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INSIGHT

Open Banking, Data Sharing, and the CFPB's 1033 Rulemaking

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New technologies that use digitized consumer financial data have led to the development of new financial products and services for consumers in recent years. *Open banking* refers to the practice of giving financial services firms access to customer banking and other financial data to facilitate the development of new types of products and services for consumers. Innovation in financial technology—commonly referred to as *fintech*—is a subject of great interest for the public and policymakers. While new innovations, such as data sharing, can benefit consumers through new and affordable financial products and services, increasing access to consumer data can also pose data security and privacy risks to consumers.

This Insight discusses data sharing market and technological developments. Then, it discusses the status of the Consumer Financial Protection Bureau (CFPB) Section 1033 rulemaking about consumer-authorized access to financial data, which will impact financial data sharing developments in the future.

Data Sharing Market and Technology Developments

Financial products and services that rely on consumer data can provide improved and innovative offerings to consumers, enabling them to manage personal finances, automate or set goals for saving, receive personalized product recommendations, apply for loans, and perform other tasks. For example, some companies provide *data aggregation services*, a type of data sharing service wherein consumers give the aggregator permission to access information across their financial accounts and put it into a standardized summarized form to help make it easier for consumers to manage their money (e.g., Mint, Yodlee). In addition, some payment processor companies enable other application services to connect to consumers' financial accounts in order to provide new services, such as peer-to-peer transfers and other payment services (e.g., Plaid).

One technology commonly used to collect financial account data is *web scraping*, a technique that scans websites and extracts data from them. In general, web scraping can be performed without a direct relationship with the website or financial firm maintaining the data. As an alternative, the financial institution managing the account may provide customer account information to another financial firm through a structured data feed or application program interface (API). Advantages and disadvantages exist

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when accessing consumer data by API rather than web scraping. For example, in certain circumstances web scraping may be an easier way for companies to gather data immediately because it does not require negotiating company agreements like APIs do. However, according to a Treasury Department report, some industry observers assert that APIs are more secure in terms of cybersecurity and fraud risks.

CFPB's Section 1033 Rulemaking

Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) provides consumers with a right of access to their financial information. This type of financial information on a consumer could include, for example, information relating to consumer transactions or account usage. If requested, this information should generally be made available electronically to consumers in a usable format. Under this law, confidential commercial information, such as proprietary algorithms, are not included in this consumer right of access, and businesses are not required to maintain information on a consumer beyond what they currently do for business purposes.

Rulemaking Developments

To implement this section of the law, the CFPB is currently working on a new regulation to clarify standards around consumer-authorized access to financial data. In November 2020, the CFPB published an advanced notice of proposed rulemaking to solicit information from the public to inform this rulemaking.

Previously, the CFPB had been engaged in stakeholder outreach on this topic. In 2016, the CFPB issued a request for information regarding consumer access to financial records. Using feedback from this request for information, in October 2017, the CFPB outlined principles for consumer-authorized financial data sharing and aggregation. These nine principles included, among other things, consumer access and usability, consumer control and informed consent, and data security and accuracy. The CFPB also convened a symposium on the topic in February 2020.

Rulemaking Goals

In addition to achieving its statutory purpose, the Section 1033 rulemaking also has the potential to facilitate consumer-friendly innovation in financial services markets, but it could also introduce new consumer risks.

Data access could facilitate competition and innovation in consumer financial services, depending on how data sharing practices develop and how the regulatory framework is structured. In July 2021, the Biden Administration put out an executive order on promoting competition in the American economy. Among its provisions, the order encouraged the CFPB director to consider "commencing or continuing a rulemaking under section 1033 of the Dodd-Frank Act to facilitate the portability of consumer financial transaction data so consumers can more easily switch financial institutions and use new, innovative financial products."

Questions exist about the extent that the CFPB should be determining API or other data standards to facilitate data sharing between financial firms. These types of standards might affect market competition in different ways. For example, standardized formats for consumer-accessed data could potentially make it easier to create new products and services for consumers. While this could benefit consumers, the process of changing financial institutions' data formats to standardize them could create a burden on industry or limit future innovation.

The development of consumer-authorized data systems raises a number of consumer protection concerns, including the security of consumer data, unauthorized access liability, and how to ensure that consumers

are informed of their access rights and potential risks. Questions exist about the extent that the CFPB should be facilitating certain cybersecurity or unauthorized access standards to protect consumers from fraud or illegal conduct. In addition, some have concerns that consumers may authorize the use of their data for purposes beyond what is understood by the consumer, such as for marketing purposes.

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