

June 23, 2025

The Hon. Russell Vought
Acting Director
Consumer Financial Protection Bureau
1700 G St NW,
Washington, DC 20552

RE: Banks' Statutory Obligation to Provide Consumers Access to Data Pursuant to Section 1033 of the Dodd-Frank Act

Acting Director Vought,

The Independent Community Bankers of America (ICBA)¹ writes today to affirm that Section 1033 of the Dodd-Frank Act only requires banks to provide information about a consumer financial product or service in an electronic form directly to the consumer.² The statute does not require banks to provide consumer financial information to third-party companies. Today, community banks already give their consumers electronic access to information about their loans and deposit accounts through online banking portals and are therefore already in compliance with Section 1033.

What Is Required By Section 1033?

The text of Section 1033 is plain. A bank “shall make available to a **consumer**, upon request, information in the control or possession of the [bank] concerning the consumer financial product or service that the consumer obtained from such [bank], including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.”³ The term consumer is defined to mean, “an individual or an agent, trustee, or representative acting on behalf of an individual.”⁴

Authorized third parties⁵ – as described in the Bureau’s 2024 rule implementing Section 1033 – are not agents, trustees, or representatives acting on the consumer’s behalf. Authorized third parties are not bound by a fiduciary duty to act in the best interest of the consumer, which is typical of agent or trustee

¹ The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation’s community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America’s community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers’ financial goals and dreams. For more information, visit ICBA’s website at icba.org.

² 12 USC 5533(a).

³ *Id.*

⁴ 12 USC 5481(4).

⁵ An authorized third party is “a third party that has complied with the authorization procedures described in [the 1033 rule].” 12 CFR 1033.131. These procedures include providing consumers with an authorization disclosure and obtaining the consumers consent to access data. 12 CFR 1033.401.

relationships. Instead, as the Bureau has recently argued in its motion for summary judgment in *Forcht Bank v. CFPB*, “an authorized third party as laid out in the rule is a commercial actor broadly allowed to use data for purposes beyond directly serving the consumer.”⁶ Authorized third parties may retain and use consumer data to refine their own products and services in ways that are not beneficial to the consumer who provides access to the data. Furthermore, authorized third parties are not required to act in the consumer’s best interest. In other words, authorized third parties are acting in their own interest and not as a representative of the consumer in any way the term is commonly understood.

Congress could have chosen to enact a statute that requires banks to share consumer information with third parties through online “developer portals.” Congress could have created a nationwide system of “Open Banking.” They did not. Instead, Congress created a requirement for banks and other financial institutions to provide consumers with information about any loans or deposit accounts that they have in an electronic form.

Consumers are, of course, free to download that information and share it with third party companies if they choose to do so. Third parties are free to offer consumers competing financial products or services based on information consumers provide them. However, nothing in the statute requires a bank to facilitate the transfer of information to a third-party company free of charge – which is what the Bureau’s 2024 implementation of the statute would require.

Banks Are Already Complying with the Requirement to Provide Consumers Electronic Access to their Data

When the Dodd-Frank Act was enacted 15 years ago, online and mobile banking were not universally available and did not provide consumers with the same amount of information and functionality that it does today. Now, virtually all banks now offer their customers access to online banking through web portals or mobile apps. In 2024, 77% of Americans reported that mobile banking or online banking was the method they used “most often” to manage their bank account. By contrast, only 13% said that they most frequently visited a bank branch or ATM. In addition, 96% of surveyed customers indicated that their bank’s online and mobile app experience rated as ‘Excellent,’ ‘Very Good,’ or ‘Good’ while only 4% rated the experience as ‘Fair’ or ‘Poor.’⁷

In other words, bank customers already have access to information related to their financial products and services “in an electronic form usable by consumers.”⁸ The high approval rates of existing online and mobile banking products clearly demonstrate that consumers are already able to easily access information about their bank accounts including account balance and transaction history. In addition, consumers are already able to digitally manage important account functions like automatic payment of bills, transferring money via peer-to-peer networks, reporting debit cards as lost or stolen, and disputing fraudulent transactions.

⁶ *Forcht Bank, N.A. v. Consumer Fin. Prot. Bureau*, Defendant’s Memo in Support of Their Motion for Summary Judgment at p. 15, CV 5:24-304-DCR (E.D. Ky. May 30, 2025).

⁷ American Bankers Association, “National Survey: Record Number of Bank Customers Use Mobile Apps More Than Any Other Channel to Manage Their Accounts” (Nov. 22, 2024), available at: <https://www.aba.com/about-us/press-room/press-releases/consumer-survey-banking-methods-2024>.

⁸ 12 USC 5533(a).

The fact that the customers' ability to manage all aspects of their account digitally has become so comprehensive that only a small minority of consumers prefer to visit an ATM or branch is clear evidence that the requirements of Section 1033 are already being complied with by the industry. Congress may have reasonably seen the need to require banks to provide information digitally in 2010 when the Dodd-Frank Act was passed, but the reality is that banks currently provide their customers with information digitally. It is what the customer has come to expect. Therefore, the Bureau should promulgate a rule implementing Section 1033 that clarifies that providing access to information via an online banking portal or mobile app is sufficient to comply with the requirements of the statute.

The Future of Open Banking

Notwithstanding the fact that Congress did not intend to create a system for regulating "open banking," open banking is likely to be a growing part of the industry's future. Just as customers came to expect their banks to offer online banking and mobile apps, customers appear to be increasingly interested in sharing their data with third-party companies in order to access new financial products and services. The existence and success of companies like PayPal, Square, Plaid, and many others is evidence of this trend. However, the world of open banking, as it exists today, did not require a new regime of government regulations. It came to exist organically, in response to customer demand. A variety of technologies to facilitate the sharing of customer information – ranging from screen scraping to Application Program Interfaces (APIs) – were developed to meet the needs of consumers to access new products and services.

The federal government should not put its finger on the scales to pick one technology over another, as the 2024 rule's requirement to create "developer interfaces" would have done. This approach – innovation by regulatory fiat – is flawed for two main reasons. First, it forces financial institutions to invest in a technology solution that their customers may or may not demand. And second, it locks that solution into place, even if more functional, more secure, or more efficient technologies later develop.

The better approach is to let consumer demand drive the implementation of open banking. As consumers increasingly express a preference for doing business with multiple financial institutions and sharing their information between institutions, the industry itself can develop the technologies and best practices most suited to meeting consumer needs. By declining to create an overly prescriptive regulatory framework for information sharing, the CFPB can allow financial institutions to manage the sharing of consumer information with other financial institutions through contractual relationships. This limits the ability of less reputable third parties to access consumer financial data and reduces the chances of data breaches. In addition, it allows the commercially interested parties to define important terms concerning the price of data access and where liability resides in the incident of a breach or fraud.

A relatively robust open banking ecosystem has already begun to develop in the absence of federal regulation. Community banks have the opportunity to become more involved in this space if their customers demand access to open banking or if they see a business opportunity to win customers from their larger peers. On the other hand, if community bank customers do not demand greater access to open banking or if the banks themselves don't see an opportunity to provide enhanced products and services then not being mandated to create and maintain developer portals will allow them to save money by not investing in a technology that does not have a business case.

Conclusion

In conclusion, ICBA urges the Bureau to implement Section 1033 in a manner consistent with the statute's plain language and Congressional intent. Community banks are already fulfilling their legal obligations under Section 1033 by providing consumers with electronic access to their financial data through secure online and mobile platforms. Nothing in the law requires banks to share this data with third-party companies that are acting in their own commercial interest rather than on behalf of the consumer. A prescriptive regulatory regime that mandates specific technologies or compels the transfer of data to such third parties would exceed the Bureau's statutory authority, impose unnecessary costs, and risk undermining consumer privacy and data security. Instead, the Bureau should support a market-driven, flexible approach that allows financial institutions to innovate responsibly in response to customer demand.

Please contact me at Mickey.Marshall@icba.org if you have any questions about the positions stated in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Marshall", with a stylized flourish at the end.

Mickey Marshall
Vice President and Regulatory Counsel