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Washington, D.C. 20004

Via www.regulations.gov and via U.S. First Class Mail

October 9, 2024

Hon. Janet L. Yellen
Secretary of the Treasury
c/o Chief Counsels, OCC and OFR
Attn: Comment Processing
OCC-2024-0012, TREAS-DO-2024-0008
400 7th St. SW, Ste. 3E-218
Washington, DC 20219

Hon. Jerome Hayden Powell
Chairman of the Board of Governors
Federal Reserve System
c/o Ann E. Misback, Secretary
Docket No. R-1837, RIN 7100-AG79
20th St. and Constitution Ave. NW
Washington, DC 20551

Hon. Martin J. Gruenberg, Chairman
Federal Deposit Insurance Corp.
c/o James P. Sheesley, AES
Attn: Comments/Legal OES
RIN 3064-AF96
550 17th St. NW
Washington, DC 20429

Hon. Todd M. Harper, Chairman
National Credit Union Administration
c/o Melane Conyers-Ausbrooks, Secretary
Docket No. NCUA-2023-0019
RIN 3133-AF57
1775 Duke Street
Alexandria, VA 22314-3428

Hon. Rohit Chopra, Director
Consumer Financial Protection Bureau
Dkt. CFPB-2024-0034, RIN 3170-AB20
Comment Intake/FDTA Interagency Rule
c/o Legal Division Docket Manager
1700 G St. NW
Washington, DC 20552

Hon. Sandra L. Thompson, Director
Federal Housing Finance Agency
c/o Clinton Jones, General Counsel
Attn: Comments/RIN 2590-AB38
Office of the General Counsel/FHFA
400 7th St. SW
Washington, DC 20219

Hon. Rostin Behnam, Chairman
Commodity Futures Trading Commission
c/o Christopher Kirkpatrick, Secretary
Comments: FDTA Joint Data Standards
RIN 3038-AF43
Three Lafayette Centre, 1155 21st St. NW
Washington, DC 20581

Hon. Gary Gensler, Chairman
Securities and Exchange Commission
c/o Vanessa Countryman, Secretary
Comments: FDTA Joint Data Standards
File No. S7-2024-05
100 F St. NE
Washington, DC 20549-1090

Dear Secretary Yellen, Chairmen Powell, Gruenberg, Harper, Behnam, and Gensler,
and Directors Chopra and Thompson:

RE: Department of the Treasury/OCC/OFR, Federal Reserve System, FDIC,
NCUA, CFPB, FHFA, CFTC, and SEC Joint Notice of Proposed Rulemaking
Titled "Financial Data Transparency Act Joint Data Standards," 89 *Fed. Reg.*
67890 (August 22, 2024)

This letter presents comments of the National Federation of Independent Business (NFIB)¹ in response to the joint notice of proposed rulemaking by the Department of the Treasury Office of the Comptroller of the Currency (OCC) and Office of Financial Research (OFR), Federal Reserve System (FRS), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (CFPB), Federal Housing Finance Agency (FHFA), Commodity Futures Trading Commission (CFTC), and Securities and Exchange Commission (SEC) ("the agencies") titled "Financial Data Transparency Act Joint Data Standards" and published in the *Federal Register* of August 22, 2024. The proposed rule would implement section 124 of the Financial Data Transparency Act (FDTA).² Proposed subsection (b)(2) of the proposed rule purports to allow the agencies to provide less protection for small businesses than the law requires. NFIB proposes below (in bold typeface for reader convenience) that the agencies revise subsection (b)(2) to correct this error.

Section 124 of the FDTA requires the agencies to "jointly issue proposed rules for public comment that establish data standards for—(A) the collections of information reported to each covered agency by financial entities under the jurisdiction of the covered agency; and (B) the data collected from covered agencies on behalf of the Council."³ The FDTA then states that six of the agencies (OCC, FRS, FDIC, CFPB, NCUA, and SEC) "may scale data reporting requirements in order to reduce any unjustified burden on smaller regulated entities" and seven of the agencies (OCC, FRS, FDIC, CFPB, NCUA, FHFA, and SEC) "shall seek to minimize disruptive changes to the persons affected by those regulations." The CFTC can adopt similar protections for small businesses under the statutory grant of authority to tailor data standards and its authority to issue regulations.⁴

¹ NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty states hear the voice of small business as they formulate public policies. The agencies regulate and collect information from many small businesses.

² Financial Data Transparency Act of 2022, title LVIII of the National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263, December 23, 2022). For reader convenience, this letter cites provisions of law enacted by the FDTA as they appear in the U.S. Code, and principally in titles 12 and 15 of the U.S. Code. For example, the key provision of the FDTA on joint data standards was enacted by section 5811 of the National Defense Authorization Act for Fiscal Year 2023 as section 124 of the Financial Stability Act of 2010, which itself was Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Title I of Public Law 111-203, July 21, 2010). Section 124 was codified at 12 U.S.C. 5334. Although titles 12 and 15 of the U.S. Code have not been enacted into positive law, see Office of the Law Revision Counsel at <https://uscode.house.gov/>, the codification of the various relevant provisions of the FDTA in titles 12 and 15 remains the most convenient source for locating those provisions.

³ Section 124(b)(1) of the FDTA (12 U.S.C. 5334(b)(1)). The "Council" is the Financial Stability Oversight Council (see 12 U.S.C. 5321). On May 23, 2024, the Secretary of the Treasury designated the CFTC as a "primary financial regulatory agency" for purposes of section 124. 89 *Fed. Reg.* at 67894, col. 1, note 2.

⁴ 12 U.S.C. 14a and 14a note (OCC); 5361(a)(4), 1467a(u), 1844(h), 5468(h), and 253 note (FRS); 1831cc and 1831cc note (FDIC); 5498 and 5498 note (CFPB); 1772e and 1772e note (NCUA); 12 U.S.C. 4527 and 4527 note (FHFA); 15 U.S.C. 77g and 77g note, 780-4 and 780-4 note, 780-3 and 780-3 note,

Subsection (b)(2) of the proposed rule states that the data standards in the proposed rule "shall be subject to consideration by the Agencies of the applicability, feasibility, practicability, scaling, minimization of disruption to affected persons, and tailoring, as specified in the Financial Data Transparency Act of 2022."⁵ The use of the term "consideration" in subsection (b)(2) fails to implement the FDTA properly. The term "consideration" refers to something to think about, a factor to take into account, or something to which to give some weight. But the FDTA is mandatory that, in establishing data standards, agencies "shall seek to minimize disruptive changes to the persons affected." Thus, at a minimum, the agencies must modify subsection (b)(2) to make seeking minimization of disruptive changes mandatory and not merely something for the agencies to consider.

In addition to stating that the agencies "shall" seek to minimize the disruptive changes, the FDTA states that the OCC, FRS, FDIC, CFPB, NCUA, and SEC "may" consider scaling to reduce any unjustified burden on small businesses. The agencies should exercise the FDTA scaling authority, given the policy and principle of the Regulatory Flexibility Act (RFA) to protect small businesses in the rulemaking process.⁶ Note especially that the RFA states: "It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation."⁷

For the foregoing reasons, NFIB requests and recommends that the Department of the Treasury (including OCC), FRS, FDIC, NCUA, CFPB, FHFA, CFTC, and SEC revise subsection (b)(2) of the common rule to read:

77z-4, 78n and 78n note, and 78rr and 78rr note (SEC); and 7 U.S.C. 2(a)(12) and section 5891(c) of Public Law 117-263, 12 U.S.C. 5334 note ("Nothing in this title, or the amendments made by this title, may be construed to prohibit the head of a covered agency, as defined in section 124(a) of the Financial Stability Act of 2010, as added by section 5811(a) of this title, from tailoring those standards when those standards are adopted under this title and the amendments made by this title.")(CFTC).

⁵ 89 *Fed. Reg.* at 67907, col. 2.

⁶ Regulatory Flexibility Act, Public Law 96-354 (September 19, 1980), 5 U.S.C. 601 note.

⁷ Section 2(b), RFA, 5 U.S.C. 601 note. In paragraph 2(a)(3) of the RFA, Congress found that "uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources[.]" In paragraph 2(a)(4) of the RFA, Congress declared that "the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity[.]" In paragraph 2(a)(6) of the RFA Congress noted that "the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation[.]"

(2) Additional Matters. (A) The data standards established in paragraph (b)(1) of this section shall--

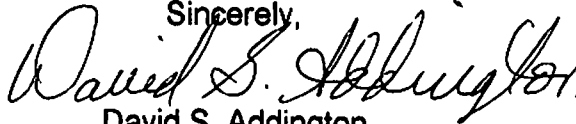
(i) be subject to consideration by the agencies of the applicability, feasibility, practicability, and tailoring, as specified in the Financial Data Transparency Act of 2022 (FDTA); and

(ii) be scaled in order to reduce any unjustified burden on smaller regulated entities, including small businesses.

(B) The Agencies shall seek to minimize disruptive changes to the persons, including small businesses, affected by this section.

Congress did not make efficiency and interoperability the sole objectives of section 124 of the FDTA. Indeed, the FDTA provides for the agencies to protect small businesses, even when doing so might reduce efficiency or interoperability. The people's elected representatives valued the ability of federal financial agencies to exchange information smoothly, but they valued even more highly the protection of small businesses from disruption and unjustified burdens imposed by agency data standards.

Sincerely,



David S. Addington
Executive Vice President and General Counsel