

December 29, 2023

Via regulations.gov
The Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau

Re: Comments on the Consumer Financial Protection Bureau’s Notice of Proposed Rulemaking on Section 1033 of the Consumer Financial Protection Act of 2010 (CFPA) on personal financial data rights, Docket Number CFPB-2023-0052

Dear Director Chopra,

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

UnidosUS is a nonprofit, nonpartisan organization that serves as the nation’s largest Hispanic civil rights and advocacy organization. Since 1968, we have challenged the social, economic, and political barriers that affect Latinos through our unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States, including Puerto Rico.

Latinos play an increasingly important role in the economy of the United States. Latinos account for 20% of the U.S. population and are one of the fastest-growing groups, reaching 62.1 million in 2020.¹ Over the past ten years, the U.S Latino economy grew more than twice as fast as the non-Latino equivalent. In 2021, Latinos’ purchasing power in the United States reached \$3.2 trillion, rivaling the world’s fifth largest economy.² Latinos also over-index in their use of “fintech” products and services.³

Yet Latinos face substantial barriers in transforming this economic power into measurable wealth. Lowincome Latino consumers are disproportionately represented among the unbanked and underbanked. A 2021 Federal Deposit Insurance Corporation’s (FDIC) survey of unbanked and underbanked households’ data shows that 12% of Latinos are unbanked, compared to 2.5% of whites. And 23% of those who earn less than \$15,000 a year are unbanked, compared to 0.6% of those who earn at least \$75,000.⁴ A 2022 UnidosUS survey of 1,200 Latinos in Arizona, California, and Texas found that 15% of Latinos were unbanked. The survey also found that 25% of Latinos earning less than \$29,000 a year were unbanked.⁵

When Latinos are banked, they pay higher premiums on comparable (and at times, worse) financial products than their non-Hispanic peers. A recent FDIC study found significant disparities in loan pricing, concluding that “Black and Latino borrowers paid approximately six basis points more in interest rate than white borrowers for conventional purchase loans.” The study also found that Black and Latino borrowers paid more in total loan costs compared with white borrowers.⁶ For deposit accounts, Latinos pay \$14 per month, on average, for ATM, overdraft, and routine service charges on checking accounts, and Black account holders pay \$12 a month. In contrast, whites pay an average of \$5 per month.⁷

Latinos are also disproportionately shut out of the credit system, despite demonstrating a high understanding of how it works.⁸ As currently structured, the U.S. credit system fails to succinctly grasp the nuances of Latinos' financial behavior. Generally speaking, the credit system fails to include 1 in 10 Americans, rendering 45 million Americans credit-invisible (meaning they have no credit on record with the "Big Three" national credit reporting agencies (CRAs)). Notably, Latinos are twice as likely as the average American to be credit-invisible. Credit scoring algorithms used by the CRAs fail to account for several factors that can be specific to Latinos, such as a reluctance to accumulate debt, existing credit history from other countries, and history of other on-time payments excluded from scores, such as rent. As a result, Latinos can be grouped into score bands that do not reflect their actual financial behavior or are not scored at all.

Given the rise of data-driven technologies and platforms that allow companies to track, collect, process, use, retain, and monetize personal information and behavior, issues such as data privacy, security, transparency, and accountability have increased significance. Latinos face several hurdles to financial inclusion that can be exacerbated by technology at the intersection of financial access, including that the community can have lower levels of digital and financial information and over-index on the wrong side of the digital divide. In addition, automated decision-making can replicate bias, discrimination, and exclusion in financial matters, widening the racial wealth gap. These factors can also limit the ability of impacted communities, including Latinos, to recognize when bias, discrimination, or exclusion is happening to them—and the current marketplace generally lacks mechanisms for securing redress or remedy.

UnidosUS work to improve Latino market access to banking and credit products. We welcome the Bureau's rulemaking as an effort to lay a foundation for open banking by standardizing how personal financial data will be collected, stored, and used by all pertinent parties in a way that can empower consumers, foster competition, and build strong privacy and fairness safeguards.

Below we outline suggestions to inform the Bureau's approach and ensure the needs of Latino consumers are addressed alongside those of other lower-income people and people of color. Specifically, we urge the Bureau to develop safe harbors around the use of alternative data in credit decisions, consider ways to minimize costs passed down to consumers, and include measures for Electronic Benefit Transfer (EBT) cards. We endorse comments submitted by Consumer Reports on areas needed to improve the scope and reach of the rule on data privacy and security, and we also note that we signed onto comments led by Prosperity Now that emphasize the need to include EBT cards.

The CFPB should develop approaches for uses of alternative data in credit decisions that empower consumers and encourage banks to adopt new underwriting models.

Standardizing open banking data access protocols, as the Bureau proposes, can allow existing market players that may be hesitant to absorb the cost of implementing new underwriting models to more easily integrate these into existing business models. To allow market players to do this in a safe and efficient manner, we support measures that:

1. **Enumerate and publish categories of routine non-credit payment data that lenders can take into account when calculating credit risk, such as on-time rental payments and other data that is predictive of risk.** Providing a clear and detailed list of approved data categories would guide

industry and avoid confusion. We encourage the Bureau to develop evidence showing the impacts of including remittances as one of the categories on both credit assessment and cashflow, given that it can represent Latinos' ability to save for a specific use or purpose. If including remittances, on net, widens the credit box, we would encourage the Bureau to include it.

2. **Prevent use of non-financial personal data that may introduce bias or consideration of protected characteristics.** While alternative forms of data, like cash flow data, have been shown to be an accurate predictor of creditworthiness, there is a real risk that industry will gain access to personal data points that go beyond the scope of determining an individual's credit risk, for example, through retail purchase history, social media activity, broader digital footprint, or even traveling patterns. These indicators are but a few that can act as proxies for race, ethnicity, or gender, etc. The Bureau should be clear that anti-discrimination principles apply to all data collected.
3. **Require specific plain language consumer consent notifications, and a comparably easy method to opt out of data collection.** To increase transparency and improve consumer trust, the Bureau should provide model language and documents concerning communications from lenders and data aggregators with consumers on the process of data collection and its uses. These notifications should include a complete and clear list of what types of data will be collected and its significance to outcomes for the consumer by category. Similarly, adverse action notices should clearly inform consumers about what caused a denial, including incomplete data, financial management choices, or other relevant factors.
4. **Improve language access throughout the entirety of the data gathering process and hold data aggregators and lenders to comparable standards.** We are pleased that the Bureau will require disclosures that can allow consumers to make informed decisions about granting third parties access to their personal financial data. Consumers of limited-English proficiency should be afforded this option as well. Requiring third parties to identify which consumers have limited English proficiency (LEP) and providing translations in their preferred language would not be overly burdensome, as the Bureau states in its notice. Given that a large portion of the LEP population speaks Spanish, the Bureau should, at a minimum, provide model notices and disclosures in Spanish and require third parties to automatically provide these documents, in electronic form, to all applicants.

Electronic Benefit Transfer (EBT) accounts should be included in the rule as covering them would substantially address the needs of lower-income Latinos.

The Bureau's proposal includes Regulation E asset accounts and Regulation Z credit card accounts within its scope, but it fails to propose inclusion of Electronic Benefit Transfer (EBT) accounts. Instead, the Bureau asks "whether to add EBT-related data to the final rule, or whether to reach EBT cards in a subsequent rulemaking."⁹ UnidosUS previously submitted a comment letter supporting inclusion of EBT accounts in 1033 rulemaking along with other covered accounts, rather than reserving action on this issue for a separate rulemaking.

We again ask the Bureau to include EBT accounts in this rulemaking and offer three reasons:

1. The population that would benefit from including EBT in 1033 experience multiple intersecting forms of vulnerability that make the loss of benefits and income deeper, as they are, by definition, struggling financially. They are also disproportionately Latinos and other people of color.
2. Because many other consumers now use cards with chips, these consumers are also disproportionately the target of, and harmed by, scams. Inclusion of EBT accounts in Section 1033 rulemaking will allow this vulnerable population to mitigate the financial impact of fraud and scams.
3. Evidence suggests that including EBT accounts in Section 1033 rulemaking is supported on a bipartisan basis.

First, food and nutrition insecurity disproportionately impact the Latino community. Children, seniors, and those with disabilities are a majority of SNAP participants. Recent data from the U.S. Census Bureau Household Pulse Survey show that 21% of Latino households with children experience food insufficiency, compared to 12% of white households with children.¹⁰ More than a fifth of SNAP benefits—about \$12.2 billion—went to Latino households in 2019.¹¹ In 2022, more than 41 million low-income people participated in SNAP,¹² and more than one in five SNAP participants are Latino.¹³ Latino SNAP beneficiaries are generally considered very low-income: the average monthly income of a Latino family of three enrolled in SNAP is just \$980.¹⁴

Although it provides an essential benefit, our system for delivering benefits to SNAP participants is being targeted by fraudsters. The U.S. Department of Agriculture (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.

Recent reporting sheds light on the vulnerability of EBT accounts to skimming, finding that, “EBT cards are especially vulnerable because they don’t have a smart chip like most modern credit cards or bank debit cards.”¹⁵ As many consumers upgrade to the new technology, scams involving skimming are now being concentrated in the populations least able to tolerate their impact on household finances. Inclusion of EBT would also promote equity across vulnerable groups relying on critical nutrition assistance supports, empower users to monitor their benefits, and help to mitigate the financial impact of fraud and scams by making them more visible. Further, improving access to EBT benefit data would facilitate SNAP participants’ ability to alert state agencies of skimming.

Inclusion of EBT accounts in Section 1033 reporting is especially critical for low-income Latinos and immigrants, as it will empower families through access to financial data. Latino families face barriers and heightened risks of fraud when relying on EBT benefits compared to native-born citizens. Many immigrant families have concerns about sharing personal information with government agencies due to uncertainties around legal status. This can preclude reporting issues with EBT cards. At the same time, language barriers around EBT cards, notices, and instructions may harm limited-English proficient households. Burdensome documentation requirements and limited access to Spanish-language call

center assistance prevent reporting of EBT skimming when it occurs and limit the ability to swiftly address lost benefits.

Finally, public statements by lawmakers on both sides of the aisle suggest broad support for including EBT in Section 1033 rulemaking and paves the way for inclusion in this proposal. Several Republicans, such as Representative Warren Davidson (R-OH), have made public statements supporting the implementation of section 1033.¹⁶ Others have made public statements asking for EBT (and other government benefits cards) to be included in the rule. For example, Representative French Hill (R-AR), a senior member of the House Financial Services Committee, expressed interest in including EBT accounts in Section 1033 in a congressional hearing this year. In his question to the CFPB, Representative Hill pointed out that EBT providers operate similarly to traditional financial providers and asked if such services should be “subject to the same competition and innovation that the market provides to consumers of other types of accounts.”¹⁷ Many lawmakers see Section 1033 as a tool for individuals to reduce waste and inefficiencies in government benefit systems and ensure that benefits are going to the people who are supposed to receive them.

The Bureau should consider the urgent economic situation that EBT users find themselves in when making a decision about the inclusion of EBT accounts in Section 1033 rulemaking. SNAP beneficiaries are low-income people who are often living paycheck to paycheck and who can have trouble withstanding a shortfall in income and benefits. Including EBT in the ongoing rulemaking would allow this population to maximize the impact of their benefits, mitigate the negative impact of fraud and scams, and lead to better economic and social outcomes. Finally, any delays in including EBT in 1033 will only serve to create a two-tiered system of data rights among low- and higher-income consumers and prevent EBT users from accessing valuable tools to improve their financial well-being and ensure the integrity of government benefit programs.

Endnotes

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- 13 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>.
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