

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 to transition from the dangerous use of credential-based screen scraping to the more secure API method, although screen scraping is still regrettably common.

The CFPB issued a proposed rule in October 2023. In a comment letter submitted on December 29, ABA urged the Bureau to:

- create a final rule that comports with the bounds of authority delegated to it by Section 1033 of the Dodd-Frank Act;
- take a more active role in managing the data sharing ecosystem it is creating while affording data providers flexibility to manage risk and prevent fraud;
- not use Section 1033 as a vehicle to initiate payments to and from a Regulation E account (as it is both extralegal and too risky);
- allow data providers to recoup costs for both legal and policy reasons;
- clarify that data providers making information available pursuant to Section 1033 are deemed not to be furnishers under the Fair Credit Reporting Act; and
- revise several sections of the regulatory text to avoid confusion or otherwise ensure the practical operationalization of the rule, such as those pertaining to qualified industry standards of APIs, operational metrics, privacy provisions, the condition precedent and timing of compliance dates, and more.

The final rule is anticipated in 2024 and will have a major impact on banks. ABA is also monitoring the forthcoming FCRA rulemaking on data brokers for the ways it might impact the 1033 ecosystem.

Why it Matters

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 rule implementing Section 1033 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.