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## CFPB TAKES ANOTHER STEP TOWARDS RULE ON CONSUMER ACCESS TO FINANCIAL RECORDS

Last week, the Consumer Financial Protection Bureau (“CFPB”) issued an advance notice of proposed rulemaking (“ANPR”) that asks the public for feedback on how the CFPB should develop regulations to implement Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

Subject to rules prescribed by the CFPB, Section 1033 requires “covered persons” to make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information related to any transaction, series of transactions or to the account, including costs, charges and usage data. Section 1033 places no duty on a covered person to keep or maintain any information about a consumer. Section 1033 contains exceptions to a consumer’s general right to access her financial records.

The ANPR groups the CFPB’s questions into the following 9 categories: (i) costs and benefits of consumer data access, (ii) competitive incentives, (iii) standard-setting with consumer data access, (iv) data access and the scope of a future rule, (v) consumer control and privacy, (vi) other legal requirements that potentially intersect or overlap with Section 1033, (vii) data security, (viii) data accuracy and (ix) other information that the CFPB should consider. The comment deadline is 90 days after the CFPB publishes the ANPR to the federal register. Publication to the federal register has not happened as of the date of this ALERT.

In the ANPR the CFPB said it aims to develop a regulation to clarify the CFPB’s compliance expectations and to help establish practices to ensure consumers have access to their financial data. The ANPR recognizes the efforts of market participants to self-regulate and set data access standards. The CFPB said, when drafting a rule, it will be mindful to avoid placing undue or unnecessary burden on industry in light of the industry’s self-regulation efforts.

The ANPR follows other actions by the CFPB over the past four years to implement a rule under Section 1033. In 2016 the CFPB issued a request for information on current consumer data access

market practices and how market practices may evolve. In 2017 the CFPB published a statement of principles covering 9 topics related to consumer-authorized data access. Most recently, the CFPB hosted a symposium in February, 2020, on consumer access to financial records and Section 1033 of the Dodd-Frank Act.

Implementing a rule under Section 1033 is challenging. As noted in the ANPR, the existing consumer-authorized data ecosystem is complicated. Participants in the space can change roles from a data holder to data user to data aggregator as consumer financial data is collected and exchanged. In the U.S. numerous financial services providers hold consumer financial data and have varying data access capabilities. Further, consumer data access involves many interconnected issues that the CFPB must work through such as balancing a consumer’s privacy with the right to access her financial data. Finally, when creating a rule, the CFPB must consider a host of other laws that potentially regulate consumer data access, including, but not limited to, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act and the Electronic Funds Transfer Act.

A future rule under Section 1033 regarding consumer data access could have far reaching implications on a cross section of financial services providers and their vendors as consumer-authorized data access has been utilized in a number of areas, including, but not limited to, personal financial management, comparison shopping for financial products or services, underwriting and account verification. □

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