FinRegLab

BY EMAIL

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Comment Intake
Personal Financial Data Rights Reconsideration
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

RE: Docket No. CFPB–2025–0037

FinRegLab appreciates this opportunity to comment on the Bureau's Advance Notice of Proposed Rulemaking (the ANPR)[1] regarding the personal financial data rights rule published on November 18, 2024 (the Final Rule).[2] We commend the Consumer Financial Protection Bureau for seeking public input on implementation of § 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)[3] given the pivotal importance of customer-directed data transfers to innovation and competition in financial markets.

Data that consumers and small businesses authorize to be transferred from one financial services provider to another has fueled a broad range of product improvements and substantially heightened market competition over the last three decades. When combined with artificial intelligence (AI), these data sources could create even more dramatic advances in the personalization, dynamism, and efficiency of U.S. financial services in coming years. As the Administration's broader AI Action Plan recognizes, facilitating access to high quality data while maintaining respect for individual rights and ensuring civil liberties, privacy, and confidentiality protections is critical to realizing the potential benefits of AI to achieve "a new golden age of human flourishing, economic competitiveness, and national security for the American people."[4] While the Plan focuses most specifically on scientific data's importance to international competition, customer-directed data transfers impact the vibrancy of the U.S. economy because access to innovative, responsible financial services can help consumers and small businesses both manage their daily lives and build greater economic security over time.

In anticipation of a rulemaking to fully implement § 1033, the financial services ecosystem had been progressing over several years toward transfer and coordination mechanisms that improve security, privacy, and efficiency. Litigation and subsequent developments have created substantial uncertainty since the

[1] Consumer Financial Protection Bureau, "Personal Financial Data Rights Reconsideration." Federal Register 90, no. 161 (August 22, 2025): 40986.
[2] Consumer Financial Protection Bureau, "Required Rulemaking on Personal Financial Data Rights." Federal Register 89, no. 222 (November 18, 2024): 90838.
[3] 12 U.S.C. § 5533.
[4] Executive Office of the President. "Winning the Race: America's AI Action Plan," 1, 8-9. July 23, 2025.

release of the Final Rule. We urge the Bureau to act expeditiously to adopt interpretations that will help the ecosystem accelerate improvements and facilitate the benefits of additional AI applications.

FinRegLab Background

Established in 2018, FinRegLab is an independent, nonpartisan innovation center that tests and monitors the use of new technologies and data in financial services. Through our research and policy discourse, we facilitate collaboration across the financial ecosystem to inform public policy and market practices. We concentrate our work on data and technology applications given their importance to broader economic activity. We have focused on the potential for customer-authorized data transfers and artificial intelligence to spur greater competition and innovation in financial services markets since our inception, including the following initiatives:

- We issued the first major public empirical evaluation of the use of customer-authorized cash-flow data in underwriting consumer and small business credit in 2019, finding that the data hold substantial promise to improve default prediction and increase access to credit when used in addition to or in lieu of traditional credit history. Subsequent reports analyzed the market for customer-authorized data transfers and the potential value of modernizing regulatory frameworks for consumer financial data and credit underwriting.[5]

- We published empirical studies and market and policy analyses from 2021 to 2023 evaluating the effectiveness of data science tools to manage explainability and other compliance concerns when implementing machine learning underwriting models.[6]

- We published a 2024 report focusing on the use of data and technology (including the use of transaction account data and various forms of AI) to improve identity verification and transaction monitoring for complying with anti-money laundering and know your customer laws (AML/KYC) and combatting fraud and scams.[7]

- In 2025, we published an empirical report measuring the benefits to both predictiveness and credit access of building traditional and machine learning underwriting models with and without cash flow data. We found that machine learning models that combined credit bureau and cash flow data were the most powerful overall and produced the largest increases in credit access at risk cutoffs that are

[5] FinRegLab. "The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings." July 2019; FinRegLab. "The Use of Cash-Flow Data in Underwriting Credit: Small Business Spotlight." July 2019; FinRegLab, "The Use of Cash-Flow Data in Underwriting Credit: Market Context & Policy Analysis." February 2020; Financial Health Network, Flourish, FinRegLab, and Mitchell Sandler, "Consumer Financial Data: Legal and Regulatory Landscape." October 2020.

[6] FinRegLab, "The Use of Machine Learning for Credit Underwriting: Market & Data Science Context." September 2021; FinRegLab, Laura Blattner, and Jann Spiess. "Machine Learning Explainability & Fairness: Insights from Consumer Lending." April 2022, updated July 2023; FinRegLab. "Explainability & Fairness in Machine Learning for Credit Underwriting: Policy Analysis." December 2023.

[7] FinRegLab. "Innovations for Identity Proofing and Transaction Monitoring: Advancing Financial Inclusion Through Data & Technology." October 2024.

most likely to be used by banks.[8] We also published empirical and qualitative analyses drilling down on the use of cash flow data in small business lending.[9]

Most recently, we published a market scan focusing on the growing adoption of agentic AI systems across a broad range of financial services use cases, including AML/KYC compliance and fraud defense, loan underwriting and servicing, agentic shopping tools, and dynamic personal financial agents that can both provide personalized advice and perform much of the work to manage users' finances on an ongoing basis and execute on their goals over time.[10] Agentic systems can be designed to operate dynamically by responding to new information, making decisions, and taking actions without ongoing human engagement. The quality of many of these applications will depend on real-time access to users' financial data, which will substantially increase demand for customer directed data transfers. We are in the process of organizing multiple follow up projects relating to agentic AI across different use cases.

Discussion

Our comment discusses five issues: (1) the importance of customer-directed data transfers to innovation and competition in U.S. financial services markets over the past 30 years and in connection with emerging agentic AI applications; (2) the importance of § 1033 and implementing rules in accelerating the adoption of infrastructure and coordination mechanisms that protect privacy, security, and other consumer interests while facilitating greater market innovation, competition, and efficiency; (3) why authorized representatives that act on behalf of consumers in facilitate § 1033 transfers should not be limited to parties with fiduciary duties under other sources of law; (4) considerations regarding defrayment of data sources' costs in connection with § 1033 transfers; and (5) debates over whether to change the Final Rule's approach to information security, privacy concerns, and implementation periods.

I. The importance of customer-directed data transfers, today and tomorrow

The system for customer-directed data transfers has become a major driver of innovation and competition in U.S. financial services markets over the past 30 years, facilitating both consumers' ability to obtain additional financial services from the providers of their choice and providers' ability to deliver services more quickly, develop new products, and compete more generally in the marketplace.[11] Customer-directed flows currently support a broad range of use cases, including credit underwriting and servicing, budgeting and financial management tools, and payments applications, as well as helping consumers to open and fund new accounts with investment firms and cryptocurrency companies. The CFPB estimated in 2022 that 100 million U.S. consumers – nearly 40 percent of adults – had authorized financial data transfers and that between 50 and 100 billion successful or attempted transfers had occurred in that year alone, nearly double the level in

[8] FinRegLab. "Advancing the Credit Ecosystem: Machine Learning & Cash Flow Data in Consumer Underwriting." July 2025.

[9] FinRegLab. "Transforming Small Business Credit: Technology and Data Adoption in Mission-Based Lending." Updated June 2025; FinRegLab, Sabrina T. Howell, and Siena Matsumoto. "Sharpening the Focus: Using Cash-Flow Data to Underwrite Financially Constrained Businesses." June 2025.

[10] FinRegLab. "The Next Wave Arrives: Agentic AI in Financial Services." September 2025.

[11] Personal financial management services that aggregated consumers' financial information across accounts began to spread in the late 1990s and had become prevalent enough by 2000 that they were referenced in rulemakings to implement the Gramm-Leach-Bliley Act and guidance by the Office of the Comptroller of the Currency. See Federal Trade Commission, "Privacy of Consumer Financial Information." Federal Register 65, no. 101 (May 24, 2000): 33655; "Bank-Provided Account Aggregation Services: Guidance to Banks." Office of the Comptroller of the Currency Bulletin 2001-12. February 18, 2001.

2019.[12] Some banks report that pulls by intermediaries who help effectuate consumer directed transfers (data aggregators) have doubled in the three years since the CFPB estimates, though experiences may vary substantially depending on customer bases and bank systems.[13]

The use of cash flow data in credit underwriting illustrates why consumers are motivated to share this information and the impact it can have on financial services innovation and competition. Roughly 70 million consumers are estimated to have no files or thin files with the nation's three largest credit bureaus, and roughly 80 million to have below prime credit scores as of 2025.[14] Though many of these consumers individually may be likely to repay loans, they often face challenges in obtaining access to affordable credit because they are more challenging to underwrite when using traditional data and models than consumers with extensive positive payment history. These patterns also affect small business credit access, since many lenders consider business owners' personal credit records when making loans, particularly for smaller and younger businesses.[15] Lenders' concerns about traditional information sources and scoring models have also increased in response to trends such as economic volatility since the pandemic, the spread of gig economy work, and growing use of new forms of credit such as buy now, pay later loans.[16]

Bank account records and other sources of cash-flow information can provide more holistic and timely views of loan applicants' finances, in part because the percentage of U.S. households with bank or prepaid accounts exceeds 95 percent.[17] FinRegLab's empirical research shows the information can be valuable in predicting credit risk among a broad range of applicants – particularly when combined with supervised machine learning underwriting models – because it provides somewhat different insights than traditional credit reports.[18] This can give lenders more confidence in marketing and extending credit to a broader range of consumers and small businesses, which in turn can help borrowers both manage daily life and improve their long-term stability through more reliable transportation, buying a home, and growing a business. Initiatives that harness transaction account data for credit underwriting have increased substantially since FinRegLab

[12] Consumer Financial Protection Bureau, "Required Rulemaking on Personal Financial Data Rights." Federal Register 88, no. 209 (October 31, 2023): 74844.

[13] Feldsher, Melissa. "Data Middlemen's Free Ride Is Driving Data Misuse." Real Clear Markets. July 19, 2025. (reporting that monthly pulls have increased to 2 million in the past two years at JPMorgan Chase). Some banks have configured their APIs and agreements to require aggregators to conduct separate pulls for each application used by the consumer, while others allow the same pulls to be forwarded to multiple applications. This impacts the amount of API traffic.

[14] FinRegLab. "Advancing the Credit Ecosystem: Machine Learning & Cash Flow Data in Consumer Underwriting," 9; FICO Scoring Solutions, "FICO Score Credit Insights," 5. 2025.

[15] FinRegLab. "The Use of Cash-Flow Data in Underwriting Credit: Small Business Spotlight." July 2019.

[16] Peter Renton, "Why Every Lender Should Be Using Cash Flow Underwriting Today." Future Nexus. July 29, 2025; Waterson, Stewart. "A New Age of Underwriting Ushered in by Cash Flow Data." Datos Insights. March 2025; Kleinbard, Martin. "How Cash Flow Data Can Diffuse the Credit Score Time Bomb." Fintech Takes. June 2025; Johnson, Alex and Kevin Moss. "Fintech Is Breaking the Credit Bureaus." Workweek/Fintech Takes. August 17, 2022.

[17] Federal Deposit Insurance Corporation. "2023 FDIC National Survey of Unbanked and Underbanked Households." November 2024. Surveys of small businesses are more limited but suggest that use of transaction accounts is between 90 percent and 95 percent. Federal Reserve Banks, "2025 Report on Employer Firms: Findings from the 2024 Small Business Credit Survey." March 2025; Sehmbi, Karrin. "Small-Business Statistics 2024." NerdWallet. February 8, 2024.

[18] FinRegLab. "Advancing the Credit Ecosystem: Machine Learning & Cash Flow Data in Consumer Underwriting." July 2025; FinRegLab, Sabrina T. Howell, and Siena Matsumoto. "Sharpening the Focus: Using Cash-Flow Data to Underwrite Financially Constrained Businesses."June 2025; FinRegLab. "The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings." July 2019.

conducted its original research, spreading from a relatively small group of fintech and mission-based lenders to a range of initiatives by score developers and aggregators and increasingly to banks that are focusing greater attention on how to utilize this data to improve and expand their lending operations.[19]

AI innovations hold the potential to derive even greater insights from cash flow data and other types of customer directed data transfers, especially given that information from transaction and other types of financial accounts is often not as standardized as credit bureau information. While simply tracking inflows, outflows, and balances can be useful for many use cases, transaction descriptions can yield substantial additional insights such as helping to identify recurring income, recurring expenses, and other nuances in the data. A number of companies are experimenting with the technologies underlying large language models to assess their usefulness in categorizing transactions, extracting key data elements, and other automation tasks to facilitate more nuanced and efficient underwriting processes.

Applying AI technologies to cash flow information could not only be extremely useful in credit underwriting but in fueling other use cases such as the next generation of financial management and budgeting tools. A broad range of personal financial management apps already rely on consumer-directed data flows in the course of providing financial dashboards and advice to consumers, but they have often struggled with ways to motivate consumers to take follow up actions such as opening high-yield savings accounts, transferring funds as daily needs fluctuate, and making other small, ongoing changes to improve their financial situations. Combining cash flow insights with agentic AI systems that can take much of the cognitive load off consumers and small businesses in managing their daily finances and executing toward long-term goals could be transformative by providing access to the kinds of high-quality, personalized financial advice and concierge services that only high net worth individuals can afford today.[20]

II. The importance of § 1033 and implementing rules in driving the data transfer ecosystem toward more positive patterns

As important and popular as customer-directed data transfers have become in the broader financial services ecosystem, the technological, market and regulatory infrastructure to support such transfers is far from ideal.[21] Aggregators have historically executed transfers by using consumers' log-in credentials and "screen scraping" techniques to collect the data from the websites of banks and other financial services providers, despite the risk that the credentials could potentially be misused to conduct transactions on the underlying accounts and various privacy, accuracy, and efficiency concerns about scraping. The transition to superior channels such as use of read-only access tokens and dedicated application programming interfaces (APIs) has been substantially slowed by cost considerations, coordination challenges, and competitive dynamics

[19] PYMNTS. "Cash Flow Data Lets Banks See Borrowers That FICO Scores Miss." PYMTS. September 17, 2025; PYMTS, "Cash Flow-Based Underwriting Adds Real-Time Context to FICO Score." May 24, 2024; Rudegair, Peter, and AnnaMaria Andriotis, "JPMorgan, Others Plan to Issue Credit Cards to People With No Credit Scores." Wall Street Journal. May 13, 2021; FinRegLab. "Data Diversification in Credit Underwriting." October 2020.

[20] FinRegLab. "The Next Wave Arrives: Agentic AI in Financial Services," 10-11; Batra, Shruti. "The Future of Financial Advice and Wealth Management." QED Investors. January 13, 2025; Bitrian, Paula, Isabel Buil and Sara Catalan. "Making Finance Fun: The Gamification of Personal Financial Management Apps." International Journal of Bank Marketing 39 no. 7 (2021): 1310-1332.

[21] For a more detailed discussion of the evolution of the system in the years before the CFPB began the rulemaking process, see FinRegLab, "The Use of Cash-Flow Data in Underwriting Credit: Market Context & Policy Analysis," § 4.1.

between industry actors, with banks in some cases attempting to block aggregators from their systems.[22] Eventually, large banks and aggregators began migrating to contractual arrangements with each other regarding data access, which have helped to create some regularization of processes and systems but take substantial time to negotiate, are still subject to uneven competitive dynamics, and are often not practicable for smaller actors.[23]

Evolution of the system began to improve after the first Trump Administration issued principles for data sharing in 2017 and concluded that § 1033 of the Dodd-Frank Act was "best interpreted" to apply to transfers of data both directly to consumers and to the financial services providers of their choosing.[24] As the rulemaking process played out over subsequent years, market actors disagreed on various policy issues but accelerated initiatives to develop common data standards and standardized APIs that allow greater interoperability and more precise control over data transfers for particular purposes. By 2022 (the year that the Bureau issued an outline of proposals and alternatives under consideration), the CFPB estimated that nearly 25 percent of data transfer attempts were routed through APIs that did not involve sharing consumers' credentials, a slightly larger share involved credential-based APIs, and 50 percent involved credential-based screen scraping.[25] While comparable statistics are not available for more recent years, the number of accounts accessible by APIs meeting standards established by the Financial Data Exchange jumped from 76 million in spring 2024 (shortly after comments closed on the proposed rule) to 114 million in spring 2025 as focus shifted to implementation of the Final Rule.[26]

Unfortunately, these cooperative relationships and forward momentum have been substantially disrupted in the past few months. After the CFPB signaled in litigation that it was questioning whether § 1033 applies to situations where a data aggregator or financial services provider accesses data on a consumer's behalf absent a fiduciary relationship between the parties, some banks began taking steps toward charging for data access differentiated by use case.[27] The situation has created further market uncertainty as participants try to

[22] APIs are software intermediaries that allow two websites or applications to exchange information using a common format. Compared to screen scraping, they can be built to provide greater security, accuracy, precision as to the scope of data sharing, and predictability with regard to costs. See FinRegLab, "The Use of Cash-Flow Data in Underwriting Credit: Market Context & Policy Analysis," § 4.1.

[23] U.S. Department of the Treasury, "A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation," 27-28; FinRegLab, "The Use of Cash-Flow Data in Underwriting Credit: Market Context & Policy Analysis," § 4.1. Smaller banks and credit unions may be more likely to view data access as a way to retain their current customers and link them to beneficial services that those institutions do not offer, but their ability to provide access is often complicated by their dependence on core processors and other vendors to operate their deposit account platforms, resource challenges, and the fact that their small scale makes negotiation of bilateral contracts with aggregators and other parties difficult.

[24] As the Treasury Department stated in 2018, "Otherwise, narrowly interpreting Section 1033 as applying only to direct consumer access would do little to advance consumer interests by eliminating many of the benefits they derive from data aggregation and the innovations that flow through from fintech applications." U.S. Department of the Treasury, "A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation," 31.

[25] Consumer Financial Protection Bureau, "Required Rulemaking on Personal Financial Data Rights." Federal Register 88, no. 209 (October 31, 2023): 74844.

[26] Financial Data Exchange. "114 Million Reasons to Keep Moving Forward on Industry-Led Standard for Secure Data Sharing." April 25, 2025.

[27] Weinberger, Evan, and Paige Smith. "JPMorgan Tells FinTechs to Pay Up for Customer Data Access." Bloomberg, July 11, 2025; Rodrigues, Francisco. "Winklevoss Claims JPMorgan Halted Gemini Onboarding After Data Access Fees Criticism." CoinDesk, July 26, 2025; Wang, Yizhu, and Paige Smith. "PNC Considers Charging Fintechs for Access to Customer Data." Bloomberg Law News, July 16, 2025.

assess what regulatory standards will apply to the ecosystem, the business implications of this initial fee benchmark for smaller companies, and whether to keep investing in API adoption if regulatory standards are unclear and some actors decide to begin reverting to screen scraping methods as an alternative to fee-based access.

Creating certainty so that the system can begin moving forward again is particularly urgent because agentic AI systems could soon substantially increase the demand for data pulls, change which parties engage in the pulls, and complicate the process for data sources trying to distinguish between legitimate and bad actors. If we want these new applications to deliver their full potential for consumers, small businesses, and broader markets and not to create undue burdens for data sources, getting the infrastructure right to support data pulls is critical. Where AAI system builders seek to use APIs for data access, they are likely to either work through data aggregators that have contractual relationships with the data sources or contract directly with the banks or other financial services providers. These contracts impose some restraints on the number of pulls per day and other practices. However, some builders could potentially choose to construct systems that will rely instead on using consumers' credentials to engage in screen scraping despite the various disadvantages discussed above. Instead of traffic flowing through a relatively small number of intermediaries, this raises the potential for banks and other data sources to face a much larger number of screen scraping attempts from a much broader range of companies and systems.[28] There is also discussion among ecosystem stakeholders about whether in the future apps could be installed on consumers' phones to access data through financial services providers' apps on the same devices, which would be substantially harder for financial services providers to detect and block.[29]

The longer uncertainty over the direction of the ecosystem drags on, the more incentive industry actors have to spend substantial AI resources on building the next generation of scraping alternatives rather than in investing in completing the transition to APIs. It is unclear whether the next generation of alternatives can fully replicate the advantages of APIs with regard to accuracy and reliability, but even if they do such a transition would raise substantial questions as to loads on data sources' systems and – absent application of a regulatory framework that imposes data minimization principles – the appropriate balancing of customer privacy, security, and confidentiality interests with innovation, competition, and other economic benefits.

In addition, absent steps to provide greater certainty to the market and restart forward momentum on API adoption, there is a substantial chance that the current environment will have greater negative effects on smaller financial services providers, low- to moderate-income consumers, and smaller businesses. Increases in costs and/or data flow frictions are likely to have the largest impact where providers' margins are already thin due to higher costs, lower returns, and less market power, including smaller providers, start ups, and companies focusing specifically on meeting the needs of smaller dollar customers. Conversely, a consistent regulatory framework could provide greater certainty to all ecosystem participants, address competitive

[28] Some aggregators appear to be using AI agents to facilitate data collection and scraping, and some genAI developers also use it to collect publicly available internet materials for use in model training and app development. Other companies are developing new technologies to try to prevent scraping their public-facing websites without permission or compensation. See, e.g., Watkins, Adam. "Scaling Web Scraping with Data Streaming, Agentic AI, and GenAI." Confluent Blog, January 6, 2025; Cunningham, Michael. "How to Scrape Data from Hundreds of Banks with AI Agents." Medium, July 21, 2025; Zeff, Maxwell. "Cloudflare Launches a Marketplace That Lets Websites Charge AI Bots for Scraping." TechCrunch, July 1, 2025; Cloudflare, "Cloudflare Just Changed How AI Crawlers Scrape the Internet-at-Large; Permission-Based Approach Makes Way for A New Business Model." July 1, 2025.

[29] Such approaches are getting attention in other sectors as well. Sharma, Dhruv. "Scraping Mobile App Data: Methods, Tools, and Best Practices." XwizAnalytics. April 23, 2025; Evangelist Apps. "Exploring the Depths: Your Complete Guide to Web Scraping in Mobile Apps." Medium. May 22, 2024.

sticking points, and facilitate research and investment in customer-friendly innovations. This could be a unique opportunity to foster greater competition, innovation, and access to financial services in ways that could have substantial positive effects on individual households, markets, and the broader U.S. economy.

III. Application of § 1033 to facilitated transfers

Section 1033 mandates that "Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, [covered data] in the control or possession of the covered person … in an electronic form usable by consumers."[30] The rules shall include but are not limited to "standards … to promote the development and use of standardized formats for information, including through the use of machine readable files."[31] The most fundamental question facing the CFPB right now is whether § 1033 extends to situations in which consumers rely upon companies (whether via an aggregator or through a direct data pull by another financial services provider) to facilitate delivery of data requests and transfers so that the data can be used as the consumer has directed.

Where such facilitated transfers occur, individual humans are still the ultimate initiators of the requests to make data available on a one time or periodic basis, even when they are relying on technology supplied by other companies to effectuate individual data pulls and the downstream use of the data. Given the detailed nature of the data and the value of AI and other advanced analytics in organizing and extracting insights from it, it is not surprising that consumers frequently rely on technologies supplied by outside sources for these purposes. Indeed, the statute's emphasis on electronic and machine readable formats confirms that Congress contemplated the importance of digital analyses. As the first Trump Administration itself recognized, "narrowly interpreting Section 1033 as applying only to direct consumer access would do little to advance consumer interests by eliminating many of the benefits they derive from data aggregation and the innovations that flow through from fintech applications."[32] Effectively requiring consumers to go through a multi-stage process to download the data themselves and then upload it to other financial services providers would be less efficient, secure, and convenient, particularly in the context of agentic AI systems that are specifically designed to reduce frictions for consumers in managing their finances.

Interpreting § 1033(a) to encompass facilitated transfers is further bolstered by § 1002(4), which defines "consumer" generally for purposes of Title X of the Dodd-Frank Act as "an individual or an agent, trustee, or representative acting on behalf of an individual."[33] This language further demonstrates that Congress contemplated consumers relying on other parties to act on their behalf under the statute in certain circumstances. The Final Rule is focused specifically on defining the processes by which consumers can authorize financial services providers to act as their representatives for purposes of effectuating data pulls and on the standards of conduct required to ensure that the companies are indeed "acting on behalf" of the consumer in taking such actions.

Litigation over the Final Rule has focused in significant part on whether "representative" should be interpreted to imply that there must be a preexisting fiduciary relationship similar to those that typically exists for agents and trustees, based largely on the canon of statutory interpretation *ejusdem generis*, which holds that a general term that follows a list of more specific terms should be interpreted to cover only similar

[30] 12 U.S.C. § 5533(a).
[31] 12 U.S.C. § 5533(d).
[32] U.S. Department of the Treasury, "A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation," 31.
[33] 12 U.S.C. § 5481(4).

matters.[34] However, this interpretation raises a number of tensions with other aspects of the Dodd-Frank Act and common usage of those terms:

- The Dodd-Frank Act itself refers several times to "legal representative,"[35] which more typically are assumed to have fiduciary duties,[36] and in other places such as § 1002(4) to simple "representatives." Many of those references do This implies that Congress recognized the difference between the two categories and deployed different wording with intention.

- While agents are *generally* subject to fiduciary duties, there are exceptions. As the Restatement of Agency notes, agency relationships are defined as a fiduciary relationship at common law, but "Legal usage varies. Some statutes … use agency terminology when the underlying relationship falls outside the common-law definition."[37]

- Consistent with the Restatement's comment, certain other passages of the Dodd-Frank Act that refer to "agents" – and in some cases in the same passages to "representatives" or other broader categories as well – in contexts that suggest Congress did not intend to limit coverage to parties who hold fiduciary duties to another party.[38]

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[34] This principle about general terms followed by specific terms is also sometimes cited as noscitur a sociis, but that is also used to refer to a broader canon that statutory words should be read in the context of their neighbors. See generally Fischer v. United States, 603 U.S. 480, 487 (2024); Waetzig v. Halliburton Energy Services, Inc., 145 S. Ct. 690 (2025).

[35] See, e.g., Dodd-Frank § 913(a) ("For purposes of this section, the term ''retail customer'' means a natural person, or the legal representative of such natural person who— (1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and (2) uses such advice primarily for personal, family, or household purposes." (codified at 15 U.S.C. § 78o note)); see also Dodd-Frank §§ 748 (codified at 7 U.S.C. § 26(c)(1)(B)(II)); 913(g)(2) (codified at 15 U.S.C. § 80b-11(g)(2)); 922 (codified at 15 U.S.C. § 78u-6(c)(1)(B)(II)).

[36] See, e.g., In re Imerys Talc Am., Inc., 38 F.4th 361, 376 (3d Cir. 2022) (bankruptcy context); In re AFI Holding, Inc., 530 F.3d 832, 845 (9th Cir. 2008) (bankruptcy context); Winn v. Panola-Harrison Elec. Co-op., Inc., 966 F. Supp. 481, 482 (E.D. Tex. 1997).

[37] Restatement (Third) of Agency §§ 1.01 cmt. B (2006). Indeed, federal regulations specifically state that the word "'agent' does not denote a fiduciary" for purposes of the Internal Revenue Code. 26 C.F.R. § 401.7701-6.

[38] See, e.g., Dodd-Frank §§ 122(b)(1)(C) (mandating GAO access to "the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the activities on behalf of the Council of such agent or representative)"); 210(g), (j) (discussing liquidation-related FDIC proceedings against "a director, officer, employee, agent, attorney, accountant, or appraiser of [a] covered financial company, or any other person employed by or providing services to a covered financial company"); 989(d) (mandating GAO access to materials belonging to or in use by "by a covered entity that engages in proprietary trading, and to the officers, directors, employees, independent public accountants, financial advisors, staff, and agents and representatives of a covered entity (as related to the activities of the agent or representative on behalf of the covered entity)"); 721(a)(4) (defining "associated person of a swap dealer or major swap participant" to include "a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves — (i) the solicitation or acceptance of swaps; or (ii) the supervision of any person or persons so engaged."). Auditors and accountants when performing attestations are not generally considered to owe fiduciary duties to the companies they are auditing. U.S. vs. Arthur Young & Co., 465 U.S. 805 (1984); Strategic Capital Res., Inc. v. Citrin Cooperman & Co., Ltd. Liab. P'ship, 213 F. App'x 842 (11th Cir. 2007); Resolution Tr. Corp. v. KPMG Peat Marwick, 844 F. Supp. 431, 436 (N.D. Ill. 1994); Fed. Deposit Ins. Corp. v. Schoenberger, 781 F. Supp. 1155, 1158 (E.D. La. 1992). But more broadly these passages suggest that Congress was using "agent" and in some cases other wording to reach parties who were acting on behalf of other individuals or entities without intending to limit either category to fiduciaries.

- To the extent that agent is read in § 1002(4) to involve a fiduciary duty, interpreting "representative" to also involve fiduciary duties may effectively strip "representative" of independent meaning, which raises potential concerns the rule against surplusage, which is a separate statutory canon that holds that each word and clause of a statute should be given operative effect under the assumption that Congress chooses words meaningfully.[39]

In short, the commonality between agents, trustees, and representatives in § 1002(4) is that they "act on behalf" of individual consumers but in potentially different ways, with different permissions, and with different scopes of activity.[40] Defining a consistent federal standard for what types of activities authorized "representatives" may engage in and what standards of conduct they must meet to ensure that they are acting on behalf of the consumer is a far more practicable and tailored approach to implementing § 1033(a) than tying the status to whether a fiduciary duty exists under state or other sources of law. Under the latter approach, there could be variation in results as to whether a particular fiduciary duty exists, the substantive nature of that duty, and whether and how such duties can be waived depending on the location of the parties.

These kinds of considerations are likely to become even more important in the future, as the CFPB may soon face questions about application of various federal consumer financial laws – including not only § 1033 but other parts of Title X of the Dodd-Frank Act and separately enumerated statutes – apply to agentic systems and the developers who create them when those systems are selected by consumers to act on their behalfs in a much broader range of financial services activities than data transfers. We therefore urge the CFPB to confirm its authority to define the circumstances under which consumers can rely on data aggregators or other companies to submit and receive a § 1033 data transfer from a covered financial services provider.

IV. Defrayment of Costs in Exercising Rights Under § 1033

The second most critical question is whether data sources can impose fees specifically for providing data access under § 1033. On this matter we believe it may be helpful to think separately about API implementation and operational costs in connection with data pulls in general as compared to downstream costs that may be incurred if there are negative outcomes from individual data uses.

On the question of implementation and operational costs, there are reasonable policy and economic arguments that allowing data sources to pass on administrative costs relating to converting to and operating safer technologies would be preferable, both in terms of providing stronger financial incentives to complete the transition promptly and to reduce the risk of negative externalities from unnecessarily frequent data pulls. While opinions on whether the statute allows for such fees vary, a substantial practical challenge has been obtaining the factual information needed to either define reasonable costs up front as part of establishing standards or in after the fact reviews. The Final Rule indicates that the CFPB concluded that commenters' submissions on this topic during the initial rulemaking were insufficiently detailed to identify

[39] Yates v. United States, 574 U.S. 528, 546 (2015); City of Chi. v. Fulton, 592 U.S. 154, 159 (2021); Waetzig v. Halliburton Energy Services, Inc., 604 U.S. __, 145 S. Ct. 690 (2025).

[40] For example, trustees have certain fiduciary duties to beneficiaries of a trust, but they are not considered the beneficiaries' agents; rather, trustees' scope of action is defined by the terms of the trust, such that beneficiaries cannot ordinarily remove them and their ability to direct the trustees' actions are often limited as well. Restatement (Third) of Trusts §§ 2, 5 cmt. E, 78 cmts. B, G (2007). In the case of agents with powers of attorney to act on behalf of incapacitated consumers may in fact administer their accounts on behalf of their principals. The class of representatives that are authorized to facilitate § 1033 data transfers pursuant to the Final Rule have a far narrower focus and scope of action.

"clear parameters … such that, subject to such parameters, data providers could charge reasonable, standardized fees that neither obstruct the access right due to cost nor impede third parties' access to data provider interfaces due to negotiations over fee amounts or schedules,"[41] but this rulemaking provides a second opportunity for industry to provide the necessary information to assist the Bureau and/or Congress in resolving these questions based on experiences since comments on the rulemaking closed in December 2023 and knowledge of what the Final Rule would require. Certain questions such as core processors' anticipated fees for conversion for those institutions who have not yet implemented APIs may be substantially clearer than they were two years ago.

To the extent that stakeholders have raised concerns about downstream losses from fraud losses, data breaches, or other negative consequences if there are problems with the downstream use of data, such losses are both more challenging to measure and forecast and are subject to a broad range of alternative mitigation strategies. The latter includes use of tokenization to reduce privacy and security risks (which the Final Rule specifically permits) intra-industry efforts through payment networks and other organizations to address business practices and dispute resolution processes, and enforcing existing legal protections addressing information security, privacy, and payments liability or developing new ones. A more detailed study of the potential costs and the impacts of different mitigation strategies – including both their effectiveness in reducing harms and costs and their impacts on consumers' ability to access their data under § 1033 – would be helpful to both the CFPB and Congress in considering next steps. This is particularly important because the range of options may differ by use case. We recommend that the Bureau not hold up the broader rulemaking while this work is ongoing, given the urgency of providing stability to the market and strengthening incentives for industry to resume more rapid API adoption as one of the largest and most effective across-the-board steps toward improving security, privacy, and efficiency in the ecosystem.

V. Questions about Information Security and Privacy Concerns and Implementation Periods

As the Administration noted in its AI Action Plan, maintaining respect for individual rights and ensuring civil liberties, privacy, and confidentiality protections is critical when ensuring that high-quality data sets can be made available to drive innovation and economic growth. We take very seriously concerns about information security and privacy in connection with § 1033 data transfers, as evidenced by our past research and the comments above. We did not agree on where the Final Rule landed on some of these issues, but we are also very conscious of the ecosystem's need for a consistent baseline of standards and the value of acting expeditiously to provide certainty to the market so that API implementation and other beneficial developments can move forward with greater speed.

We therefore urge the CFPB to maintain the Final Rule's approach to applying information security standards under the Gramm-Leach-Bliley Act (GLBA) to actors who are involved in facilitating and receiving consumer-directed transfers. Those standards apply broadly across both bank and non-bank financial services providers, and Federal Trade Commission updates effective in 2022 and 2024 further strengthened and harmonized the version applicable to non-banks in light of recent technology and market developments.[42] We do believe there are productive steps that the CFPB can take in continuing to strengthen security

[41] Consumer Financial Protection Bureau, "Required Rulemaking on Personal Financial Data Rights." Federal Register 89, no. 222 (November 18, 2024): 90884-90887 (describing various stakeholders' comments but noting that "[n]o commenters provided any information regarding possible parameters for standardized fees.").
[42] Federal Trade Commission, "Standards for Safeguarding Customer Information." Federal Register 88, no. 217 (November 13, 2023): 77499; Federal Trade Commission, "Standards for Safeguarding Customer Information." Federal Register 86, no. 234 (December 9, 2021): 70272.

processes and infrastructure. These include coordinating with prudential regulators to provide further guidance about risk management expectations for banks and the circumstances under which data sources can reject transfer requests due to information security concerns. There is also substantial potential for regulators to engage with private actors in continuing to articulate and evolve industry standards as technologies continue to change and to explore the potential for independent organizations to provide assessments and certifications, similar to the administration of security standards in other financial and non-financial contexts.[43] However, we believe it would be preferable to confirm in the interim that the existing standards apply as a reasonably robust and consistent starting place than to leave the status of facilitated transfers in question.

On privacy protections, we urge the CFPB to preserve the Final Rule's general approach to data minimization in up front collection and make a surgical but important revision with regard to downstream use and retention of data that has been deidentified and subjected to other protections for purposes of facilitating product improvements and development and public research by government, academic, and non-profit researchers. We believe these changes would strike an appropriate balance that simultaneously protects consumer information and facilitates customer-friendly innovation in the market. They would also facilitate the conduct of research to inform public policy, such as the Department of Housing and Urban Development's recent request for information on buy now, pay later loans and other emerging financial products.[44] It also provides a more level competitive playing field between different types of financial services providers, since companies that rely in whole or in part on customer-permissioned data flows are substantially more constrained in product improvement and development than companies who can use data generated by their own transaction account customers or rely solely on traditional consumer report information.

Our proposed approach relies on a combination of interlocking safeguards to protect consumers' data, ensure that third party actors are acting on behalf of consumers when handling their information, and facilitate further customer-friendly innovations in the market:

- **Minimization principle:** The Final Rule already requires data aggregators, recipient financial services providers, and any vendors they share data with to commit to limiting their collection, use, and retention of covered data to what is "reasonably necessary" to provide the consumer's requested product or service.[45]

- **De-identification and pseudonymization:** The rule could be modified to require that data to be used for product development or research be held in a format that is either de-identified or

[43] See, e.g., PCI Security Standards Council. "PCI Standards Overview." https://www.pcisecuritystandards.org/standards/, visited October 20, 2025; Coalition for Financial Ecosystem Standards. "CFES: Coalition for Financial Ecosystem Standards." https://thecfes.com, visited October 20, 2025

[44] Department of Housing and Urban Development, "Request for Information Regarding Buy Now Pay Later Unsecured Debt" Federal Register 90, no. 119 (June 24, 2025): 26824. At least two studies have used deidentified bank account data to study buy now, pay later users. DeHaan, Ed, Jungbae Kim , Ben Lourie, and Chenqi Zhu. "Buy Now Pay (Pain?) Later." Management Science. 70 no. 8 (August 2024): Pages v-vii, 4953-5625, iii-v; Di Maggio, Marco, Justin Katz, and Emily Williams. "Buy Now, Pay Later Credit: User Characteristics and Effects on Spending Patterns." Harvard Business School Working Paper 2022.

[45] 12 C.F.R. § 1033.421(a), (c), (f).

- pseudonymized.[46] If the data holder decides to work with outside vendors in product improvement activities or with outside researchers, we propose that the key not be provided to the outside party, but rather that appending data sets would need to be facilitated by original data recipient, potentially working with other entities (e.g., a consumer reporting agency) holding the data to be appended. This will protect consumer privacy and guard against misuse.

- **Prohibitions on reidentification or use beyond intended purposes:** Before sharing information with a research organization or vendor the rule could be amended to require the financial services provider to secure from the researcher, as a condition of receiving the data, an agreement that would prohibit attempts to reidentify the data or use it for purposes other than public research or product improvement.[47]

- **Modified retention period.** We also urge that the rule be amended to allow continuing use of the de-identified or pseudonymized data after the consumer consent has lapsed with regard to the original product or service, but to require the original provider to delete the consumer-identifying information from its key after a reasonable number of years for product improvement or once it is no longer reasonably necessary to maintain that information for the research project.[48] Such deletion would effectively turn the remaining data into de-identified data since there no longer would be a key to link the data back to a given individual.

Given the importance of representative data sets to improve our understanding of consumers' financial activities and needs and to develop more useful products and services, an opt-in regime would be both substantially less effective and more difficult to administer for these purposes. Rather, we believe the proposed approach provides a reasonable and appropriate balancing of interests in the current circumstances by maintaining the bounds on initial data collection while permitting additional use and retention of deidentified/pseudonymized data subject to additional safeguards in order to provide greater consumer and public benefits from innovation, competition, and research. While it does not provide a completely level playing field concerning different types of consumer financial data or the providers that accrue such data in the course of their businesses, it would help to ensure that consumer-permissioned data continues to fuel the kinds of innovation described in Part I above until such time as the Bureau or Congress undertakes a more comprehensive review.[49]

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[46] These terms are defined in different ways under different regulatory regimes, but we use de-identified to mean that personally identifiable information such as name, address, account number or other information used to effectuate payments, and Social Security number has been stripped out of the data set, and pseudonymized to refer to data where a unique identifier field that is not used for any other purpose is substituted for personally identifiable information. The key file for the unique identifiers is maintained separately by the original data holder and subject to technical and organizational security measures to ensure that the information would only be used for the limited purpose of appending other data for the covered purposes.

[47] 12 C.F.R. § 1033.421(f) already imposes restrictions on third parties who obtain the data from other third parties.

[48] Reasonable time periods could potentially be defined by references to various federal consumer financial protection laws that require record retention for three to five years for compliance purposes or the Fair Credit Reporting Act, which generally requires the removal of information from consumer reports after seven years. These standards represent previous policy judgments with regard to the utility of the data for underwriting and other purposes, staleness, privacy, and other considerations.

[49] Consumer financial data is subject to varying protections under the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, and the Final Rule. Each sets different restraints on how and when financial services providers who are holding consumers' data can use and share the information with other parties. Financial services providers may

Again, however, we emphasize the urgency of not bogging down over a complete rethinking of privacy and security protections given the importance of providing stability to the market and confirming that the broader principles of minimization apply to facilitated transfers. As discussed above, we believe the CFPB may have a relatively short window in which to create greater regulatory certainty, strengthen the incentives to adopt safer technologies, and establish key principles that would govern any companies that decide to focus instead on developing the next generation of scraping tools. We urge the Bureau to consider these factors in adjusting implementation periods as well so that the ecosystem can begin moving forward more expeditiously to safer technologies and practices.

Thank you again for the opportunity to comment on these issues.

Sincerely,

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be subject to all three regimes; for instance, the CFPB had begun working on a rulemaking under FCRA that would have provided additional standards of conduct for data aggregators. A comprehensive review of how the three regimes fit together and how to create a more consistent framework that balances consumer privacy, safety, and other interests with innovation, competition, and efficiency in the financial services market would help to create greater market certainty for all participants but would take time and resources. For more detailed discussions see Financial Health Network, Flourish, FinRegLab, and Mitchell Sandler, "Consumer Financial Data: Legal and Regulatory Landscape."