

November 18, 2024

The Honorable Rohit Chopra
Director of the Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Via electronic mail: OpenBankingStandards@cfpb.gov

Re: Docket No. CFPB-2024-0055; ABA letter in opposition of the of the Digital Governance Standards Institute application for open banking standard setter recognition

Dear Director Chopra,

The American Bankers Association (ABA)¹ appreciates the opportunity to comment regarding the Digital Governance Standards Institute application for recognition pursuant to 12 CFR Part 1033.² We write to oppose the application due to its deficiency in two main areas: 1) the application fails to meaningfully address any of the standards in the rule, or the organization's relationship with them; and 2) the application fails to demonstrate a significant nexus between the organization and the US data sharing ecosystem. The lack of this context in the application renders it impossible to assess the Digital Governance Standards Institute's fitness for recognition as a standard-setting body under 1033.

In June 2024, the Consumer Financial Protection Bureau (CFPB or Bureau) finalized a portion of its 1033 rule related to a recognition process for standard-setting bodies to offer evidence of compliance with certain substantive regulatory requirements.³ The partial final rule includes an appendix providing a step-by-step guide on how organizations can apply for recognition under Part 1033.⁴

In order to receive recognition by the Bureau, the partial final rule codified at 12 CFR 1033.141 requires a standard-setting body to demonstrate that it satisfies the following attributes: openness, balance, due process and appeals, consensus, and transparency.⁵ Appendix A describes

¹ *The American Bankers Association is the voice of the nation's \$23.9 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.*

² Digital Governance Standards Institute application for open banking standard setter recognition, <https://www.regulations.gov/docket/CFPB-2024-0055>.

³ "Partial Final Rule" on Personal Financial Data Rights; Industry Standard-Setting, <https://www.federalregister.gov/documents/2024/06/11/2024-12658/required-rulemaking-on-personal-financial-data-rights-industry-standard-setting>.

⁴ See Appendix A to Part 1033—Personal Financial Data Rights Rule: How To Apply for Recognition as a Standard Setter, <https://www.ecfr.gov/current/title-12/chapter-X/part-1033#Appendix-A-to-Part-1033>

⁵ Openness: The sources, procedures, and processes used are open to all interested parties, including: consumer and other public interest groups with expertise in consumer protection, financial services, community development, fair lending, and civil rights; authorized third parties; data providers; data recipients; data aggregators and other

the recognition process and terms, including the necessary contents of the application (at Step One).⁶

Pursuant to Step Two of the Appendix,⁷ the CFPB published the Digital Governance Standards Institute's application to its (i.e., the Bureau's) website seeking public comment.⁸ The materials are unclear for which aspect of the 1033 rule the Digital Governance Standards Institute is seeking recognition.⁹

A consensus standard issued by a recognized standard-setting body can serve as an indicia of compliance for standardized formats, notice and amount of scheduled downtime, commercial reasonableness of the developer interface performance and response time, access caps, reasonable denials, reasonableness of data provider revocation methods, sufficiency of developer interface documentation to enable third party access and use, listing data fields, policies and procedures regarding accuracy, and reasonableness of reauthorization requests.¹⁰ For comparison, the Financial Data Exchange's application specifically requested recognition as an issuer of "data formats" (i.e., standardized formats).¹¹

Turning back to the Digital Governance Standards Institute's application, we have no doubt their organization's desire to support the open banking ecosystem is sincere and that it shares many of the goals of the broader ecosystem. However, the application lacks specificity and the level of

providers of services to authorized third parties; and relevant trade associations. Parties can meaningfully participate in standards development on a non-discriminatory basis.

(2) Balance: The decision-making power is balanced across all interested parties, including consumer and other public interest groups, and is reflected at all levels of the standard-setting body. There is meaningful representation for large and small commercial entities within these categories. No single interest or set of interests dominates decision-making. Achieving balance requires recognition that, even when a participant may play multiple roles, such as data provider and authorized third party, the weight of that participant's commercial concerns may align primarily with one set of interests. The ownership of participants is considered in achieving balance.

(3) Due process and appeals: The standard-setting body uses documented and publicly available policies and procedures, and it provides adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and a fair and impartial process for resolving conflicting views. An appeals process is available for the impartial handling of procedural appeals.

(4) Consensus: Standards development proceeds by consensus, which is defined as general agreement, though not necessarily unanimity. During the development of consensus, comments and objections are considered using fair, impartial, open, and transparent processes.

(5) Transparency: Procedures or processes for participating in standards development and for developing standards are transparent to participants and publicly available. See <https://www.ecfr.gov/current/title-12/chapter-X/part-1033#1033.141>.

⁶ Supra, note 4.

⁷ Id.

⁸ Applications for open banking standard setter recognition, <https://www.consumerfinance.gov/personal-financial-data-rights/applications-for-open-banking-standard-setter-recognition/>.

⁹ Digital Governance Standards Institute, *Request for Recognition as a Standard Setter under the Personal Financial Data Rights Rule*; https://files.consumerfinance.gov/f/documents/cfpb_application-standard-setting-body-digital-governance-standards-institute_2024-10.pdf.

¹⁰ Final rule on Personal Financial Data Rights, <https://www.federalregister.gov/documents/2024/11/18/2024-25079/required-rulemaking-on-personal-financial-data-rights>.

¹¹ See Financial Data Exchange, *Application to the CFPB - 1033 Dodd-Frank Standard-Setting Body*; https://files.consumerfinance.gov/f/documents/cfpb_application-standard-setting-body-financial-data-exchange.pdf.

granularity needed to demonstrate how the Digital Governance Standards Institute would, if recognized, help to achieve those goals.¹²

To ABA's knowledge, the organization currently has no meaningful presence in the United States of America, and no existing significant connection to the US data sharing ecosystem. The application does not show how its work product is used by market participants today. Moreover, the list of members appear to be primarily based in Canada and comprised of governmental units or academic institutions—not the traditional financial institutions, data aggregators, or fintechs that would utilize any consensus standards.¹³

Therefore, recognition of the organization as a standard-setting body under the Section 1033 regulation is unwarranted due to the aforementioned vagueness in the application.

For these reasons, ABA opposes the Digital Governance Standards Institute's application posted on October 25, 2024 and urges the CFPB to deny recognition until such time that the entity remediates the aforementioned (and any other relevant) deficiencies in its application.

Thank you for your kind attention to this matter. If you have any questions about this comment, please contact Ryan T. Miller via email at rmiller@aba.com or via telephone at (202) 663-7675.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ryan T. Miller', with a long horizontal flourish extending to the right.

Ryan T. Miller
Vice President & Senior Counsel, Innovation Policy

¹² Supra, note 9.

¹³ Id.