

Issue Update

Data is playing an ever-increasing role in all aspects of our economy, and banking is no different. Today, both banks and fintech companies offer products (such as budgeting tools, income verification, and digital wallets) that rely on access to a consumer's financial data, which is often housed at another business.

Section 1033 of the Dodd-Frank Act gives consumers the right to access their financial records in a standardized electronic format, with some exceptions. Such access could be direct by the consumer or by authorized third parties, using entities known as data aggregators as intermediaries. In 2017, the CFPB issued a set of principles that outlined the Bureau's vision for realizing a robust and safe data sharing ecosystem. Since then, industry has collaborated through an entity called the Financial Data Exchange (FDX) to transition from the dangerous use of credential-based screen scraping to the more secure API method, which currently connects more than 76 million accounts (although screen scraping still occurs).

The CFPB issued a proposed 1033 rule in October 2023. In a comment letter submitted in December 2023, ABA urged the Bureau to: take a more active role in enforcing compliance while affording data providers flexibility to manage risk and prevent fraud; not require payment initiation; allow data providers to recoup costs; deem data providers complying with 1033 not to be furnishers under the Fair Credit Reporting Act (FCRA); and revise several sections of the regulatory text to comport with the statute, avoid confusion, or otherwise ensure the practical operationalization of the rule. In June 2024, the CFPB released a partial final rule laying out the requirements for recognition of industry standard setters to evidence compliance with portions of the rule; FDX is a potential standard setter. The remaining final 1033 rule is anticipated in Fall 2024. ABA is also monitoring the forthcoming FCRA rulemaking on data brokers for the ways it might impact the 1033 ecosystem.

Why it Matters To Your Community

Banks support their customers' ability to access and share their financial data in a secure, transparent manner that gives the customer control. The CFPB's 1033 rule will require data providers, including banks, to make certain information available in an electronic format. This will impose significant compliance costs. However, banks will also be able to capture consumer consent in order to ingest their data, which will enable innovative use cases. Thus, the rule also represents a business opportunity.

Recommended Action Items

- **Continue to urge the CFPB to create a larger participant rule that brings data aggregators under direct supervision** to ensure consistent protections and outcomes for consumers.
- **Urge the CFPB to provide more time for compliance; ABA has asked for an 18-month extension for all tiers.** This will give banks time to conduct a data inventory/mapping exercise; plan for an external API portal (built in-house or through a service provider); assemble cross-functional teams to create policies, procedures, disclosures, and workflows for both making data available and ingesting it; and develop use cases for functioning as a data recipient.
- **Provide feedback to the 1033-adjacent FCRA rulemaking on data brokers.** This rulemaking could have significant implications for data sharing under 1033.

Data Aggregation - 1033

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Compliance Dates for Banks under CFPB’s Proposed 1033 Rule
(<https://www.federalregister.gov/documents/2023/10/31/2023-23576/required-rulemaking-on-personal-financial-data-rights>)

Bank Asset Size	Compliance Date as Proposed by CFPB*	Compliance Date as Urged by ABA*
At least \$500 billion	6 months	2 years
At least \$50 billion but less than \$500 billion	1 year	2.5 years
At least \$850 million but less than \$50 billion	2.5 years	4 years
Less than \$850 million	4 years	5.5 years

*Triggered by publication of final rule in the Federal Register