The Center for Financial Services Innovation (CFSI) is the nation’s authority on consumer financial health. CFSI leads a network of financial services innovators committed to building a more robust financial services marketplace with higher quality products and services. Through its Compass Principles and a lineup of proprietary research, insights and events, CFSI informs, advises, and connects members of its network to seed the innovation that will transform the financial services landscape.

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Executive Summary

Consumer financial data is increasingly important in our world today. Reliable data access can drive consumer financial health and innovation in financial services. However, the rapid growth of financial technology in recent years has initiated an important debate around risk, consumer protection and competition.

In October 2016, CFSI released its Consumer Data Sharing Principles, which provide a starting point for industry to work together on shared solutions to these questions. Currently, there is widespread agreement that consumers have the right to access their financial information, and various groups and regulators have become more involved in developing solutions; but there is more work to do.

Today, there is no shared understanding of how existing regulations apply to data sharing, and different approaches to risk allocation across bilateral contracts could create inconsistent protection for consumers. To address this, the market should develop a liability framework for consistency in regulatory interpretation, contractual risk allocation and consumer protection. Industry leaders should also develop consistent guidelines for consumer disclosures and control, and facilitate widespread adoption of shared frameworks and solutions.

Regulators should support the development of industry-led solutions by clarifying existing regulation, providing consistent training to examiners, coordinating to remove redundancy across agencies, and supporting promising private sector initiatives.

Recommendations for Providers of Financial Services

Recommendation
Develop a Common Liability Framework
Create an agreed-upon framework for apportioning liability related to data sharing among financial institutions, data aggregators and financial technology companies that can be shared and replicated in contracts between the different parties.

Key Considerations
- Limit consumer risk exposure to the greatest extent possible.
- Determine minimum security standards that financial technology companies and aggregators are expected to maintain to access consumer data.
- Develop a list of data variables necessary to fulfill use cases requested by consumers, and outline the risk implications of those data.

Recommendation
Establish Continuity in Consumer Communication and Control
Develop principles for consistency in consumer disclosures and control mechanisms in data sharing.
Key Considerations

- Develop model data-sharing communication and disclosures for informing consumers of the risks of data sharing and what steps they need to take to limit their liability.

- Determine guidelines for permission and control options that consumers should have related to data sharing.

Recommendation

Facilitate Market-wide Adoption

Ensure that standard data-sharing approaches can extend to all entities.

Key Considerations

- Consider the ability of small financial institutions to develop and maintain new partnerships and infrastructure.

- Identify, or create, an inclusive group tasked with leading coordination and liability framework development.

Recommendations for Regulators

- Clarify existing regulations that impact data sharing.

- Provide consistent guidance to examiners on how to apply regulations applicable to data sharing.

- Coordinate to determine where there is potential to remove regulatory overlap and form shared inter-agency viewpoints.

- Support promising market-led coordination.

If both private and public sector data-sharing actors follow the recommendations outlined here, consumers will benefit from consistency in protection and access, and businesses will benefit from increased partnerships, innovation and growth.
Financial Data: Why It Matters Who Shares What

The value of financial data for consumers, and for the businesses who serve them, is rapidly expanding. Reliably and securely sharing data between financial services providers, technology companies and consumers leverages this increasing value for improved consumer financial health and market growth. Market actors have exchanged digital consumer data going back decades, but the rapid growth of financial technology in recent years has initiated an important debate around risk, consumer protection and competition.

In late 2015, there were significant disruptions in the provision of data to consumers through financial technology applications because of unclear legal and financial risk for the businesses involved. Impeding the flow of financial data limits consumers’ ability to effectively understand, manage and improve their financial health. As the nation’s leading authority on consumer financial health, the Center for Financial Services Innovation (CFSI) began tackling the issue of financial data sharing to facilitate consumers’ ongoing and secure access to their data.

Today, there is broad agreement among financial services providers (by which we mean all private sector actors but primarily banks, credit unions, data aggregators, financial technology applications, core processors and any other private entities engaged in data sharing) and regulators that consumers should have the ability to share their financial data with the service providers and applications of their choice. New partnerships have emerged between financial institutions, data aggregators and financial technology applications that mitigate risk by codifying roles and responsibilities within those contracts. Several market-led groups have formed to develop technical standards. Regulators, including the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency, and the Federal Reserve Board of Governors, have increased their focus on this issue and indicated their interest in the development of industry-wide solutions.

Despite the positive progress, there is more work to do to protect consumers and support innovation. Currently, there is no common interpretation of how existing regulations apply to financial data sharing, and liability distribution in contracts may vary with each partnership. This perpetuates inconsistency and unknown risk for consumers and businesses, which in time could limit innovation and degrade confidence in the market. Consumers and providers alike would benefit from a liability framework that guides consistent regulatory interpretation, contractual risk allocation, and consumer protection.

“Consumers and providers alike would benefit from a liability framework that guides consistent regulatory interpretation, contractual risk allocation, and consumer protection.”
Additional challenges include a lack of common principles for consumer disclosures and control, and a lack of resources and coordination to ensure that all institutions can reasonably participate in the data-sharing ecosystem. Finally, current regulations do not uniquely address data sharing, guidance by financial institution examiners can be inconsistent, and the patchwork of different regulatory entities with authority over this ecosystem creates overlap and confusion.

Sharing financial data through reliable and secure systems is necessary for the growth of the financial sector and for the financial health of individual consumers. This brief provides recommendations for how both industry and regulators can leverage available resources and progress to date. Taking these steps will hasten progress and maintain security as a focus in consumer financial data sharing, which in turn will drive market stability and growth.

**Private and Public Sector Coordination**

The financial services industry is at a pivotal juncture: there is broad agreement on data-sharing principles and an appetite for coordination, and participants are not fully entrenched in different approaches. However, there remains a lack of clarity between industry and regulators, and even among regulators themselves, over their respective roles and responsibilities in developing solutions.

Addressing the challenge of how liability can, and should, be allocated among financial institutions, aggregators and financial technology applications requires a common interpretation of the existing regulations that impact the data sharing ecosystem. Industry actors are hesitant to call for new regulation around financial data sharing, concerned that prescriptive rule-making would add additional complexity, be slow to develop and not adapt to quickly-changing technology. While regulators have taken small steps through public statements and increased engagement, the ongoing changing of the guard at the major regulatory agencies makes it unlikely that regulators will take up this issue in a more significant way.

Given these two dynamics, industry actors should lead the development of solutions, with additional clarification from regulators to facilitate progress. Ultimately, it is the combination of market leadership and regulatory support that will lead to progress in the shared goals of consumer protection, data access and market stability.
Recommendations for Providers of Financial Services

The following three recommendations are targeted at industry actors, including financial institutions, data aggregators, financial technology companies and other service providers involved in consumer financial data sharing.

Develop a Common Liability Framework
Create an agreed-upon framework for apportioning liability related to data sharing among financial institutions, data aggregators and financial technology companies that can be shared and replicated in contracts between the different parties.

The most important issue for the market to address is effective and proportional liability distribution among data-sharing parties. Having a shared liability framework that addresses the unique risks of financial data sharing will ensure that consumers can be confident in the overall market and their own information security, no matter with whom they bank or which financial technology applications they choose to use. This would also provide efficiency in developing business partnerships because a baseline for distributing responsibility will already be established. Regulation E provides a framework for liability and responsibility distribution for electronic funds transfer and could serve as a starting point for a similar system in data sharing. The market could reach a shared interpretation of how Regulation E currently applies to data sharing and build out additional elements that address the specific nuances of data sharing.

CFSI recommends that the market incorporate the key recommendations below into the creation and implementation of a common liability framework:

- **Limit consumer risk exposure to the greatest extent possible.** Protecting a consumer from fraud and data loss creates confidence in the overall market, which in turn generates new customers and drives increased business and innovation. Guidelines may be developed that define how consumers can limit their liability, such as reporting errors within a specified timeframe. Reinsurance could pool risk across companies of various sizes, enabling them to maintain liability proportionate to their role in data sharing. These reinsurance pools may be an avenue to safeguard consumer protection without jeopardizing business solvency should fraud or a breach occur.

- **Determine minimum security standards that financial technology companies and aggregators are expected to maintain to access consumer data.** A collaboratively-developed set of minimum security standards will create consistency and transparency for new actors entering the market and will uphold confidence in the distribution of liability. Standards should contain tiers of rigor commensurate with the type and amount of data sharing entities engage in, so as to not unduly limit innovation or competition.

### Three Data-Sharing Recommendations for Financial Services Providers

1. **Develop a common liability framework**
2. **Establish continuity in consumer communication and control**
3. **Facilitate market-wide adoption**
• Develop a list of data variables necessary to fulfill use cases requested by consumers, and outline the risk implications of those data. Information such as account and routing numbers are highly sensitive, while a limited amount of transaction history, while still valuable, does not have the same potential for fraud or other loss of funds. In order to build out a liability framework applicable to all use cases, the market should create an agreed-upon risk classification for data variables necessary to retain consumer-permissioned access. This list and corresponding risk classification would need to be revisited and expanded upon on a continuous basis as new use cases are discovered through ongoing innovation.

Establish Continuity in Consumer Communication and Control
Develop principles for consistency in consumer disclosures and control mechanisms in data sharing.

Today, consumers have inconsistent experiences with financial data sharing. The development of a liability framework will help minimize data-sharing risk for consumers, but communicating consumers’ responsibility and rights in a digestible and consistent way, and enabling direct control, is imperative.

CFSI recommends that the market address the key elements below in coordination with the development of a liability framework:

• Develop model data-sharing communication and disclosures for informing consumers of the risks of data sharing and what steps they need to take to limit their liability. To enable consumers to understand and participate in data sharing, the industry has a responsibility to improve customer interaction with, and understanding of, the legal relationship they are entering into when they give permission to share their data. The care that is put into user experience within financial technology can be leveraged to create model consumer communication and disclosures for data sharing.

• Determine guidelines for permission and control options that consumers should have related to data sharing. Having a recognizable method to provide data-sharing permission and assert control will increase engagement because consumers will be familiar and confident with the mechanisms and their own responsibility. Customers of financial technology applications should have visibility into what data they have permissioned to be shared, and who is receiving that information. They should also have the ability to modify or revoke data sharing permission at any time.

Three Data-Sharing Recommendations for Financial Services Providers

1. Develop a common liability framework
2. Establish continuity in consumer communication and control
3. Facilitate market-wide adoption
Facilitate Market-wide Adoption

Ensure that standard data-sharing approaches can extend to all entities. To maintain a consistent experience for consumers and maximize growth within the industry, the solutions developed for data sharing must work for all entities. Small financial institutions in the United States face unique economic constraints within the data-sharing ecosystem that must be addressed. The development of frameworks and guidelines should be a coordinated and inclusive effort, with meaningful representation of all relevant stakeholders within the data-sharing ecosystem.

CFSI recommends that the market take into consideration the key elements below to enable widespread adoption of solutions:

- **Consider the ability of small financial institutions to develop and maintain new partnerships and infrastructure.** If data-sharing solutions do not take into account the unique resource constraints of smaller entities, consumers could be limited in either the financial institutions with which they can bank or the financial technology applications they can safely use. Participation by small financial institutions in the development of frameworks and guidelines can help ensure that the adoption of solutions is feasible for entities of all sizes. In addition, coordinating efforts should consider ways to mitigate implementation costs for small institutions. Core processing companies and other businesses that provide services to financial institutions may provide avenues to disseminate standard data-sharing technology and process solutions that can be taken up by entities of all sizes.

- **Identify, or create, an inclusive group tasked with leading coordination and liability framework development.** In order to succeed, a common liability framework for data sharing must work within the business models of a diverse group of stakeholders. In the last few years, several new industry groups have formed to work on this issue, suggesting that there is appetite for building collective solutions to data sharing challenges. However, these groups are either primarily focused on developing technical standards or have narrow membership bases, making it difficult to convene the broad cross-section of stakeholders needed to develop an agreed-upon approach to liability allocation. Coordinated efforts to develop a liability framework should include representation from large and small financial institutions, aggregators, financial technology companies, core processors and consumer advocates.

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<tr>
<th>Three Data-Sharing Recommendations for Financial Services Providers</th>
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<tbody>
<tr>
<td>1. Develop a common liability framework</td>
</tr>
<tr>
<td>2. Establish continuity in consumer communication and control</td>
</tr>
<tr>
<td>3. Facilitate market-wide adoption</td>
</tr>
</tbody>
</table>
International Approaches

A push to develop systems for financial data sharing is happening across the world. In the United Kingdom under the auspices of the Open Banking Initiative, and in Europe under the Revised Payment Services Directive (PSD2), progress is being made on an industry-wide data-sharing model. Singapore and Australia are looking into developing similar frameworks.

The U.K.'s Open Banking Standard is a set of guidelines for secure financial data sharing across the United Kingdom. Unlike in the United States, the U.K. government has issued a clear top-down directive requiring the sharing of consumer financial data. The U.K. also has far fewer financial institutions than the U.S. that must implement new standards. Despite these differences, there are lessons that can be taken from that country’s process and structure.

Develop a Common Liability Framework: The topics addressed by the U.K. data-sharing framework are holistic: “The bulk of the work in implementing and promoting the Open Banking Standard is not technical. The critical issues that must be faced...are around governance, security, liability, standards, communications, regulation and legal.”

Establish Continuity in Consumer Communication and Control: The U.K. framework focuses on the security of consumer data, as well as consumer understanding of, and participation in, the market. “People must be helped to understand the value of their own data, and what responsibilities they take on when they share it with third parties.”

Facilitate Market-wide Adoption: To facilitate adoption, the implementation of the U.K. Open Banking Standard was structured to be free for small institutions once initial integration is developed. “The Open Banking Standard will be made available under a license that permits it to be freely used, reused and distributed.” The U.K. also ensured that framework development and standard implementation was inclusive by bringing together “experts in banking, data, and consumer and business communities”.

The U.K. efforts have gone well, but are not without their challenges. Similar to the United States, this undertaking requires broad coordination among diverse industry actors, which can prove challenging. As the framework is rolled out across the U.K., it will be a case study for the rest of the world as to the efficacy of these concepts.

1 Open Data Institute 2016, “Introducing the Open Banking Standard”.
2 Open Data Institute 2016, “The Open Banking Standard”.

Recommendations for Regulators

The following recommendations are targeted at all regulating entities that maintain the safety and soundness of our financial systems and protect consumers. These include the Federal Reserve System (FRS), the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), state banking regulators and others.

Regulators have an important role to play in the development of guidelines for a data-sharing ecosystem. Recent steps regulators have taken, such as clarifying statements that reinforce consumers’ right to their data, and public speeches outlining nuances and regulatory learning, have had a positive impact on the data-sharing discussion. These steps have allowed market actors to move closer to a shared understanding. At a minimum, regulators should continue to remove barriers to market progress through clarification, guidance and messaging consistency.

CFSI encourages regulators to take the following actions:

- **Clarify existing regulations that impact data sharing.** There are differing interpretations of how regulations, such as the OCC’s Third Party Risk Management guidance, the Gramm-Leach-Bliley Act’s privacy and safeguard rules, and Regulation E liability limits, should be applied to data sharing between financial institutions and third parties like data aggregators and financial technology applications. Without a shared interpretation of regulatory requirements, achieving a market-led liability framework will be much more difficult. Clarifying statements or bulletins describing how regulators interpret existing guidelines as they apply to data sharing will assist the market in developing solutions that comply with all regulations and protect consumers.

- **Provide consistent guidance to examiners on how to apply regulation applicable to data sharing.** Financial institutions have examinations on a regular basis, but guidance related to data sharing during these visits on safety and soundness and consumer protection compliance can vary. There are already public debates around how regulation should be interpreted; adding differing private guidance exacerbates confusion and the reluctance to share data. All agencies with a role in supervising chartered financial institutions should provide consistent training for examiners in consumer-permissioned data sharing.

- **Coordinate to determine where there is potential to remove regulatory overlap and form shared inter-agency viewpoints.** There is a significant amount of overlap in regulation and regulatory jurisdiction as it relates to data sharing. The Federal Financial Institutions Examination Council (FFIEC) may be an ideal home for this kind of collaboration, as it brings together nearly all of the agencies that implement regulations tied to consumer financial data sharing.

- **Support promising market-led coordination.** Regulators not only have the opportunity to remove roadblocks, but through support of industry-led entities and solutions, they can also facilitate even faster progress. There will naturally be a concern as to whether an industry-led solution will be in line with regulatory thinking on an issue. Support by relevant bodies can increase participation and confidence in coordinating efforts, moving everyone further toward shared goals.

Four Data-Sharing Recommendations for Regulators

1. Clarify existing regulations that impact data sharing
2. Provide consistent guidance to examiners on how to apply regulation applicable to data sharing
3. Coordinate to determine where there is potential to remove regulatory overlap and form shared inter-agency viewpoints
4. Support promising market-led coordination
A Shared Responsibility to Enable Consumer Financial Health

The key challenge for the United States data-sharing ecosystem today is the lack of a common approach to liability. CFSI recommends that industry actors, including financial institutions, data aggregators, financial technology companies and other service providers, take primary responsibility for developing a framework for proportional liability allocation, which can include minimum security requirements and initial data risk classifications. In addition to developing a liability framework, consumer communication and control principles, and avenues to disseminate these solutions to financial institutions of all sizes and types, are needed. Identifying an inclusive coordinating group to address these challenges may be the most effective path forward.

While regulators are unlikely to take the lead role in developing such a framework in the current environment, they still hold an essential supporting function. Regulators can provide clarification on the interpretation of key rules that impact the data-sharing ecosystem and financial institution examiners can provide consistent guidance to industry actors. Finally, inter-agency coordination and support of an industry-led coordinating effort will go far in guiding the market towards long-term solutions.

If these recommendations are taken up by both private and public sector actors, consumers will gain consistent protection and access, businesses will benefit from new partnerships and efficiency, and the market will expand and innovate.