



Broadening Banking: Assessing the Impact of the CFPB's Proposed Rulemaking on Section 1033 of the Dodd-Frank Act

Policy Analysis

Informed by the DCI Open Banking Working Group

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Executive Summary

After a comprehensive review process, the Consumer Financial Protection Bureau (CFPB) has issued a Notice of Proposed Rulemaking (NPRM) to finalize Personal Financial Data Rights, exercising its authority under Section 1033 of the 2010 Dodd-Frank Act. This step marks a significant advancement in addressing a broken market and propelling Open Banking into a progressive new era that includes innovation at the largest national financial institutions, thousands of smaller banks, and contemporary “fintech” companies. The coming implementation of the rule strengthens existing market-driven practices that have evolved since the passage of Dodd-Frank, and the new opportunities it provides will encourage further investment and innovation in the sector.

To better understand the implementation of the NPRM, the Data Catalyst Institute (DCI) convened more than a dozen independent experts in economics, law, consumer advocacy, and financial technology into a virtual Working Group to discuss the NPRM and related issues. Participants explored the rule’s potential impacts on U.S.-based consumers, small- and medium-sized businesses (SMBs) and their owners, technological innovation, and industry competition. They also discussed what steps the CFPB should continue to take to ensure clarity, equity, and opportunity are preserved in the final rule. There was broad consensus that the CFPB’s proposed Open Banking rule:

- **Empowers consumers to control how third-party financial institutions, including large banks, small and rural banks, and nascent fintechs use their data.** Not only does it put more information in the hands of consumers, which helps them make better financial decisions, but the underbanked have already benefited from Open Banking, and implementing the 1033 Rule will continue to help.
- **Promotes broad industry competition among all kinds of financial institutions.** The new implementation will strengthen data portability and interoperability, which will, in turn, encourage industry competition and innovation and discourage potential anticompetitive behavior by the largest incumbent financial institutions.
- **Creates enormous opportunities for small banks, online-only banks, and fintech startups that rely on data access to offer consumers their services and compete in the broad market.** When small banks and upstarts have equal access to permissioned consumer data, they can compete with incumbents to provide consumers with the best, innovative services. The CFPB’s Standard-Setting Organization (SSO) should be mindful that fair representation means meaningful inclusion of consumers, innovators, small businesses, and smaller financial institutions.

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- **Leaves questions the Bureau must address to avoid hindering the innovation and competition it aims to promote with this rule.** These include how the CFPB will level the playing field regarding appropriate secondary data use that could restrict bank and non-bank innovators from bringing customer-friendly products to market, the broader scope of data subject to monitoring, and enforcement against anticompetitive efforts. The innovation envisioned by the CFPB's Open Banking Rule will be stymied - and ironically disproportionately benefit incumbents - if the regulation allows large bank incumbents to engage in anticompetitive behaviors.

In conclusion, the CFPB's forthcoming mandate for Open Banking establishes the regulatory certainty needed for competition and innovation to flourish. The CFPB has responded to industry demand for clarity by balancing existing market conditions with future innovation and consumer rights opportunities.

Background

After much anticipation, on October 19, 2023, the CFPB issued its Notice of Proposed Rulemaking (“NPRM”) to implement Section 1033 of the 2010 Dodd-Frank Act (“CFPB’s Proposed Open Banking Rule”). Its statutory purpose is to enhance consumer control over their financial data, foster data portability across institutions, and ignite competition among banks and fintechs for superior financial products and services. The CFPB’s Proposed Open Banking Rule benefits both industry innovation and consumers of its products and services.

Why is this rule necessary? First, the U.S. financial industry is more complex than most people realize. It contains over 9,000 banks and credit unions (many of which are small or remote/rural) and about 10,000 third-party financial technology or “fintech” entities. Second, consumer-permissioned data sharing between these stakeholders has existed for years, and currently, about 100 million U.S.-based consumers allow third-party access to their financial data. Last year, there were roughly 50-100 billion instances of such third-party data access (e.g., connecting a checking account to an online loan website). Third, the financial services industry has not had clear guidelines for sharing consumer-permissioned data with third parties in the thirteen years since Dodd-Frank passed.

Recently, the CFPB proposed a preliminary rule implementing Section 1033 for financial industry feedback, seeking to remedy the regime they call “broken...based on a set of unstable and inconsistent norms across market participants.” The proposed rule generally conforms to existing market-driven practices, clarifies some de facto “rules of the road” for the industry, and advocates for increased competition and innovation in the industry. Between the release of the proposed rule and the end of the CFPB comment period, we hosted a virtual Working Group with over a dozen experts to discuss aspects of it and its implications. This report contains DCI’s analysis of the rule, incorporating “off the record” contributions from these participants.

The DCI Open Banking Working Group

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The Open Banking Working Group participants have expertise in economics, law, consumer advocacy, and financial technology:

- [Brian Knight](#), Director of the Program on Innovation and Governance, Mercatus Center, George Mason University
- [Daniel Morgan](#), EMEA & APAC Government Affairs, SecurityScorecard
- [Dan Quan](#), General Partner, Neuvcat Ventures
- [Filipe Correia](#), Assistant Professor, Dept of Finance, University of Georgia
- [Giuseppe Colangelo](#), Jean Monnet Chair in European Innovation Policy and Associate Professor of Law and Economics (University of Basilicata, Italy); Transatlantic Technology Law Forum Fellow (Stanford University)
- [Jane Barratt](#), Chief Advocacy Officer, MX
- [John Breyault](#), Vice President of Public Policy, Telecommunications, and Fraud, National Consumers League
- [Jonah Crane](#), Partner, Klaros Group
- [Louis Caditz-Peck](#), Senior Fellow, The Aspen Institute; Senior Fellow, the National Community Reinvestment Coalition; Recent Member of the CFPB's Consumer Advisory Board
- [Liya Palagashvili](#), Senior Research Fellow, Mercatus Center, George Mason University; Law and Economics Fellow, NYU Law
- [Mickey Marshall](#), AVP and Regulatory Counsel, Independent Community Bankers of America

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- Rob Seamans, Professor and Director of Center for the Future of Management, New York University; Nonresident Senior Fellow, Brookings Center on Regulation and Markets
 - Stephanie Tatar, Attorney, Tatar Law Firm; Board Member, National Association of Consumer Advocates
 - Tom Brown, Partner, GC of Nyca; Special Advisor, Paul Hastings
 - Tirzah Duren, Director of Tech Policy, American Consumer Institute

Key Findings

1. The CFPB's Open Banking Rule Empowers Consumers to Control How Their Data is Used

1.1 The CFPB's Proposed Open Banking Rule puts more information in the hands of consumers, which helps them make better financial decisions

1.1.1 The CFPB's Proposed Open Banking Rule gives consumers more access to information that will help them more thoroughly evaluate their finances and better save and use their money. The story of how consumers earn, spend, and save their money is told in their financial data. Consumers can use this data to see a complete picture of their financial situation and, among other things, shop for more favorable credit terms, interest rates, and loan terms – typically by inputting their data into financial apps and services. According to one Working Group participant, consumer financial data rights are “not just about switching accounts, but about providing more information to the consumer to determine how to save and use their money better.” For example, when consumers share their spending data and employment history with fintech lenders, they may be able to get a loan they wouldn't qualify for with simply their credit score.

1.1.2 Open Banking holds the potential to revolutionize the development of new fraud prevention tools in the financial market. By enabling secure and controlled access to consumer financial data, Open Banking fosters an environment where financial institutions can collaborate more effectively. Interoperable bank collaboration allows large and small banks and fintech companies to create sophisticated algorithms and models to detect and prevent fraudulent activities more accurately. Additionally, the real-time data sharing facilitated by Open Banking ensures that these tools are constantly updated with the latest transaction information, enhancing their ability to quickly identify and respond to emerging fraud trends. Access to real-time consumer-permissioned data protects consumers and strengthens the integrity and trustworthiness of the financial system as a whole.

1.2 The underbanked have already benefited from Open Banking, and the CFPB's Proposed Open Banking Rule will continue to help

1.2.1 The CFPB's Proposed Open Banking Rule grants meaningful consumer control of financial data, benefiting consumers from marginalized communities left behind by traditional institutions.

One Working Group participant noted that there is “emerging research showing that the presence of fintech companies tends to be beneficial for minority borrowers because there’s less of a reliance on traditional, relational banking and more on hard data to determine whether to give someone a loan and what the terms of the loan are.” Another participant added, “We have the empirical analysis that demonstrates the incorporation of cash flow data into traditional underwriting has reduced the cost and the discriminatory impact of the reliance on traditional variables, such as FICO - this is a reason to be optimistic about widespread adoption.”

1.2.2 The CFPB's Proposed Open Banking Rule standardizes data connections from different accounts and income streams to show a 360-degree view of all the institutions consumers work with.

Fintechs seamlessly incorporate data from accounts and different income streams to fully understand all the institutions and financial products consumers use. This can help them access more capital, bespoke products, and credit. As one of the participants explained, “Many people have multiple income streams, which complicates banking. Open Banking seamlessly connects data to show a 360-degree view of all the institutions consumers work with. Strangely, a consumer might be considered underbanked at one institution and high net worth at another.” FinRegLab [reports](#) that new scoring models infused with decentralized Open Banking data could benefit up to 40 million underserved consumers with so-called “thin” credit files. An Open Banking rule will allow traditional financial institutions to offer this 360-degree view as they increasingly become data recipients.

1.2.3 The CFPB's Proposed Open Banking Rule helps underbanked consumers seamlessly and securely share financial data with alternative service providers competing for their business.

Fintech alternatives to traditional lending largely benefit those who wouldn't typically qualify for bank loans and have historically been targeted by harmful predatory lenders. To compete with traditional lenders, fintech companies rely on access to deposit and transaction information to offer alternatives to bank overdraft loans and payday loans, largely benefiting the most marginal consumers. One participant viewed this as “potentially providing a more level playing field for consumers, particularly those who don't have access to credit. Using banking information may give them more access, and ease of access, to available lines of credit.” For instance, an immigrant without a U.S. credit history can use a service like [Nova Credit](#) to share their foreign financial data to qualify for better rates than they could have with no history. Simultaneously, when consumers grant access to their financial data, these alternative providers can operate more confidently.

2. The CFPB's Proposed Open Banking Rule Can Promote Broad Industry Competition

2.1 The CFPB's Proposed Open Banking Rule will promote broad industry competition by strengthening data portability and interoperability.

2.1.1 The CFPB's Proposed Open Banking Rule will strengthen consumer data rights, leading to more competition, innovation, higher quality services, and lower prices for banking customers.

The proposed rule should reduce account switching costs for consumers. In the words of one Working Group participant, "The effect of policies prioritizing data portability and interoperability should be to increase innovation and competition between firms. At a high level, proposals should lead to more competition, leading to more innovation, higher quality service, and lower prices for all banking customers – individuals and small and medium-sized businesses." Of the 30+ million small and medium-sized businesses (SMBs) in the U.S., 86.5% are sole proprietorships that will likely use new Open Banking tools for both personal and commercial purposes. DCI notes that millions of SMBs already rely on popular services powered by Open Banking (e.g., Quickbooks, Square, Toast, Venmo, etc.) that will become more accessible and valuable by implementing the proposed rule.

2.1.2 Complying with new standards may initially be challenging for some small banks, but the proposed rule will help them engage with consumers and catch up to and compete with larger institutions. Implementing any new technology standard to comply with regulatory obligations is understandably concerning for some small banks. However, it is necessary to note that thousands of small banks already leverage Open Banking APIs through core service providers. As one participant put it, "Smaller banks are going to be more dependent on their core [technology] processors (platforms that provide technology and payment services to small banks) and other third-party [technology] providers." Thousands of banks already access Open Banking APIs via core providers, but more will be expected of cores to onboard the remaining small institutions. Larger banks that have not yet adopted Open Banking APIs may have greater adaptation pressures and costs to develop their own bespoke APIs that comply with the CFPB's proposed rule. Awareness and education are still significant barriers for banks wanting to adopt this technology. Most Working Group participants acknowledged that the proposed rule offers a unique opportunity for smaller institutions to form strategic partnerships with industry innovators and deepen technology partnerships with core service providers. As one participant said, these partnerships are "leveling playing fields and a chance for small banks to steal customers back." Gradually, the rule is expected to empower small banks to incorporate cutting-edge digital tools, enhancing their financial offerings and enabling them to better compete with larger counterparts. (The rule includes an exception for small banks lacking electronic banking capabilities.)

2.2 The CFPB's Proposed Open Banking Rule and the Standard-Setting Organization (SSO) it will establish should have clear, fair governance and discourage conflicts of interest

2.2.1 The CFPB's Proposed Open Banking Rule needs to promote competition, especially when market incentives fail to protect consumers and upstart competitors. The Bureau must guard against anticompetitive behaviors or conflicts of interest that could restrict consumers' freedom to exercise their data rights or lead to unnecessary consumer expenses. The CFPB should ensure equitable treatment of all financial entities, such as banks, credit unions, and fintech companies, and ensure these institutions provide uniform access to consumer data. 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. Large banks should not be allowed to use data restrictions that prevent customers from using their preferred payments and banking applications. Participants in our Working Group discussed how some banks have attempted to skirt competitive market forces by invoking data security concerns, arguing they are the only ones capable of protecting sensitive financial data and determining who should access it. As an example, banks have limited how consumer account data flows to outside financial technology apps, preventing consumers from accessing their banking data and third-party fintech apps. Some big banks' false pretext about data security as a justification for disconnecting consumers from their data diminishes consumer choice and autonomy and could be seen as a means to direct consumers toward big bank products and obstruct data sharing with competing financial services. Conflicts of interest like this erode trust and fairness in the financial sector, and the CFPB should monitor for and protect against anticompetitive practices, such as product favoritism. In this vein, a participant noted, "Once you remove market incentives, you move towards [needing] enforcement to maintain banks' adherence to the standards."

CASE STUDY: Conflicts of Interest

Working Group participants highlighted Akoya, a large bank-owned consortium that acts as a service provider to banks, as an example of potential anticompetitive behavior that the CFPB's rule should address. Fidelity Investments initially created Akoya in 2018 to address risks associated with "screen scraping" – a data-sharing method where consumers share their login information with third parties. Participants expressed concerns about reports of Akoya threatening to block consumers' access to their data and imposing fees that could hinder third-party access to data. This was especially concerning given Akoya's ownership by banks that hold large amounts of consumer financial data.

When large banks control both the data and the entity dictating how it can be shared, that creates a conflict of interest. One participant warned that the financial services industry should be "wary of gatekeepers" that restrict consumer choice and burden consumers with unnecessary costs. Another worried that such an entity potentially "doesn't allow consumers to share data where they want to share it." Restricted data access is a significant issue, particularly for products not covered by the proposed rule, such as auto or small business loans.

2.2.2 The Standard-Setting Organization should be inclusive, representing industry professionals and consumers fairly. Working Group participants aligned with the CFPB's stated aim to create a "fair industry standard-setting" body to provide balanced technical standards in the financial services industry. One participant "foresees an association created with multiple types of industry professionals and consumer [advocates] who would create the rules, determine how information is stored, and ensure accountability." Another explained, "Whenever the conversation turns towards standard-setting, two themes come up: 'Who is at the table when the standards are set?' and 'Is the representation of advocates a token or do they have the power to affect the standards that come out?'" One Working Group participant bluntly stated, "The standards-setting game is often gamed to benefit one side over the other" and cautioned that one group should not dominate the SSO. Working Group participants agreed that established financial providers and large banks cannot be allowed to have outsized influence in the SSO or use it to consolidate their market power. Participants recommended that the CFPB meaningfully include representatives of consumer groups, tech startups, and the SMB community with industry familiarity and technical knowledge.

2.2.3 Standards set by the Standard-Setting Organization should apply equally to all industry players. The SSO is pivotal for creating transparent, fair, and balanced governance in the financial industry. As envisioned in the proposed Open Banking Rule, standards should apply equally to all market participants, encompassing approximately 19,000 entities. Participants were concerned about the differential impact standards could have on different-sized financial institutions, emphasizing the need for impartiality. One participant expressed, “[Big financial institutions] shouldn’t get a pass because they are large, but one shouldn’t consider technologies from large firms as inherently nefarious when the focus should be on the clear standards that should apply to all firms equally.” It is essential that large and small banks, credit unions, and fintechs receive equal treatment under these standards, ensuring no disparity in how different types of consumer data requests are handled. Consumers should expect—and receive—consistent access to their data, whether directly from their bank or through a third-party service.

3. The CFPB’s Proposed Open Banking Rule Creates Opportunities Which Will Incentivize Financial Innovation

3.1 The CFPB’s Proposed Open Banking Rule strengthens existing market-driven practices

3.1.1 Absent a regulatory mandate for Open Banking, the industry has had a market-driven approach. In the 13 years since the Dodd-Frank Act passed, the lack of a clear regulatory mandate for Open Banking allowed a market-driven approach to emerge. As one participant said, “The fact that we don’t have a regulatory mandate for Open Banking doesn’t mean it doesn’t exist.” The market-driven approach contributed to “innovation in the space and the discovery of a lot of consumer use cases for connecting accounts and getting data from different accounts.” According to another participant, consumers see “real benefits to the extent [Open Banking] allows systems to operate more efficiently, effectively, cheaply; and increased competition in those spaces would benefit them.” The CFPB’s rulemaking builds upon the innovative market environment, taking what’s been working and codifying and consolidating that, with the potential to increase competition and ensure consumer access to Open Banking across institutions in a way the market hasn’t.

3.1.2 The CFPB’s Proposed Open Banking Rule is aligned with market-driven standards but should add clarity, protect the industry from anticompetitive threats, and ensure consumers benefit and are not harmed. By responding to the market, the Bureau standardizes some of the best industry practices. According to one participant, “Ensuring that the practices around which the industry has been built will continue to exist helps to ensure those gains are not lost.” The

proposed rule provides space for a uniform industry standard to emerge for sharing and disconnecting data because it supports innovation on the backend business and compliance side. Without additional anticompetitive practices and amendment to the data scope, the rule may fall short of preserving consumer benefits and safeguarding future opportunities for innovation. In that vein, one participant published an [American Banker op-ed](#) highlighting the need for clear regulatory guidance and expanding the financial data the rule covers.

3.1.3 The CFPB’s Proposed Open Banking Rule affirms data-sharing as a safe practice for consumers who may have been wary about sharing financial data. The proposed rule enhances the legitimacy of API-based data-sharing in managing personal finances. This regulatory clarity is pivotal to reassuring consumers who were previously wary of sharing sensitive financial information, particularly when interfaces demanded their account credentials. The CFPB’s endorsement affirms the safety of API-based data sharing and introduces a regulatory timeline to transition away from the less secure method of screen scraping. Importantly, the Bureau clarifies that consumers have the right to share and permit the use of their financial data while also emphasizing the reliability and security inherent in regular third-party data exchanges. For one Working Group participant, the “rule helpfully moves in the direction of requiring banks to avoid some of the risks associated with widespread sharing of online banking credentials.”

3.2 The CFPB’s Proposed Open Banking Rule Is Expected to Encourage Further Investment and Innovation

3.2.1 The CFPB’s Proposed Open Banking Rule can incentivize investors to support the development of new products and services. In the future, the CFPB’s proposed Open Banking Rule is poised to open opportunities for investors to enter the financial services space and promote the creation of new products and services. Such innovation will manifest in better credit underwriting and pricing, financial education, account switching, [fairer AI-credit models](#), faster payment services, and consumer loan refinancing options. In the words of one participant, “It provides assurances to consumers and investors in this space. Investors will see Open Banking as somewhere they can grow and provide new products and services.” Another said, “The rule may provide certainty within the industry that this is a legitimate business model.”

3.2.2 The CFPB’s Proposed Open Banking Rule requires banks to improve their data-sharing infrastructure to strengthen customer security standards. One participant summarizes, “There will be enhanced access [to consumer-permissioned accounts] through developer portals and interfaces, with mandatory uptimes, that don’t need screen-scraping as a backup.” The CFPB has embraced a phased approach to implementing new technology so consumers don’t lose access to the financial services they rely on, regardless of where they bank. While one participant

expressed concern that this shift could cause discomfort for small banks that lack technical expertise and face higher compliance costs, most participants agreed that they expect the standard will improve small financial companies' access to markets over time.

3.2.3 The CFPB's Proposed Open Banking Rule improves market access for small financial companies. For example, community banks, regional banks, Community Development Financial Institutions, credit unions, and online banks will have equitable means to partner with third-party data aggregators and core service providers (i.e., platforms that provide technology and payment services to small banks), access the consumer-permissioned data needed to serve customers and compete with bigger institutions. We have already “observed digitally-minded community banks working with technology partners to make more digitally advanced services available to consumers,” one participant explained.

3.3 The Proposed Rule's Data Use Restrictions May Suppress Innovation and Favor Incumbents

3.3.1. The CFPB's Proposed Open Banking Rule resolves disagreements between industry stakeholders about who owns consumer financial data - but is overly restrictive when it comes to secondary use limitations. Working Group participants agreed the proposed rule clarifies that consumers own their data and have agency over how it is shared. One participant summed up, “Overall, a positive movement in the right direction,” and another said, “Clarifying that data belongs to the citizen is a positive thing.” However, the proposed rule's blanket ban on secondary data use by third parties favours large financial institutions and hinders the ability of small upstarts to use consumer data to develop new financial innovations, such as more favorable loan rates or refinancing options. Several participants agreed the CFPB should “protect consumers from unfair, sneaky, or abusive marketing” but explained healthy “cross-marketing” helps providers offer consumers beneficial financial products and preserves “intense” industry competition.

3.3.2. The CFPB's data privacy regulations may be more extreme than other widely accepted standards. Several participants speculated that the CFPB is potentially adopting stricter data collection and usage regulations than even the most stringent privacy regulators (e.g., Europe, California). The proposed rule makes no exceptions for responsible actors in the competitive market who could offer consumers alternatives to harmful financial products, like predatory payday lenders. Participants agreed that consumers should have data privacy options, and one suggested, “emphasis should be on informed consumer consent – if they own the data, [consumers] should be respected in the decision-making process and what they choose to do with that.” This would ensure a balance between protecting privacy and fostering a competitive market that benefits consumers.

Conclusions

The CFPB's Proposed Open Banking Rule Could Do More to Drive Innovation and Competition in Financial Services

The CFPB's Proposed Open Banking Rule could expand covered financial services and data points in the rule's scope. According to the Working Group participants, the rule could have included all financial services, not just credit cards and checking accounts, but mortgages, small business loans, auto loans, retirement plans, payroll data, government benefit accounts, and student loans. One Working Group participant criticized the narrowness of the proposed rule, saying, "The rule could have gone far by including all financial services, not just credit cards and checking accounts, but mortgages, small business loans, and student loans, [which are] unfortunately not covered, hopefully, they will be covered in the future." The participant explains, "Things are already happening in those verticals whether there is a rule or not." But while other participants did mention including payroll data, employment data, small business data, brokerage accounts, and insurance data, the challenge for the CFPB is their authority - or lack of clear authority - in some of these areas.

Despite these limitations, industry experts see the rule as generally positive. Participants anticipate the rule's scope will expand to include other types of consumer financial data. One Working Group participant expects "bill pay and rent data to be included within two years. And linking to payroll data, which is not included in the rule." He specified that "where sources of income go is where your bills are often paid from, and if the consumer is able to switch all at once, that is the 'holy grail' for [competing] institutions. The ones talking about it are the big banks." For one participant, the rule understandably "started with a handful of really large services, and after a couple of years of things not falling apart, it will be an easier lift – once the industry has built out tech and compliance, and customers like it – to fold other things in," concluding that "given the policy choice Congress made, it's probably the right call."

Overall, the CFPB's proposed rule moves the financial services industry in the right direction to facilitate Open Banking. One participant predicted there will be "more innovation in financial services that I hope other industries will copy." Another participant elaborated, "This is all a good way to go forward, to support consumers – that could lead to more innovation and investment and opportunity, even though what's on the table looks limited compared to what's already going on in the market." The U.S. House Financial Services Committee Chairman, Patrick McHenry (R-NC), commended CFPB Director Chopra for his work on Section 1033. In the Congressman's words, "Americans should have greater control over their sensitive financial data. Consumers should know where their data is going, how it's used, and be able to terminate collection of their data by certain firms."

Open Banking has brought consumers countless financial benefits in the years since Dodd-Frank became law. Tools for budgeting, seamless payments, and instant transfers are now features we expect from our financial service providers. The CFPB's Proposed Open Banking Rule moves the ball forward, bringing banking further into the 21st century and affirming the importance of data in our interconnected world. Balancing consumer rights, industry interests, and safety is essential to preserving competition and opportunities for future financial innovations.