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EXAMINING HOW EXISTING FEDERAL CONSUMER PRIVACY LAWS APPLY TO THE OPEN BANKING ECOSYSTEM

This article examines how existing federal consumer financial privacy laws in the United States, namely the Gramm-Leach-Bliley Act and the Fair Credit Reporting Act, apply to the open banking ecosystem, particularly in light of the Consumer Financial Protection Bureau's recently promulgated Personal Financial Data Rights rulemaking under Section 1033 of the Dodd-Frank Act. While these new rules require data providers and authorized third parties to implement several new consumer protections, they were crafted to work in conjunction with existing privacy laws. The overlap of these new rules with legacy privacy frameworks is examined to demonstrate how they work in tandem and how they will work going forward if the new rules are vacated through pending litigation. In some cases, the new rules introduce stricter limitations on the access, use, retention, and redisclosure of data than existing federal consumer financial privacy laws, raising complex operational questions for entities involved in the open banking ecosystem.

By Adam Maarec *

The Consumer Financial Protection Bureau ("CFPB") finalized its Personal Financial Data Rights rulemaking (the "Final Rule") under Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") in November 2024. But after two national banking trade associations filed suit to block the Final Rule from taking effect, and the CFPB joined the banks in asking the court to vacate its own rules, companies operating in the open banking market

are left with uncertainty regarding the rules that apply to their activities.

Companies sharing and accessing customers' sensitive financial account data need to consider how existing consumer financial protection laws might apply to their open banking activities — with or without the Final Rule. Open banking generally refers to consumerauthorized data sharing. For example, when a consumer authorizes a third party to access and directs their bank

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¹ 89 Fed. Reg. 90838 (November 18, 2024).

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