

# The Banking Law Journal

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April 2025

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# The New “Open Banking” Regime: Primer, Fact Sheet and Its Likely Future

*By Andrew C. Glass, Gregory N. Blase and Joshua L. Durham\**

*In this article, the authors discuss the new “open banking” rule finalized in late 2024 by the Consumer Financial Protection Bureau.*

The Consumer Financial Protection Bureau (CFPB) finalized its “open banking” rule in late 2024. As required by Section 1033 of the Consumer Financial Protection Act, the CFPB promulgated the rule to require certain financial services entities to provide for the limited sharing of consumer data and to standardize the way in which that data is shared. The CFPB has stated that the open banking rule will “boost competition”<sup>1</sup> by facilitating consumers’ ability to switch between banks and other financial service providers.

In general, the open banking rule:

- Provides consumers with control over their data in bank accounts, credit card accounts, and other financial products, including mobile wallets and payment apps;
- Allows consumers to authorize third-party access to consumers’ data including transaction information, account balance information, and information needed to initiate payments; and
- Requires financial providers to make this information in accurate, machine-readable format and with no charge to consumers.

## COMPLIANCE DEADLINES

Numerous comments to the proposed rule urged the CFPB to lengthen the period of time for businesses to comply with the rule. The CFPB responded to those comments by extending the original six month compliance date for the largest affected institutions to provide a 1.5 year implementation period. Table 1 summarizes the compliance schedule by which different sized entities must operate in compliance with the rule.

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<sup>1</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-personal-financial-data-rights-rule-to-boost-competition-protect-privacy-and-give-families-more-choice-in-financial-services/>.

Table 1<sup>2</sup>

Compliance Timeline	Depository Institutions	Nondepository Institutions
1 April 2026 (-1.5 years)	At least US\$250 billion total assets	At least US\$10 billion in total receipts as of either 2023 or 2024
1 April 2027 (-2.5 years)	At least US\$10 billion total assets, but less than US\$250 billion total assets	Less than US\$10 billion in total receipts in both 2023 and 2024 (this is the final compliance date for nondepository institutions)
1 April 2028 (-3.5 years)	At least US\$3 billion total assets, but less than US\$10 billion total assets	-
1 April 2029 (-4.5 years)	At least US\$1.5 billion total assets, but less than US\$3 billion total assets	-
1 April 2030 (-5.5 years)	Less than US\$1.5 billion total assets, but more than US\$850 million (depositories holding less than US\$850 million are exempted from compliance)	-

### MAKING CONSUMER FINANCIAL DATA AVAILABLE

Under the final rule, a “data provider” must provide, at the request of a consumer or a third party authorized by the consumer, “covered data” concerning a consumer financial product or service that the consumer obtained from the data provider. The rule defines data provider to include depository institutions, electronic payment providers, credit card issuers, and other financial services providers. The rule defines covered data to include transaction information, account balances, and other information to enable payments.

A data provider’s obligations regarding covered data arise only when holding data concerning a consumer financial product or service that the consumer actually obtained from that data provider. Notwithstanding third-party obligations, merely possessing data from another data provider does not implicate the rule. The CFPB revised the definition of covered data in a manner that offers some clarity for the consumer reporting agencies (CRAs), which typically gather data for other entities for consumer credit reports.

<sup>2</sup> As discussed below, we note that the court in the pending lawsuit challenging the rule tolled the compliance deadlines by 30 days. See *Forcht Bank, N.A., et al. v. CFPB*, No. 5:24-cv-00304-DCR (E.D.K.Y.). It is possible that the court may issue another order further tolling these deadlines.

Table 2

	<b>Electronic Payments</b>	<b>Credit Cards</b>	<b>Other Products and Services</b>
<b>Data Provider</b>	A financial institution, as defined in Regulation E.	A card issuer, as defined in Regulation Z.	Any other person that controls or possesses information concerning a covered consumer financial product or service that the consumer obtained from that person.
<b>Covered Consumer Financial Product or Service</b>	A Regulation E account.	A Regulation Z credit card.	Facilitation of payments from a Regulation E account or Regulation Z credit card.

### DATA PROVIDER INTERFACES

As part of the provision of data, data providers must create both consumer and developer interfaces to enable the efficient provision and exchange of consumer data. In addition to various technical requirements, data providers must also establish and maintain written policies and procedures to ensure the efficient, secure, and accurate sharing of consumer data. Data providers are prohibited from charging fees for providing this service.

Table 3

	<b>Consumer Interface</b>	<b>Developer Interface</b>
<b>When to Provide Data</b>	Data provider receives information sufficient to: (1) authenticate the consumer’s identity; and (2) identify the scope of the data requested.	Data provider receives information sufficient to: (1) authenticate the consumer’s identity; (2) authenticate the third party’s identity; (3) document the third party is properly authorized; and (4) identify the scope of the data requested.
<b>Data Format</b>	Machine-readable file	Standardized and machine-readable file
<b>Interface Performance</b>	Strict requirement to provide data	Minimum 95% success rate

<b>Data Request Denials</b>	Unlawful, insecure, or otherwise unreasonable requests may be denied	Unlawful, insecure, or otherwise unreasonable requests may be denied
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## AUTHORIZING THIRD PARTIES

To lawfully access covered data, a third party must generally do three things, namely:

- (1) Provide the consumer with an authorization disclosure;
- (2) Certify that the third party complies with various restrictions on the use of the data; and
- (3) Obtain the consumer's express approval to access the covered data.

The rule prohibits three uses of data:

- (1) Targeted advertising;
- (2) Cross-selling of other products or services; and
- (3) Selling covered data.

While commenting on the proposed rule, several CRAs requested that the CFPB allow for use of covered data for internal purposes such as research and development of products. The CFPB found this reasonable and permitted "uses that are reasonably necessary to improve the product or service the consumer requested."

## ROBUST FRAMEWORK

The open banking rule establishes a robust framework for the exchange and transmission by certain entities regarding certain types of consumer data and the safeguarding of that data. Although the final rule extends the implementation deadlines beyond those originally proposed, implementation will require careful coordination among various functions of affected data providers' businesses and by entities authorized to receive covered data.

## THE FUTURE

Will the CFPB's open banking rule survive under the new Congress and presidential administration? Two upcoming proceedings may hold the answer.

The first challenge may occur rapidly now that the 119th Congress is in session. Under the Congressional Review Act (CRA), Congress may disapprove of any rule finalized by the CFPB within the last six months of the outgoing presidential administration. To do so, both the Senate and the House must pass an identical joint resolution of disapproval. All votes under the CRA are simple majority votes, and under most circumstances, the resolution is not subject to filibuster in the Senate. Whether Congress will reject the open banking rule remains to be seen.

To disapprove of a rule under the CRA, Congress must act within a 60-day period that commences in mid-January. This review period overlaps with the first weeks of the new administration when the Senate is typically focused on confirming the president’s cabinet nominees. The CFPB also issued a flurry of rules in the final months of the outgoing administration, so the new Congress may need to pick and choose which ones to consider jettisoning during the short CRA review window.

The second challenge to the open banking rule is playing out in a lawsuit filed by a Kentucky-based national bank and the Bank Policy Institute in federal court in Lexington, Kentucky. In their amended complaint, the plaintiffs allege that the open banking rule exceeds the congressional grant of rulemaking authority in at least six ways, which include the following:

1. The rule purports to regulate the provision of data to third parties, but the statute only permits rulemaking with respect to banks’ obligations to “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 the bank.<sup>3</sup>
2. The rule increases risk to consumers by forcing banks to make available information enabling third parties to initiate payment from a consumer’s account and tasks banks with ensuring that unsupervised third parties can be trusted with the data they receive.
3. The rule seeks to outsource the task of establishing standards for compliance to private entities.
4. The rule imposes vague and confusing performance standards for the developer interfaces that data providers are required to establish.
5. The rule would require compliance before any of the standard-setting bodies are convened, much less able to promulgate standards for compliance.
6. The rule prevents data providers from recouping any of the substantial costs that compliance with the rule will impose.<sup>4</sup>

Recently, the Financial Technology Association (FTA) filed a motion to intervene and defend the open banking rule to the extent that the new leadership at the CFPB declines to do so. The CFPB and the plaintiffs filed a joint motion to stay the case and to toll all compliance deadlines under the rule

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<sup>3</sup> 12 U.S.C. § 5533(a) (emphases added).

<sup>4</sup> See Am. Compl. ¶¶ 12-18, Forcht Bank, N.A., et al. v. CFPB, No. 5:24-cv-00304-DCR (E.D.K.Y.).

for 30-days while the new leadership at the CFPB decides how to respond to the suit. The court granted the stay and the tolling request, and it denied the motion to intervene without prejudice. If the parties do not resolve the suit by March 31, 2025, FTA is free to renew its motion to intervene. Under the new administration, the CFPB will have wide latitude to use the lawsuit to determine the fate of the rule. A new director could, for example, consent to an injunction that would prevent the rule from taking effect or to withdraw the rule with or without prejudice to reissuing the rule. Whether the open banking rule will meet this fate remains to be seen. The proposed rule drew bipartisan support,<sup>5</sup> including from former U.S. Representative Patrick McHenry, the then-chair of the House Financial Services Committee. And the final rule, though controversial in many respects, appears to have avoided the ire of at least some members of the incoming administration.

Regardless of what happens to the rule, open banking is likely here to stay. Data providers have already established private, though largely unregulated, facilities for the electronic sharing of consumer data. Consumers and market participants who take issue with the manner in which data is shared, or allegedly misused, have several legal remedies available to them, regardless of whether open banking is regulated by the CFPB.

While it is impossible to predict the ultimate fate of the open banking rule, this much is likely certain: it will meet its destiny sooner rather than later.

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<sup>5</sup> [https://financialservices.house.gov/uploadedfiles/2023-12-12\\_1033\\_letter\\_12.12.2023\\_final.pdf](https://financialservices.house.gov/uploadedfiles/2023-12-12_1033_letter_12.12.2023_final.pdf).