

ICBA Regulatory Update: Section 1033

Overview

Section 1033 of the Dodd-Frank Act requires banks make available to customers access to their financial data, including information relating to any transaction, series of transactions, or information related to the account including costs, charges and usage data in a machine-readable format. In February, an ICBA member banker participated in the CFPB's SBREFA Panel on Section 1033, which was a discussion session to collect information on a rule's impact on small entities.

On October 27, 2023, the CFPB released a Notice of Proposed Rulemaking implementing Section 1033. The Bureau's proposed rule would require all banks who offer online banking to create and maintain a developer portal where customer-authorized third-party companies could access customer financial data including but not limited to transaction information and upcoming bill information. Banks would be prohibited from imposing any fees or charges on a consumer or an authorized third party in connection with establishing or maintaining the required interfaces.

On June 5, 2024, the CFPB issued a rule establishing the criteria that organizations must meet to become a CFPB-recognized standard setting body that could issue "Consensus Standards" (formerly called "Qualified Industry Standards.") These standards address the form and manner in which required data is to be shared with third parties, and technical specifications for application program interfaces (APIs). The rule would require a standard setting body to display attributes consisting of openness, transparency, balanced decision making, consensus, and due process and appeals.

ICBA Position

ICBA supports consumers' rights to have access to their own information and support allowing consumers to share that data with third parties that provide innovative products. However, we are very concerned about the cost burden and privacy implications of implementing Section 1033. We support an exemption from the requirement to create a developer portal for banks below \$850 million in assets (the SBA threshold for small businesses in banking) and we are urging the CFPB to allow banks to charge a reasonable fee to third parties for accessing customer data.

Talking Points

- The CFPB's proposal to require all banks who offer online banking to create and maintain a developer portal places an undue burden on community banks who will be dependent on their core providers and other third-party companies to create the technological tools that enable compliance.
- The Bureau's tiered implementation period, which gives banks below \$850 million in assets up to 4 years to comply is a step in the right direction, but an exemption for the smallest banks would be more appropriate. An exemption would allow for a market-based solution – if customers of small banks demanded to share their data with third-parties, small banks could

build a developer portal in order to be more competitive and retain their customers. However, if that demand did not materialize, small banks would be spared the compliance cost.

- Banks should be permitted to charge reasonable fees to third parties who access customer data in order to offset the cost of maintaining a developer portal. Ultimately, these third-party companies will be the beneficiaries of access to this data and should logically bear the cost of the rule.
- The CFPB is right to require authorized third parties to implement Gramm-Leach-Bliley Act (“GLBA”) like data security standards. GLBA’s information security safeguards and data privacy provisions provide a secure framework which community bank customers have come to expect from their financial products.