

February 17, 2017

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1275 First Street, NE
Washington, DC 20552

**Re: Request for Information Regarding Consumer Access to Financial Records;
Docket No. CFPB–2016–0048**

To Whom It May Concern:

On behalf of the 2.3 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) request for information (RFI) on consumer access to financial records.

The CFPB is seeking comments from the public on consumer access to financial account and account-related data in usable electronic form, including "access by entities acting with consumer permission, in connection with the provision of products or services that make use of that information." The RFI, and therefore this comment letter, focuses on "consumer-permissioned access," which is consumer access to financial account and account-related information, either directly or through a third-party acting with the consumer's permission.

The RFI highlights the practice where financial service providers offer consumers services that depend, at least in part, on broader, consumer-permissioned access to data across a consumer's financial accounts—sometimes combined with other information about the consumer. A recent trend involves the use of third-party "account aggregators" as a way to more easily access a consumer's data across multiple financial account providers. These third-parties often rely on the practice of "screen scraping," which involves a third-party obtaining a consumer's authorization and credentials so the third-party can access the consumer's online financial accounts.

According to the CFPB, greater access to consumer data by data aggregation companies benefits consumers because it allows companies to innovate as they develop tools and services for consumers, such as personal financial management tools, credit decisioning, bill payment, and fraud protection. We agree with the CFPB that some of the tools and services that rely on data aggregation are useful to consumers. However, the benefits of such practices are certainly not without serious risks.

We appreciate that the CFPB acknowledges in the RFI the existence of current market issues and risks associated with consumer-permissioned account data access. However, it appears the CFPB's focus is more on the potential benefits than the (certain) risks. We urge the CFPB to spend as much, if not more, time understanding the risks, particularly since many of the risks could directly harm consumers, such as privacy and security issues that could expose consumers to identity theft and fraud.

Of major concern to credit unions and other providers of consumer financial accounts is the potential liability associated with unauthorized transactions or data breaches resulting from a third-party's use of a consumer's financial data. Our concerns are compounded by the relative lack of legal and regulatory safeguards required of many of these third-party account data aggregators.

Financial institutions, including credit unions, are subject to a litany of security-focused requirements, including provisions under the Gramm-Leach-Bliley Act (GLBA) restricting them from sharing certain nonpublic customer information as well as requiring them to safeguard the security and confidentiality of customer information. The GLBA is implemented, in part, by the CFPB's Regulation P, which governs financial institutions' treatment of nonpublic customer information, including the conditions under which they may disclose such information to nonaffiliated third parties.

In addition, provisions of the GLBA are implemented by the National Credit Union Administration's (NCUA) part 748, which requires credit unions to maintain security programs for safeguarding customer records and information. Specifically, credit unions must maintain safeguards to ensure the security and confidentiality of customer records and information; protect against anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that would harm or inconvenience a member.

While credit unions are subject to numerous requirements regarding the treatment and safeguarding of their members' nonpublic financial information, many third-parties are not subject to similar requirements. This is particularly of concern in light of the CFPB's current focus on potentially expanding third-party access to consumers' financial information. As noted above, one of the most troubling aspects associated with such access is the potential liability a credit union or other financial institution will be exposed to in the event of a breach of a consumer's personal financial information by a third-party. Thus, if the CFPB does pursue a rulemaking in this area, we urge it to ensure any resulting liability rests with the responsible party.

In addition, we are concerned that the CFPB may be pursuing a rulemaking that would directly require credit unions and other financial account providers to provide third-parties with direct access to a consumer's financial account data.

The CFPB cites the general rulemaking sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) as authority to conduct this RFI. However, the CFPB appears to rely on section 1033 of the Dodd-Frank Act as support to possibly require financial institutions to provide third-parties access to consumers' financial data. The CFPB states that in

the context of this existing statutory and regulatory landscape, section 1033 of the Dodd-Frank Act provides for consumer rights to access information. Specifically, section 1033 states, Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of such person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, or series of transactions, to the account including costs, charges, and usage data.

We support consumers' ability to access pertinent account information in a timely and straightforward manner. We agree that section 1033 requires financial institutions to provide consumers with certain account information upon request. However, we do not interpret section 1033 to require a financial institution to provide a third-party with direct access to a consumer's account—regardless of whether the consumer has authorized the third-party to do so. Since the CFPB has not directly cited section 1033 as authority to possibly require financial institutions to provide third-parties with direct account access, we are unsure which section of the Dodd-Frank Act would provide such authority.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Bradley D. Douglas". The signature is written in a cursive style with a large initial "B".

Brad Douglas
President/CEO