

July 15, 2023

Via E-Rulemaking Portal

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

Re: Comments Regarding Data Brokers and Others Involving the Collection and Sale of Consumer Information RFI - Docket No. CFPB-2023-0020

Dear Director Chopra:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the Consumer Financial Protection Bureau’s (“CFPB”) request for information (“RFI”) regarding data brokers and other business practices involving the collection and sale of consumer information.

ETA’s members are dedicated to providing innovative, convenient, secure, and timely financial services and products that make their customers’ lives easier. ETA appreciates the opportunity to contribute to this important dialogue and remains committed to supporting efforts that promote fair, transparent, and competitive markets for consumer financial products and services. Including the CFPB’s efforts to examine data collection and use, however, we believe that the definition of "data broker" as outlined in the Notice is currently too broad and should not include third parties.

Who We Are

ETA is the world’s leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than \$44 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

ETA’s Comments on the CFPB’s RFI

It is important to recognize the historical context of the Fair Credit Reporting Act (“FCRA”) enacted in 1970. The FCRA was specifically designed to regulate consumer reporting agencies and address abuses within the industry. Its provisions focus on ensuring fair and equitable handling of consumer information, emphasizing confidentiality, accuracy, relevancy, and proper use.

The landscape of data collection and utilization has significantly evolved since the enactment of the FCRA, with the emergence of companies engaged in the sale of consumer data. While these companies may share similarities with consumer reporting agencies in terms of collecting and selling personal data, it is crucial to acknowledge the different contexts and purposes in which they operate.

The Notice defines "data broker" as an umbrella term to describe firms involved in the collection, aggregation, sale, reselling, licensing, or sharing of consumers' personal information. However, this broad definition also encompasses entities that have direct relationships with consumers and who are acting at a

consumer's express direction to collect, use or manage consumer data with the consumer's consent. This conflation of models will lead to confusion and an inaccurate representation of these different practices.

Data brokers may engage in a wide range of activities, such as marketing and advertising, credit and insurance underwriting, fraud detection, and background checks. They focus on collecting data from various sources to create comprehensive datasets that can be utilized by other entities for analysis, research, fraud prevention and identity verification, or decision-making purposes. They do not have a direct relationship with the consumer that the collected data pertains to and are not acting on behalf of the consumer.

By including entities that have direct relationships with consumers and are acting on their behalf within the definition of "data broker," it fails to acknowledge their distinct roles and functions in the data ecosystem and how consumers are involved with respect to what information about them is collected and how it is used.

Considering these distinctions, ETA suggests the CFPB adopt a more specific definition of "data broker" that focuses specifically on firms that do not have a direct relationship with the consumer or are not acting on their behalf and are engaged in the sale of personal information for purposes such as marketing, credit evaluation, and background screening. This refined definition would provide a clearer understanding of the roles and responsibilities of different entities within the data industry.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Executive Vice President, Scott Talbott at stalbott@electran.org.

Sincerely,



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