

Open Banking Is On Ice As CFPB Seeks To Toss Its Own Rule

By **Obrea Poindexter and Palmer Quamme** (July 24, 2025)

On May 30, the Consumer Financial Protection Bureau in *Forcht Bank NA v. CFPB* took the rare step of asking the U.S. District Court for the Eastern District of Kentucky to vacate the bureau's own final rule implementing Section 1033 of the Dodd-Frank Act.

The CFPB's request, filed in a motion for summary judgment in ongoing litigation brought by a number of banking industry groups and a Kentucky bank, represents a reversal in the agency's approach to so-called open banking but is consistent with the Trump administration's efforts to move away from Biden-era policies.

As of June 29, the Financial Technology Association, as an intervenor, is now defending the rule against these challenges.

Background: The Rule and the Legal Challenge

On Oct. 22, 2024, the CFPB released its long-awaited final rule implementing Section 1033 of the Consumer Financial Protection Act concerning personal financial data rights.

The final open banking rule sought to operationalize Section 1033 by requiring that certain financial institutions, card issuers and other payment facilitation providers make consumer data — including transaction data — more readily available to consumers and authorized third parties.

It also placed consumer protection obligations on these entities, as well as on third parties authorized to collect and use that data.

Banking industry trade groups, including the Kentucky Bankers Association and Bank Policy Institute, and a Kentucky community bank, Forcht, challenged the rule in court almost immediately, arguing that the CFPB exceeded its statutory authority and imposed arbitrary, burdensome requirements on financial institutions in its efforts to regulate open banking.

In February 2025, following the change in administration, the plaintiffs and the CFPB filed a joint motion to stay proceedings while the CFPB reviewed its position on the rule.

Shortly thereafter, a fintech trade group, the Financial Technology Association, filed a motion to intervene, due to the uncertainty regarding whether the CFPB would continue to defend its own rule in court, and the court granted the request.

The CFPB's Motion for Summary Judgment: A Reversal

The CFPB's motion asks the court to find the rule unlawful under the Administrative Procedure Act and vacate it in its entirety. The CFPB raises four arguments in support of its position.



Obrea Poindexter



Palmer Quamme

1. Exceeds CFPB's Authority

The CFPB contends that the rule exceeds its statutory authority because Section 1033 grants consumers the right to access their own data; it does not enable broad data sharing with third parties as mandated by the rule.

By requiring banks to provide data to authorized third parties, and not just to consumers, the CFPB argued the rule improperly stretches the definition of "consumer" and goes beyond the language of the statute.

In its opposition, filed June 29, the FTA argued that authorized third parties, as representatives of an individual consumer, fall within the CFPB's definition of consumer.

2. Unlawful Fee Prohibition

The CFPB asserts that the rule unlawfully prohibits data providers from charging fees for consumer data access.

According to the CFPB, this prohibition lacks statutory support as Section 1033 is silent on fees. The CFPB further argues the fee ban is arbitrary and capricious because the CFPB offered only conclusory reasoning that any fee would impede consumers' rights to access their data.

3. Risks to Consumer Data

The CFPB criticizes the handling of data privacy and security under the rule, stating that the CFPB failed to account for the cumulative risks posed by requiring disclosure of sensitive financial information.

The rule permits third parties to delegate access to other entities and does not prohibit so-called screen scraping, a practice the CFPB itself had acknowledged as risky.

The CFPB also stated that the rule establishes a "lax" system for assessing and verifying the security practices of authorized third parties.

4. Arbitrary Compliance Deadlines

The CFPB also takes aim at the rule's tiered compliance deadlines, arguing that the deadlines are not tied to the development or availability of consensus industry standards. The motion asserts that the deadlines effectively require banks to adhere to compliance requirements that do not yet exist — rendering the deadlines arbitrary and capricious.

The CFPB requested that the rule be vacated in its entirety, asserting that the unlawful portions are not severable because references to third parties and authorized third parties permeate it.

Policy Reversals

The CFPB's retreat from the open banking rule is the latest in a growing list of actions that reflect a significant recalibration of the agency's rulemaking and policymaking posture.

It has revised or reversed a number of high-profile efforts from previous administrations, including by:

- Proposing to rescind the rule creating a so-called nonbank repeat offender registry;[1]
- Withdrawing its notice of proposed rulemaking regarding data broker practices;[2]
- Withdrawing nearly 70 pieces of nonbinding guidance;[3]
- Issuing an interpretive rule asserting a narrower role for state enforcement of federal consumer protection law;[4] and
- Submitting a proposed rule removing the CFPB's ability to allocate Civil Penalty Fund money for consumer education and financial literacy programs.[5]

These efforts are likely not finished.

In early June, the CFPB submitted five rulemakings for Office of Management and Budget review. While only their titles are available at this stage, these suggest that further potential changes to (or in the case of Regulation Z, rescission of) the following financial rules and regulations could be forthcoming:

- Recission of loan originator compensation requirements under the Truth in Lending Act, i.e., Regulation Z;
- Discretionary servicing rules under the Real Estate Settlement Procedures Act, i.e., Regulation X;
- Discretionary mortgage servicing rules under the Truth in Lending Act;
- Defining larger participants of the consumer debt collection market; and
- Defining larger participants of the 2025 consumer reporting market.

The Future of Section 1033

As noted, in the Kentucky litigation, the FTA filed its opposition and cross-motion for summary judgment on June 29. The plaintiff's combined reply and opposition is due on July 29, and the FTA's reply is due by Aug. 29. A hearing on the motions will likely occur sometime after that.

Despite the CFPB's position on the current rule, it remains statutorily required under Section 1033 to issue rules to effectuate consumer access to data and to "prescribe standards ... to promote the development and use of standardized formats for information." [6]

The CFPB has not provided details on whether and how it would replace the previously finalized rule.

However, the CFPB's interim final rule extending the deadlines for the Section 1071 small business lending rule might provide insight into one possible approach. As with the open banking rule, the CFPB is statutorily required to implement some version of a small business lending rule.

Upon finalization, both rules were immediately subject to strong challenges from the industry and trade associations.

The Trump administration appears to find at least some of these criticisms compelling, and its course of action as to the Section 1071 rule — extending the compliance deadlines and reopening the rulemaking — could provide a road map for Section 1033.

Obrea Poindexter is a partner at Cooley LLP. She previously served as a staff lawyer at the Board of Governors of the Federal Reserve System in the Division of Consumer and Community Affairs.

Palmer Quamme is an associate at Cooley.

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[1] <https://www.federalregister.gov/d/2025-08345>.

[2] <https://www.federalregister.gov/d/2025-08644>.

[3] <https://www.federalregister.gov/d/2025-08286>.

[4] <https://www.federalregister.gov/d/2025-08641>.

[5] <https://www.federalregister.gov/d/2025-11248>.

[6] 12 USC 5533(a)(d).