Regulatory Dispatch

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CFPB Issues Personal Financial Data Rights (1033) Final Rule

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) finalized a rule that will give consumers greater rights, privacy, and security over their personal financial data. The rule requires financial institutions, credit card issuers, and other financial providers to unlock an individual's personal financial data and transfer it to another provider at the consumer's request for free. Consumers will be able to more easily switch to providers with superior rates and services. By fueling competition and consumer choice, the rule will help lower prices on loans and improve customer service across payments, credit, and banking markets.

"Too many Americans are stuck in financial products with lousy rates and service," said CFPB Director Rohit Chopra. "Today's action will give people more power to get better rates and service on bank accounts, credit cards, and more."

Today's rule ensures consumers will be able to access and share data associated with bank accounts, credit cards, mobile wallets, payment apps, and other financial products. It aims to address market concentration that limits consumer choice over financial products and services. Consumers will be able to access, or authorize a third party to access, data such as transaction information, account balance information, information needed to initiate payments, upcoming bill information, and basic account verification information. Financial providers must make this information available without charging fees.

The rule moves the United States closer to having a competitive, safe, secure, and reliable "open banking" system. Today's rule is part of the CFPB's efforts to finally activate Section 1033 of the Consumer Financial Protection Act, a dormant legal authority enacted by Congress in 2010. This is the CFPB's first significant rule to accelerate responsible open banking in the U.S., and the CFPB will be developing additional rules to address more products, services, and use cases. The rules will boost competition by giving people more freedom to switch banks or providers and shop around for the best deal. This increased choice will incentivize financial institutions to offer improved products that help them attract new customers and retain old customers.

Today's rule also establishes strong privacy protections, requiring that personal financial data can only be used for the purposes requested by the consumer. It ensures that third parties cannot use consumer data for other purposes that benefit the third party, but that consumers do not want. It also helps move the industry away from "screen scraping," a still common but

risky practice that typically involves consumers providing their account passwords to third parties who use them to access data indiscriminately through online banking portals.
In giving consumers more control over their financial data, the Personal Financial Data Rights final rule will spur greater choice and increase competition by enabling people to:

- **Fire fintechs and banks that provide lousy service:** Consumers will be able to transfer their bank data to another bank, ensuring consumers can keep much of their banking history as they switch to another financial institution. People will not have to pay fees or clear hurdles from companies that make it harder to switch providers.
- **Shop for better rates on products and credit:** Consumers will be able to comparison shop and move to a competitor offering better rates, such as higher interest on deposits or lower interest on loans. It can also help people—including consumers with shorter credit histories, like young people—gain access to credit or obtain credit on better terms, by allowing lenders to make loans using data held by other institutions, such as information on income and expenses.
- **Make secure payments, including with "pay-by-bank":** The rule ensures consumers are able to securely share payments information, which can help enable what is sometimes referred to as pay-by-bank. Such products enable consumers to pay merchants, peers, and others, as well as move money between their own accounts. The rule will help bring greater competition to payments markets, which have long been an area of anti-competitive practices.

The final rule strengthens protections for consumers' data by:

- **Banning bait-and-switch data harvesting:** Third parties can only collect, use, or retain data to deliver the product the consumer requested. They cannot secretly collect, use, or retain consumers' data for their own unrelated business reasons – for example, by offering consumers a loan using consumer data that they also use for targeted advertising. The rule does not prohibit any particular uses of data, but it requires that all use be driven by what is necessary to deliver the product sought by the consumer.
- **Creating revocation and deletion rights:** When a person revokes access, the rule requires that data access end immediately, and deletion would be the default practice. Access can be maintained for no more than one year, absent express reauthorization. To prevent "dark patterns" from emerging, the process to revoke access must be simple and straightforward.

Compliance with the rule will be implemented in phases, with larger providers subject to the rule sooner than smaller ones. Financial firms will be required to comply based on their size; the largest institutions will have to comply by April 1, 2026, while the smallest covered institutions will have until April 1, 2030. Certain small banks and credit unions are not subject to this rule.

In June, the CFPB finalized a rule outlining the qualifications to become a recognized industry standard setting body, which can issue standards that companies can use to help them comply with the CFPB's Personal Financial Data Rights Rule.

Comment: In a win for community banks, those with total assets less than $850 million are exempt from the rule. This rule, implementing part 1033 of Dodd-Frank, gives consumers the right to access and share their financial data. Section 1033 requires 'financial services providers' aka banks to make available to consumers – and representatives acting on their behalf – certain information in those providers' control.

Bank Management

	FDIC Makes Public September Enforcement Actions; No Administrative Hearings Scheduled for November 2024 (10/25/2024) – WASHINGTON - The Federal Deposit Insurance Corporation (FDIC) today released a list of orders of administrative enforcement actions taken against banks and individuals in September 2024. There are no administrative hearings scheduled for November 2024. The FDIC issued 10 Orders in September 2024. The FDIC issued ten safety and soundness orders in September 2024. The administrative enforcement actions in those orders consisted of four consent orders, four orders terminating consent orders, and two orders terminating deposit insurance. To view orders, adjudicated decisions and notices and the administrative hearing details online, please visit the FDIC's Web page by clicking the link below.
	FRB Beige Book (10/23/2024) – **Overall Economic Activity** On balance, economic activity was little changed in nearly all Districts since early September, though two Districts reported modest growth. Most Districts reported declining manufacturing activity. Activity in the banking sector was generally steady to up slightly, and loan demand was mixed, with some Districts noting an improvement in the outlook due to the decline in interest rates. Reports on consumer spending were mixed, with some Districts noting shifts in the composition of purchases, mostly toward less expensive alternatives. Housing market activity has generally held up: inventory continued to expand in much of the nation, and home values largely held steady or rose slightly. Still, uncertainty about the path of mortgage rates kept some buyers on the sidelines, and the lack of affordable housing remained a persistent problem in many communities. Commercial real estate markets were generally flat, although data center and infrastructure projects boosted activity in a few Districts. The short-lived dockworkers strike caused only minor temporary disruptions. Hurricane damage impacted crops and prompted pauses in business activity and tourism in the Southeast. Agricultural activity was flat to down modestly, with some crop prices remaining unprofitably low. Energy activity was also unchanged or down modestly, and lower energy prices reportedly

compressed producers' margins. Despite elevated uncertainty, contacts were somewhat more optimistic about the longer-term outlook.

Labor Markets

On balance, employment increased slightly during this reporting period, with more than half of the Districts reporting slight or modest growth and the remaining Districts reporting little or no change. Many Districts reported low worker turnover, and layoffs reportedly remained limited. Demand for workers eased somewhat, with hiring focused primarily on replacement rather than growth. Worker availability improved, as many contacts reported it had become easier to find the workers they need. However, contacts noted that it remained difficult to find workers with certain skills or in some industries, such as technology, manufacturing, and construction. Wages generally continued to rise at a modest to moderate pace. With the improvement in worker availability, contacts in multiple Districts pointed to a slowdown in the pace of wage increases. Still, larger than usual pay increases were reported for some workers, such as those in the skilled trades or in remote areas.

Prices

Inflation continued to moderate with selling prices reportedly increasing at a slight or modest pace in most Districts. Still, the prices of some food products, such as eggs and dairy, were reported to have increased more sharply. Home prices edged up in many Districts, while rents were reported to be steady or down slightly. Many Districts noted increasing price sensitivity among consumers. Input prices generally rose moderately. Contacts across several industries noted more acute pressures from rising insurance and healthcare costs. Multiple Districts reported that input prices generally rose faster than selling prices, compressing firms' profit margins.

OCC Interest Rate Risk: Interest Rate Risk Statistics Report (10/21/2024) – Summary

The Office of the Comptroller of the Currency (OCC) today published the fall 2024 edition of the Interest Rate Risk Statistics Report. The report presents interest rate risk data gathered during examinations of OCC-supervised midsize and community banks and federal savings associations (collectively, banks). The statistics are for informational purposes only and do not represent OCC-suggested limits or exposures.

Rescissions

This bulletin rescinds OCC Bulletin 2024-10, "Interest Rate Risk: Interest Rate Risk Statistics Report," which transmitted the spring 2024 report.

Note for Community Banks

The publication contains information collected from banks supervised by the OCC's Midsize and Community Bank Supervision department. The report is for informational purposes only.

Highlights

The fall 2024 report provides statistics on interest rate risk exposures and risk limits for different midsize and community bank populations, including:

	• all OCC-supervised midsize and community banks with reported data. • banks by asset size. • banks by charter type. • minority depository institutions. The publication is intended as a resource to the industry, examiners, and the public. ***Comment: This report provides interesting tables with statistics for different bank populations, including midsized and community banks.***

BSA / AML

	FinCEN Issues Alert to Financial Institutions to Counter Financing of Hizballah and Its Terrorist Activities (10/23/2024) – Today, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued an alert to assist financial institutions in identifying and reporting suspicious activity supporting Lebanese Hizballah, a U.S.-designated Foreign Terrorist Organization engaged in active hostilities against Israel. The alert builds upon FinCEN's May 2024 advisory on Iran-backed terrorist organizations and offers a comprehensive overview of Hizballah's global criminal financial networks. **News Release:** https://www.fincen.gov/news/news-releases/fincen-issues-alert-financial-institutions-counter-financing-hizballah-and-its **Alert:** https://www.fincen.gov/sites/default/files/shared/FinCEN-Alert-Hizballah-Alert-508C.pdf

Human Resources

	CFPB Background Dossiers and Algorithmic Scores for Hiring, Promotion, and Other Employment Decisions (10/24/2024) – Question Presented: Can an employer make employment decisions utilizing background dossiers, algorithmic scores, and other third-party consumer reports about workers without adhering to the Fair Credit Reporting Act (FCRA)? Response: No. Similar to credit reports and credit scores used by lenders to make lending decisions, background dossiers—such as those that convey scores about workers—that are obtained from third parties and used by employers to make hiring, promotion, reassignment, or retention decisions are often governed by the FCRA. Many background dossiers that are compiled from databases collecting public records, employment history, collective-bargaining activity, or other information about a worker are "consumer reports" under the FCRA. Other types of consumer reports may include, for example, reports that convey scores assessing a current worker's risk level or performance. Employers that use consumer reports—both initially when hiring workers and for subsequent employment purposes—must comply with FCRA obligations, including the requirement to obtain a worker's permission to procure a consumer report, the obligation

	to provide notices before and upon taking adverse actions, and a prohibition on using consumer reports for purposes other than the permissible purposes described in the FCRA. The third-party providers furnishing these reports are "consumer reporting agencies" regulated by the FCRA, which (among other things) imposes an obligation to follow reasonable procedures to assure maximum possible accuracy, a requirement to disclose information in a worker's file to the worker upon request, and a requirement to investigate worker disputes alleging inaccuracies. ***Comment: This guidance builds on a January 2024 advisory opinion that addressed the requirement that credit bureaus, background check agencies, and other "consumer reporting agencies" provide consumer file disclosures under the FCRA. Update your policy and procedures accordingly to ensure your bank is complying with FCRA obligations when using covered 'background dossiers.'***

Technology / Security

	CISA Cisco Releases Security Bundle for Cisco ASA, FMC, and FTD Software (10/24/2024) – Cisco released its October 2024 Semiannual Cisco ASA, FMC, and FTD Software Security Advisory Bundled Publication to address vulnerabilities in Cisco ASA, FMC, and FTD. A cyber threat actor could exploit some of these vulnerabilities to take control of an affected system. CISA encourages users and administrators to review the following advisory and apply the necessary updates: • Cisco Event Response: October 2024 Cisco ASA, FMC, and FTD Software Security Advisory Bundled Publication

Selected federal rules – proposed

Proposed rules are included only when community banks may want to comment. Date posted may not be the same as the Federal Register Date.

07.30.2024 **FDIC** Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions SUMMARY: The FDIC is inviting comment on proposed revisions to its regulations relating to the brokered deposits restrictions that apply to less than well-capitalized insured depository institutions. The proposed rule would revise the "deposit broker" definition and would amend the analysis of the "primary purpose" exception to the "deposit broker" definition. The proposed rule would also amend two of the designated business relationships under the primary purpose exception and make changes to the notice and application process for the primary purpose exception. In addition, the proposed rule would clarify when an insured depository institution can regain status as an "agent institution" under the limited exception for a capped amount of reciprocal deposits.

DATES: Comments must be received by the FDIC no later than November 21, 2024 (extended by the FDIC from the original October 22, 2024 deadline.)

08.08.2024 **FDIC** Request for Information on Deposits SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is soliciting comments from interested parties on deposit data that is not currently reported in the Federal Financial Institutions Examination Council's (FFIEC) Consolidated Reports of Condition and Income (Call Report) or other regulatory reports, including for uninsured deposits. The FDIC seeks information on the characteristics that affect the stability and franchise value of different types of deposits and whether more detailed or more frequent reporting on these characteristics or types of deposits could enhance offsite risk and liquidity monitoring, inform analysis of the benefits and costs associated with additional deposit insurance coverage for certain types of deposits, improve risk sensitivity in deposit insurance pricing, and provide analysts and the general public with accurate and transparent data. **DATES: Comments must be received on or before December 6, 2024 (extended by the FDIC from the original October 7, 2024 deadline.)**

09.17.2024 **FDIC** Recordkeeping for Custodial Accounts Summary: SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing requirements that would strengthen FDIC-insured depository institutions’ (IDI) recordkeeping for custodial deposit accounts with transactional features and preserve beneficial owners’ and depositors’ entitlement to the protections afforded by Federal deposit insurance. The proposal is intended to promote the FDIC’s ability to promptly make deposit insurance determinations and, if necessary, pay deposit insurance claims “as soon as possible” in the event of the failure of an IDI holding custodial accounts with transactional features. The proposed requirements also are expected to result in depositor and consumer protection benefits, such as promoting timely access by consumers to their funds, even in the absence of the failure of an IDI. The requirements described in this document would only apply to IDIs offering custodial accounts with transactional features and that are not specifically exempted as provided in this NPR. **DATES: Comments must be received on or before December 2, 2024.**

09.20.2024 **CFPB** Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E) SUMMARY: The Consumer Financial Protection Bureau (CFPB) proposes a narrowly tailored amendment to certain remittance transfer disclosure requirements in the remittance rule in Regulation E (Remittance Rule or Rule), which implements the Electronic Fund Transfer Act, and certain accompanying model forms, to ensure that consumers sending a remittance transfer have information about the types of inquiries that may be most efficient to direct to the CFPB and the State agency that licenses or charters their remittance transfer provider. **DATES: Comments must be received on or before November 4, 2024.**