specific collection, handling, or sharing of information is required under regulation or law. For example, the CFPB’s ongoing work to promulgate a rule under Section 1033 rule is expected to require a financial institution to share a customer’s information with a third-party if requested by that consumer. This rulemaking could cause some companies, even if unintentionally, to be labeled as a “data broker” if the CFPB attempts to define this term more concretely as part of other regulatory initiatives that may result from this RFI.

We consequently would ask the CFPB to be more clear about what it means by “data broker” in any further regulatory action it takes relating to the data broker market. As discussed above, the CFPB should carefully adhere to its statutory authority in clarifying the term “data broker.”

### **III. The CFPB should maintain a balanced perspective on the data broker market.**

We are pleased that the CFPB has begun this process by asking for information from consumers, market participants, and other key stakeholders in the data broker marketplace. The CFPB’s approach properly acknowledges that the data broker market is complex and that a better understanding of the market will inform better policy. Needless to say, it is important for the CFPB to receive and review the information it solicits with an open mind. Without such a balanced perspective, the CFPB will not draw the appropriate lessons from the information it receives and the current RFI process will be a missed opportunity.

We particularly highlight this point because the RFI reflects apparent skepticism of the data broker industry. It is important that all perspectives on the data broker industry are shared in response to the CFPB’s RFI. Consumer concerns about their

experiences are instructive, even if they reflect only unusual edge cases that do not reflect common industry practices. However, regulatory action should only be based on a clear demonstration of consumer harm, not on perceived or imaginable risks in the marketplace.

As we have explained in response to other requests for comment by the CFPB, the US Chamber of Commerce supports clear rules of the road that provide clarity to businesses and protect consumers. For example, we support establishment of a federal privacy law that governs the collection and use of consumer data enforced by the appropriate regulator, the Federal Trade Commission.<sup>3</sup> We also recognize the enormous benefits to consumers provided by data-driven services. These include:

- Allowing financial services companies to confirm customer identification, detect and prevent; and support Know Your Customer (KYC) compliance; all improving the consumer experience.
- Enabling tailored marketing that matches offers to an individual's eligibility, circumstances, and needs; and
- Facilitating the use of alternative data in credit decisions, which increases credit-opportunities for individuals underserved by traditional underwriting practices.

Fully evaluating and understanding these benefits will allow the CFPB to make informed and balanced decisions about whether to take further regulatory action and, if so, how to do so without causing negative unintended consequences.

#### **IV. The CFPB should give the public an appropriate opportunity to weigh in on any regulatory action related to the data broker industry.**

As discussed above, we appreciate the opportunity to provide our input on the data broker industry in response to this RFI. We note, however, that the scope of our comments is inherently limited since the RFI (like other RFIs) does not indicate a particular regulatory approach that the CFPB may intend to pursue.

Given the critical role of the data broker industry in today's data-driven economy, it is vital that the CFPB give the public an appropriate opportunity to weigh in on any contemplated regulatory action related to the data broker industry. We accordingly would ask the CFPB to provide the public a further opportunity to comment on any

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<sup>3</sup> <https://www.uschamber.com/major-initiative/data-privacy>

regulatory approach it decides to consider after reviewing the submissions under this RFI.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink that reads "William R. Hulse". The signature is written in a cursive style with a horizontal line underlining the name.

Bill Hulse  
Senior Vice President  
Center for Capital Markets Competitiveness  
U.S. Chamber of Commerce