

January 25, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Comments on the Consumer Financial Protection Bureau’s Outline of Proposals and Alternatives under Consideration for its forthcoming Section 1033 Rulemaking on Personal Financial Data Rights

Dear Director Chopra:

On behalf of UnidosUS, we respectfully submit these comments in response to the Consumer Financial Protection Bureau’s (CFPB) regulatory proposal on personal financial data rights.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation’s largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels.

UnidosUS routinely conducts analyses of issues related to Latinos and access to the Supplemental Nutrition Assistance Program (SNAP). This research includes looking into the steps needed to address a lack of enrollment in SNAP among eligible households and identifying improvements to SNAP benefit adequacy. Our research and analysis includes publications such as *How SNAP Benefits Our Families and the Economy* (2020);¹ *SNAP for Health: A healthy community starts with strong partnerships* (2019);² and *The value of SNAP: Tackling food insecurity and hunger in America* (2018).³

Additionally, UnidosUS works with community-based organizations on a project—Comprando Rico y Sano—which engages the community with information about healthy shopping habits and enrolls eligible Latinos in SNAP. Through this project, UnidosUS and our Affiliates have helped enroll more than 23,000 Latinos into SNAP since 2018.⁴ Finally, UnidosUS monitors issues related to personal data rights with the aim of ensuring that technology innovations improve financial services while protecting the personal data privacy of consumers.

The Bureau’s Outline of Proposals and Alternatives for its forthcoming Section 1033 Rulemaking proposes many ways for consumers to access their data, specifies the types of accounts that

could be covered, and describes the consumer protections that will accompany covered accounts. Specifically, the proposal addresses seven topics:

- Coverage of data providers who would be subject to the proposal under consideration
- Recipients of information, including consumers and authorized third parties
- The types of information that would need to be made available
- How and when information would need to be made available—to consumers directly and to third parties authorized to access information on their behalf
- Third-party obligations
- Record retention obligations
- Implementation period

This letter will focus on the section of the proposal that addresses covered data providers. In this section, the CFPB defines the types of entities that would be considered “covered data providers” under the rule. These include financial institutions covered by Regulation E and card issuers covered by Regulation Z. However, the proposal does not include providers of government benefit accounts in its definition of a covered data provider.

The CFPB proposal requests input from stakeholders regarding alternative approaches that are not currently under consideration. Among those alternatives, the CFPB asks if “providers of government benefit accounts used to distribute needs-based benefits programs” should be covered under the forthcoming rule. As explained below, including government benefit providers and benefit accounts in Section 1033 would have a positive impact on low-income people and Latinos, millions of whom rely on SNAP benefits to sustain their families. We therefore urge the CFPB to include government benefit providers and benefit accounts in the Section 1033 rule.

Government benefit distributors provide a valuable service to low-income people and Latinos but improvements to consumer protections could be made.

Funds from government benefit programs are typically distributed and administered through Electronic Benefits Transfer (EBT) accounts to eligible participants. EBTs are modeled after private-sector debit cards and were created with the intent of making the government benefit payment experience more similar to that of private-sector payments.

State and territorial governments currently contract with private companies, commonly referred to as “EBT processors,” to administer EBT accounts. Two processors own roughly 95% of all state contracts.⁵

Consumer protections within the system could be improved. 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 cannot see whether money is in their account or how much they have.

As in the traditional banking system, providers have entered the market to offer low-income families opportunities to access their EBT account balances and view their transaction histories via mobile applications in a convenient manner. However, these providers need to be able to access holders' EBT data to provide users with the ability to manage their benefits. Currently, EBT users and their servicers are not guaranteed access to such data.

A recent conflict between the provider Propel and Conduent, a government contractor that runs the food stamp network in 25 states, illustrates the issues with the current system. In 2018, EBT users who rely on Propel to access their account information experienced interruptions in their service after Conduent, which maintains the EBT database, denied access to Propel because Conduent had not consented to sharing benefits data with Propel.⁶ As a result, some Propel users were unable to access their EBT account information, in some cases for as long as a month. If government service providers are included in the 1033 proposal, no such interruptions would occur because companies like Propel and Conduent would be guaranteed access to EBT account information.

Latinos benefit greatly from SNAP, which is increasingly a target of third-party fraudsters.

Food insecurity disproportionately impacts the Latino community. Recent data from the United States Department of Agriculture (USDA) show that 17% of Latino households with children experience food insufficiency, compared to 11% of White households with children.⁷

Federal nutrition programs like SNAP are critical for reducing hunger and addressing food insecurity among low-income children and families. For example, a 2019 study by the Center on Budget and Policy Priorities found that, "SNAP kept about 10.3 million people out of poverty in 2012, including about 4.9 million children." The study also found that SNAP benefits improve children's health and improves reading and mathematics skills among elementary children.⁸

In 2021, more than 41 million low-income people participated in SNAP,⁹ and more than one in five SNAP participants are Latino.¹⁰ While the characteristics of these households vary, children, seniors, and those with disabilities make up a majority of SNAP participants.¹¹ More than a fifth of SNAP benefits—about \$12.2 billion—went to Latino households in 2019.¹² Moreover, Latino SNAP beneficiaries are generally considered very low-income: the average monthly income of a Latino family of three enrolled in SNAP is just \$980.¹³

Although it provides an essential benefit, unfortunately, our system for delivering benefits to SNAP participants is being targeted by third-party fraudsters. The USDA and state-level SNAP agencies recently reported a nationwide increase in SNAP EBT third-party scams called

“skimming,” in which third-party actors place a device on card-swipe machines at an automated teller machine (ATM) or point of sale location such as a grocery store to illegally copy EBT card information.¹⁴ In Massachusetts alone, more than \$1 million in SNAP benefits was stolen from SNAP households in a two-month span.¹⁵ News reports demonstrate that very low-income families in the state who were victims of EBT theft are still struggling with the economic and health consequences.¹⁶

Although an illegal practice such as skimming also impacts all credit and debit card users, SNAP beneficiaries are particularly vulnerable as they face food insecurity and economic instability when their SNAP benefits are stolen. Debit and prepaid card users are protected by the federal Electronic Fund Transfer Act and Regulation E, both of which protect consumers against losses that may be incurred from schemes like skimming. Unlike a bank-issued debit card, however, an EBT account holder who is a victim of theft via skimming is not protected by law and will not receive reimbursement for stolen SNAP benefits.

Thankfully, the rulemaking by the CFPB comes at an opportune time to implement basic data privacy for SNAP recipients. Improving access to EBT benefit data would facilitate SNAP participants’ ability to securely monitor their benefits and, just as importantly, alert state agencies of skimming. Strengthening access to balance and transactional information for low-income SNAP beneficiaries, including millions of Latinos, is critical for a host of reasons including to empower consumers.

The regulatory changes under consideration should include critical elements to make data protections and access to government benefits more equitable.

The CFPB should work to ensure that everyone benefits from new rules based on Section 1033 by extending coverage to government benefit accounts and providers of needs-based benefit programs. Doing so will allow SNAP beneficiaries to have more control of their personal data and increase access to SNAP benefits.

Notes

- ¹ UnidosUS, *How SNAP Benefits Our Families and the Economy* (Washington, DC: UnidosUS, August 14, 2020), <https://unidosus.org/publications/2077-how-snap-benefits-our-families-and-the-economy/>.
- ² UnidosUS, “SNAP for Health: A healthy community starts with strong partnerships,” *UnidosUS blog*, May 23, 2019, <https://unidosus.org/blog/2019/05/23/snap-for-health-unidosus-walmart-foundation/>.
- ³ UnidosUS, “The value of SNAP: Tackling food insecurity and hunger in America,” *UnidosUS blog*, December 18, 2018, <https://unidosus.org/blog/2018/12/18/value-of-snap-food-insecurity-hunger/>.
- ⁴ UnidosUS, *Comprando Rico y Sano: Buying Healthy and Flavorful Foods* (Washington, DC: UnidosUS, November 21, 2019), https://unidosus.org/wp-content/uploads/2021/07/comprandoricoy sano_handout.pdf.
- ⁵ United States Department of Agriculture, “EBT Status Report by State,” United States Department of Agriculture, November 15, 2022. <https://fns-prod.azureedge.us/sites/default/files/resource-files/ebt-contract-procurement-summary-20221115.pdf>.
- ⁶ Steve Lohr, “This Start-Up Says It Wants to Fight Poverty. A Food Stamp Giant Is Blocking It,” *The New York Times*, April 23, 2018, <https://www.nytimes.com/2018/04/23/technology/start-up-fight-poverty-food-stamp-giant-blocking-it.html>.
- ⁷ United States Census Bureau, *Food Table 2. Food Sufficiency for Households with Children, in the Last 7 Days, by Select Characteristic*, Data Chart, United States Census Bureau Household Pulse Survey, Week 49, December 2022, https://www2.census.gov/programs-surveys/demo/tables/hhp/2022/wk49/food2_week49.xlsx.
- ⁸ Center on Budget and Policy Priorities (CBPP), *SNAP Works for America’s Children* (Washington, DC: CBPP, September 29, 2016), <https://www.cbpp.org/research/food-assistance/snap-works-for-americas-children>.
- ⁹ The Annie E. Casey Foundation KIDS COUNT Data Center, *Number of participants in the Supplemental Nutrition Assistance Program in the United States*, The Annie E. Casey Foundation, February 2022, <https://datacenter.kidscount.org/data/line/9165-number-of-participants-in-the-supplemental-nutrition-assistance-program?loc=1&loct=1#1/any/false/2048,574,1729,37,871,870,573,869,36,868/asc/any/18178>.
- ¹⁰ Center on Budget and Policy Priorities (CBPP), *SNAP Helps Millions of Latinos* (Washington, DC: CBPP, February 26, 2018), <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-latinos>.
- ¹¹ United States Department of Agriculture (USDA), *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2018* (Washington, DC: USDA, November 2019), <https://fns-prod.azureedge.us/sites/default/files/resource-files/Characteristics2018.pdf>.
- ¹² United States Department of Agriculture (USDA), *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2019* (Washington, DC: USDA, March 2021), <https://www.fns.usda.gov/sites/default/files/resource-files/Characteristics2019.pdf>.
- ¹³ Center on Budget and Policy Priorities, *SNAP Helps Millions of Latinos*.
- ¹⁴ United States Department of Agriculture (USDA), “Supplemental Nutrition Assistance Program (SNAP) Scam Alerts,” USDA, <https://www.fns.usda.gov/snap/scam-alerts>; <https://www.mass.gov/news/massachusetts-residents-advised-to-protect-public-benefits-from-scams>.
- ¹⁵ Letter from members of the Congress of the United States to Thomas J. Vilsack, Secretary of the U.S. Department of Agriculture, regarding SNAP benefit skimming in Massachusetts, September 1, 2022, https://mcgovern.house.gov/uploadedfiles/ma_delegation_snap_skimming_letter_9.1.22.pdf.
- ¹⁶ Aimee Picchi, “Amid surge in food-stamp theft, low-income victims are left on the hook, lawsuit claims,” *CBS News*, November 21, 2022, <https://www.cbsnews.com/news/food-stamps-skimming-lawsuit-alleges-hardship-over-stolen-benefits/>.