

Dear Director Chopra,

We congratulate you and the Consumer Financial Protection Bureau (CFPB or Bureau) on proposing a strong, legally binding consumer data portability right for the United States and a fulsome set of consumer protections to accompany that right. We are concerned, however, that the proposal as it stands unfairly excludes low-income Americans and establishes a more robust set of rights and protections for those with higher incomes. The Bureau should extend coverage of a personal financial data right and associated consumer protections to providers of government benefit accounts used to distribute needs-based benefits programs.

[INSERT ORGANIZATIONAL DESCRIPTION HERE & CONNECTION TO THIS ISSUE]

The Bureau's Outline of Proposals and Alternatives Under Consideration for its forthcoming Section 1033 Rulemaking<sup>1</sup> (Outline) asks if the personal financial data rights rule should cover "providers of government benefit accounts used to distribute needs-based benefits programs." We believe the answer is a clear yes.

Public benefits are an essential pillar of the household financial portfolio of tens of millions of American families. Programs like the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance to Needy Families (TANF) serve the most vulnerable in our country - people who deserve access to their financial data and robust consumer protections to protect them from unfair, deceptive, and abusive practices.

Funds from these programs are typically distributed and administered through Electronic Benefit Transfer (EBT) accounts to eligible participants. EBT is patterned after private-sector debit cards and was created with the intent of introducing a government benefits payment experience that is similar to that of private-sector payments. At present, the marketplace for consumers who use public benefits is defined by limited competition, poor service, consumers with no ability to "vote with their feet", and service providers who feel little to no pressure to improve their offerings.

State and territorial governments currently contract with private companies, commonly referred to as "EBT processors", to administer EBT accounts, with two of the processors owning roughly 95 percent of the state contracts.<sup>2</sup> Much like the traditional banking system, EBT processors are currently not required to provide SNAP beneficiaries with access to their data electronically, and households that receive benefits via EBT often experience data unavailability and slow connectivity.

As is the case in the traditional banking system, third-party providers have entered the market to provide low-income families with opportunities to access their EBT account balances and view their transaction histories via mobile applications in a faster and easier way. Innovation in the space currently allows for millions of EBT accountholders to use third-party applications to more efficiently view their account information. However, these third parties need access to

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<sup>1</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_data-rights-rulemaking-1033-SBREFA\\_outline\\_2022-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf)

<sup>2</sup> <https://fns-prod.azureedge.us/sites/default/files/resource-files/ebt-contract-procurement-summary-20221115.pdf>

acountholders' EBT account data to provide the opportunity for users to manage their public benefits. People seeking to access their EBT data via third-party applications have been subjected to intentional restrictions.<sup>3</sup> Such restrictions should never be permissible, especially in the case of people living with limited margins and for whom balance and transaction information is vital.

The Section 1033 rulemaking approach under consideration by the CFPB, as described in the Outline, would restrict personal financial data rights to only those account types covered by Regulation E and Regulation Z. This proposed approach would double down on policy exclusions that have resulted in "second class" treatment of low-income Americans.

Means-tested benefit programs are excluded from Reg E, a policy choice that has yielded substantial harm to low-income Americans. Unlike bank-issued debit cards, EBT accountholders who are victims of theft via "card skimming and cloning" have long been ineligible to receive reimbursement, unless they reside in California and Washington, D.C., where TANF funds are eligible for state reimbursement. Congress recently took action to temporarily give the USDA the authority to provide reimbursement to EBT accountholders in response to a troubling national spike in benefits theft. Regardless of the Congressional response, data access is an essential tool to empower low-income consumers who rely on public benefits to monitor their accounts for suspicious activity and protect themselves from theft.

The Dodd-Frank Act provides that a "covered person" includes any entity that engages in "providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used by processing payments data."<sup>4</sup> EBT processors clearly meet the definition of "covered persons" under Section 1033.

If the Bureau advances a final rule that excludes providers of government benefit accounts, substantial consumer harm will be a likely outcome. Consumers who are already subject to limited choice and poor quality of service may see their choices further reduced and will enjoy no protections limiting the sale or reuse of their data.

If the Bureau advances a final rule that covers providers of government benefit accounts, substantial consumer benefit will likely result. First, the Bureau will ensure that vulnerable, low-income consumers have a right to access data that is essential for them to manage their households. This will include empowering consumers to identify theft from their accounts more quickly. While this should not be considered a substitute for legal protections for EBT accountholders from theft or fraud, it provides a substantial improvement from the status quo. Second, the Bureau will clear the way for new market entrants to spark additional competition and innovation in this market, creating more choice and value for consumers who badly need it.

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<sup>3</sup> <https://www.nytimes.com/2018/04/23/technology/start-up-fight-poverty-food-stamp-giant-blocking-it.html>

<sup>4</sup> <https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>

While we applaud the effort to advance a core set of data rights and consumer protections, we are concerned that the proposal as it stands unfairly excludes low-income Americans, and establishes a more robust set of rights and protections for those with higher incomes. The Bureau should work to ensure a single class of treatment for all Americans by extending coverage of the proposed rule to include providers of government benefit accounts used to distribute needs-based benefits programs.

Sincerely,