Data Catalyst Institute Analysis of CFPB Implementation of Dodd-Frank Section 1033, “Open Banking Rule”

Section 1033 of the 2010 Dodd-Frank Act champions “open banking,” namely, enhancing consumer control over financial data, fostering portability across institutions, and igniting competition among banks and fintech companies for superior financial products and services. The Consumer Financial Protection Bureau (CFPB) recently released their “notice of proposed rulemaking” for Section 1033 after the 12-year implementation delay caused market uncertainty, freeing some larger banks to set data-sharing practices that preserve their market power, undercut smaller competitors, and in some cases block third-party access to essential consumer data. CFPB Director Rohit Chopra, a champion of open banking, has publicly suggested that it can “supercharge competition, improve financial products and services, and discourage junk fees.”

The CFPB fundamentally believes consumers should have the autonomy to switch from subpar services to competing offerings that better serve their needs and offer superior service at competitive prices. However, the current patchwork of U.S. open banking standards complicates consumers’ ability to command their financial affairs fully. Different data access methods, unclear rules about what data can be used with customer permission, and varying responsibilities for banks, fintechs, and other stakeholders in handling data - often at the cost of the consumer - mark the current landscape. While some industry stakeholders may be comfortable with the ambiguous *status quo*, this undermines the CFPB’s goals.

With the CFPB accepting comments on the proposed Section 1033 rule, in order to set the best possible conditions for market competition and innovation for the benefit of American consumers, DCI recommends the following. We further detail our thoughts below.

- **Democratize data access** by explicitly affirming consumer ownership of data and control over that data’s portability, with the right to safely and securely connect and disconnect their data.

- **Standardize open banking** across the financial services ecosystem to ensure community banks, regional banks, credit unions, and fintech companies can equitably access consumer-permissioned data to fairly compete with larger financial institutions, in part by creating innovative products.

- **Preserve future competition and innovation** by avoiding ‘data oligarchies’ within open banking standard-setting organizations and addressing any remaining situations where incumbents may be incentivized to restrict consumers from exercising their personal financial data rights.

1. Ownership of Data Gives Consumers Control and Security

Description: When consumers own their data, they control how it is used and shared. Consumer data ownership and safe, secure data sharing are not mutually exclusive. Crucially, consumer-permissioned access to data ensures consumers can monitor data connections across institutions, understand the purpose of third-party data connections, and revoke access on their terms. The most competitive industry players are already moving to a more secure API standard and promoting features that help consumers see how companies use their data and easily disconnect it if desired.

Examples: (a) Consumers can seamlessly access and securely share financial account information with tools like Empower and RocketMoney, centralizing financial management capabilities on one platform.

(b) With real-time third-party data access, consumers can shop competitive products on sites like Rocket Mortgage, monitor fraud, and leverage interconnected data for near-instant credit approvals through services like Klarna.

(c) If correctly implemented, consumer-permissioned data can be shared with a payment provider to speed up real-time account-to-account payments, helping avoid costly short-term loans.

Impact: A regulatory shift that empowers large banks to act as gatekeepers of data access could significantly hamper consumers' ability to exercise their rights over their data. Such a shift could lead to 'broken' connections, resulting in substantial harm to consumers, including losing access to essential tools and applications. Therefore, the regulatory framework must prioritize creating an open, equitable, and competitive data ecosystem where consumer choice and innovation take precedence.

2. Equal Standards Preserve Competition and Reduce Consumer Costs

Description: Data parity standards prevent financial institutions from discriminating between different types of data requests. Whether a consumer is accessing their data directly from their bank or through a third-party service, they should be able to obtain the same data in a similar format and within a comparable time frame. Parity under the law promotes fair market competition between larger and smaller stakeholders and consistent customer expectations. The CFPB should consider prohibiting members of standard-setting bodies from engaging in data aggregation to prevent potential conflicts of interest.

Example: A centralized model of control in which large banks set the terms for consumer data access and industry standards could dampen market competition, increase costs to consumers, degrade user experience, and reduce consumer trust in financial services. On the other hand, FinRegLab, a nonprofit that tests new technologies to inform public policy, reports that new scoring models infused with decentralized open banking data could benefit up to 40 million underserved consumers with "thin" credit files.

Impact: When community banks, regional banks, credit unions, and fintech companies can access consumer data on a level playing field, competition flourishes across the customer experience. Customers will no longer be locked into one provider simply because a dominant provider controls access to their data. Instead, the largest banks will be forced to compete with other smaller bank and fintech offerings and prices, freeing the consumer to "vote with their feet."

3. Decentralized Marketplaces Deter Incumbents from Stifling Innovators

Description: Financial consortiums and market consolidation historically permit big banks to write the "rules of the road." While this initially drives efficiency, such arrangements often evolve into protective mechanisms for incumbents, stifling competition, innovation, and consumer choice. The CFPB should restrict the consolidation of market power by the largest stakeholders at the expense of consumer welfare and innovation and closely monitor standard-setting organizations for compliance with fair data access, representative consumer and industry voices, and decisions that suppress financial innovation.

Example: Zelle was developed by a consortium of major banks in response to the popularity of startup Peer-to-Peer (P2P) payment apps like Venmo. Innovators typically focus on creating new products that work well for consumers to break into new markets. However, Zelle's owners built their service in an attempt to drive business back to their banks and undercut upstart competition at the expense of consumer protection.

Impact: Decentralized control diffused among many market players will preserve market competition and innovation and protect consumers from fraud and risks associated with centralized power.

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As regulators seek the best 1033 rule implementation to protect consumers and small market players, they should be mindful that the framework doesn't inadvertently favor large, established players to the detriment of other stakeholders. For Open Banking to deliver on its promises of financial transparency, consumer empowerment, industry innovation, and robust competition, consumers must have ultimate control of their data. Preventing centralized data ownership facilitates consumer access to better providers, diverse financial services, and active participation in the data-sharing process with trusted providers. The CFPB's actions are vital to safeguarding consumer ownership of their financial data and their freedom to decide its use, as well as ensuring large banks cannot impede on this freedom by restricting access and dictating terms of data sharing with competing financial services.

The Data Catalyst Institute strongly recommends that the CFPB implement Section 1033 to ensure a level playing field for all market participants, empower consumers, and foster innovation in the financial services space.

About DCI

The Data Catalyst Institute (DCI) supports policymakers and other stakeholders as they undertake the important and difficult work of enacting sound public policy governing the use of technology and data. DCI reports on regulatory and legislative proposals to celebrate good policy and identify relevant challenges. Proposals often evolve — before and even after enactment. DCI will monitor amendments, court cases, and other changes to adjust our analyses and conclusions to reflect future changes. Our objective is not to criticize or condemn but rather to support a better, broader understanding among all stakeholders.