



United States House of Representatives
One Hundred Nineteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

November 14, 2025

Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB–2025–0037 – Comments on the Advanced Notice of Proposed Rulemaking on Personal Financial Data Rights Reconsideration

To Whom It May Concern:

We appreciate this opportunity to comment on the advanced notice of proposed rulemaking (ANPR)¹ on consumer financial data portability as authorized by Congress in section 1033 of the Dodd-Frank Act (DFA 1033).² We appreciate the thoughtfulness that the Consumer Financial Protection Bureau (CFPB) is displaying in maintaining the ability of consumers to meaningfully control and use their personal financial data for their financial betterment while also adhering to the limits of the statutory authorities Congress conferred in DFA 1033 when the CFPB promulgates related regulations.

As the CFPB continues the rulemaking process under DFA 1033, the CFPB should do so in a manner that preserves the ability of consumers to authorize a wide range of third parties, both with and without fiduciary duties, to access and use such consumers' financial data for the provision of beneficial and innovative financial products and services. We are in the era of consumer financial data portability and we do not want to see an upending of the existing ecosystem to the detriment of consumers and innovation.

Additionally, the CFPB should continue the DFA 1033 rulemaking process in the direction of a uniform privacy and security framework that adopts the Gramm-Leach-Bliley Act (GLBA) consumer financial data privacy and security standards to which entities affected by any DFA 1033 rulemaking are already subject. This would preserve CFPB resources, prevent unnecessary costs for covered entities from duplicative requirements, and create a standard for all covered entities to give consumers the consistent protections that they expect.

The legal analysis in the sections below provides the statutory interpretations of DFA 1033 and related definitions under the Consumer Financial Protection Act (CFPA). We look forward to

¹ Personal Financial Data Rights Reconsideration, 90 Fed. Reg. 40986 (proposed Aug. 22, 2025).

² Dodd-Frank Wall Street Reform and Consumer Prot. Act, Pub. L. No. 111-203, § 1033, 124 Stat. 1376, 2008 (2010) (codified at 12 U.S.C. § 5533).

working to create and maintain a durable framework for the permissioned sharing of consumer financial data in a manner that promotes innovation, fosters competition, and ensures the privacy and security of consumer financial data.

I. The Definitions of “Consumer” and “Representative”

a. The Term “Representative” Should Be Read to Include Nonfiduciary Third Parties That a Consumer Affirmatively Authorizes to Access Their Personal Financial Data

i. The Definition of “Consumer”

The CFPA, included as Title X of the Dodd-Frank Act, states that “[e]xcept as otherwise provided in this title, for the purposes of this title, the following definitions shall apply: ... [t]he term ‘consumer’ means an individual or an agent, trustee, or representative acting on behalf of an individual.”³ The use of “shall” in the preamble to the CFPA’s definitions section mandates that, unless a section of the CFPA contains a section-specific variation in the definition, the CFPA’s definition of consumer applies throughout the CFPA uniformly.

The CFPA’s statutory definition of consumer varied significantly from that term’s contemporary legal definition,⁴ indicating a choice by Congress to include both “individual[s]”, namely, natural persons within the contemporary legal meaning of consumer, as well as natural and legal persons serving as “an agent, trustee, or representative acting on behalf of a consumer.”⁵ Absent a section-specific definition of consumer that differs from the Act-wide definition, an atextual narrowing of the CFPA definition of consumer on an Act-wide or section-specific basis to only one of the statutory definition’s constituent elements, such as “individual”, while disregarding the rest, would ignore the plain meaning⁶ of the CFPA’s statutory definition of consumer. Thus, for the purposes of the CFPA, consumers are a broader class than just individuals.

In the CFPA’s definition of consumer, we find four distinct constituent elements: an “individual”, an “agent ... acting on behalf of an individual”, a “trustee ... acting on behalf of an individual”, and a “representative acting on behalf of an individual.”⁷ Representative is one term in a series of terms that denotes types of natural and legal persons that may “act[] on behalf of an individual.”⁸ The terms agent and trustee each have a rich history of use and a defined legal corpus explaining their meanings, while representative does not. It is important to examine the

³ Dodd-Frank Wall Street Reform and Consumer Prot. Act, Pub. L. No. 111-203, § 1002(4), 124 Stat. 1376, 1956 (2010) (codified at 12 U.S.C. § 5481(4)).

⁴ *Consumer*, Black’s Law Dictionary (9th ed. 2009) (“A person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.”).

⁵ 12 U.S.C. § 5481(4).

⁶ Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 436 (2012) (“plain-meaning rule: The doctrine that if the text of a statute is unambiguous, it should be applied by its terms without recourse to policy arguments, legislative history, or any other matter extraneous to the text—unless this application leads to an absurdity.”).

⁷ 12 U.S.C. § 5481(4).

⁸ 12 U.S.C. § 5481(4).

differences in these terms and their meanings to properly understand how they relate to one another and what roles they play in the CFPA and DFA 1033.

ii. The Definition of “Agent”

Agents have long been understood to owe fiduciary duties to their principal.⁹ The contemporary common law definition of agent at the time of the enactment of DFA 1033 provides the same generally accepted legal understanding.¹⁰ Popular usage of the term agent does not control actual agency relationships under law, i.e., agency relationships exist only where the agent owes fiduciary duties to the principal.¹¹ Where a statute, like the CFPA and DFA 1033, uses a common law term, like agent, without the statute itself supplying its own definition, the statute is understood to have adopted the term’s common law meaning¹² and will be understood to only alter the common law definition when such a disposition is clear.¹³

The CFPA and DFA 1033 contain no variation in the meaning of the term agent from its common law definition. No such variation appears in the CFPA’s Act-wide statutory definitions,¹⁴ which only mentions agents as a constituent element within various Act-wide statutory definitions.¹⁵ Similarly, no such variation appears in DFA 1033; indeed, DFA 1033 nowhere mentions the term agent, only the term consumer.¹⁶ Given that Congress had ample opportunity to provide a specific statutory definition of the term agent in either the CFPA or DFA 1033 and chose not to do so implies that Congress’s choice was to impute the common law definition of agent into the statutory scheme. Thus, for the purposes of DFA 1033, agents have fiduciary duties.

iii. The Definition of “Trustee”

Trustees have also long been understood to owe fiduciary duties to beneficiaries of trusts they administer.¹⁷ The contemporary common law definition of trustee at the time of the

⁹ See, e.g., Restatement (First) of Agency § 1 cmt. b. (1933) (“Agency results only if there is an agreement for the creation of a fiduciary relationship with control by the beneficiary.”); Restatement (Second) of Agency § 1(1) (1958) (“Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.”).

¹⁰ Restatement (Third) of Agency § 1.01 (2006) (“Agency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.”).

¹¹ Restatement (Third) of Agency § 1.02 (2006) (“An agency relationship arises only when the elements stated in [Restatement (Third) of Agency] § 1.01 are present. Whether a relationship is characterized as agency in an agreement between parties or in the context of industry or popular usage is not controlling.”).

¹² Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 426 (2012) (“canon of imputed common law meaning: The doctrine that a statute that uses a common-law term, without defining it, adopts its common-law meaning[.]”).

¹³ *Id.* at 437 (“presumption against change in common law: The doctrine that a statute will be construed to alter the common law only when that disposition is clear[.]”).

¹⁴ 12 U.S.C. § 5481.

¹⁵ 12 U.S.C. § 5481(3), (4), (8)(C), (21)(F), (21)(L), (25)(C)(i).

¹⁶ 12 U.S.C. § 5533.

¹⁷ See, e.g., Restatement (First) of Trusts § 170 cmt. a. (1935) (“A trustee is in a fiduciary relation to the beneficiary[.]”); Restatement (Second) of Trusts § 170 cmt. a. (1959) (“A trustee is in a fiduciary relation to the beneficiary[.]”).

enactment of DFA 1033 provides the same generally accepted legal understanding.¹⁸ Where a statute uses a common law term, like trustee, without the statute itself supplying its own definition, the statute adopts the term's common law meaning¹⁹ and is understood to only alter the common law definition when such a disposition is clear.²⁰

The CFPA and DFA 1033 contain no variation in the meaning of the term trustee from its common law definition. No such variation appears in the CFPA's Act-wide statutory definitions,²¹ which only mention trustees as a constituent element within the Act-wide statutory definition of consumer.²² Similarly, no such variation appears in DFA 1033; indeed, DFA 1033 does not mention the term trustee, only the term consumer.²³ Given that Congress had the opportunity to provide a specific statutory definition of the term trustee in either the CFPA or DFA 1033 and chose not to do so implies that Congress' choice was to impute the common law definition of trustee into the statutory scheme. Thus, for the purposes of DFA 1033, trustees have fiduciary duties.

iv. The Definition of "Representative"

The definition of representative does not have a rich history of use, unlike the terms agent and trustee. The contemporary legal dictionary definition of representative at the time of the enactment of DFA 1033 is broad, acting more as an umbrella term for multiple classes of entities "who stand for or act[] on behalf of another[.]"²⁴ These classes include everything from nonfiduciary representatives acting as a surrogate on one hand, to classes charged with fiduciary duties owed to a principal on the other, though this definition's text never uses the term "fiduciary" explicitly.²⁵ The contemporary nonlegal dictionary definition of representative at the time of the enactment of DFA 1033 is similarly broad, again, acting more as an umbrella term for multiple classes of entities.²⁶

The CFPA, DFA 1033, and the Act-wide definitions of the Dodd-Frank Act do not contain a statutory definition of representative²⁷ that provides a technical gloss to that term's meaning

¹⁸ Restatement (Third) of Trusts § 86 (2007) ("A trustee ... is subject to and must act in accordance with the fiduciary duties stated in ... this Restatement.").

¹⁹ Scalia & Garner, *supra*, at 426.

²⁰ *Id.* at 437.

²¹ 12 U.S.C. § 5481.

²² 12 U.S.C. § 5841(4).

²³ 12 U.S.C. § 5533.

²⁴ *Representative*, Black's Law Dictionary (9th ed. 2009).

²⁵ *Representative*, Black's Law Dictionary (9th ed. 2009) (noting that this definition does make reference to the definition of "agent" referred to elsewhere in Black's Law Dictionary, but without limiting the definition to this class of representatives alone).

²⁶ *Representative*, Webster's Third New Int'l Dictionary 1926–27 (2002) ("standing for or in the place of another : acting for another or others : constituting the agent for another esp[ecially] through delegated authority[;] ... one that stands for a number or class (as of persons or things) : one that in some way corresponds to, replaces, or is equivalent to someone or something else[;] ... one that represents another or others in a special capacity[;] ... one that represents another as agent, deputy, substitute, or delegate usu[ally] being invested with the authority of the principal[;] ... one that in some respect stands for or in the place of another[.]").

²⁷ 12 U.S.C. § 5481 (listing CFPA definitions where the term "representative" only appears as a constituent element of "consumer"); 12 U.S.C. § 5301 (listing Dodd-Frank Act-wide definitions and containing no appearance of the

that differs from the contemporary²⁸ ordinary meaning²⁹ of representative. Additionally, in contrast to agent and trustee, the statute uses a term in representative that has no fixed meaning in the common law and therefore cannot be understood to have imputed a common law meaning of representative.

Thus, we turn to the contemporary legal dictionary and nonlegal dictionary definitions of representative, which, as noted before, contemplate a broad range of relationships which could be described as one entity acting as the representative of another, with or without owing fiduciary duties. This contemporary ordinary meaning of representative must, in the absence of both a statute-specific definition and an imputed common law meaning, be the definition that controls. Namely, a representative is an entity “acting on behalf of an individual”³⁰ that may, or may *not*, be charged with fiduciary duties.

This conclusion is buttressed by comparison of the term representative to its neighboring constituent elements, agent and trustee, within the CFPA definition of consumer. Were representative to be characterized as a synonym of agent and trustee, for practical and legal purposes, it would merge with one or both, rendering the term representative surplusage. Had Congress wanted the term representative to be synonymous with agent or trustee, it simply would not have included the term representative in the CFPA definition of consumer, leading to the conclusion that Congress chose to include the term representative purposefully. This choice by Congress in statute, that an additional class of entities—representatives with or *without* fiduciary duties—can act on behalf of individuals, in addition to agents and trustees, should be given consideration in any regulations related to DFA 1033.³¹

The Dodd-Frank Act also juxtaposes the terms agent and representative elsewhere without providing section-specific definitions.³² This reinforces the evidence that Congress chose to have the meaning of agent carry its common law meaning, with fiduciary duties attaching.³³ This contrasts with the choice of Congress to include the contemporary ordinary meaning of representative and the spectrum of entities falling under that contemporary ordinary meaning, namely, fiduciary and *nonfiduciary* entities.³⁴

term “representative”); 12 U.S.C. § 5533 (codifying DFA 1033 and containing no appearance of the term “representative”).

²⁸ Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 428–29 (“fixed-meaning canon: The doctrine that words must be given the meaning they had when the text was adopted[.]”).

²⁹ *Id.* at 435 (“ordinary-meaning canon: The doctrine that words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense[.]”).

³⁰ 12 U.S.C. § 5481(4).

³¹ Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 440 (“surplusage canon: The doctrine that, if possible, every word and every provision is to be given effect ... According to this canon, ‘if a [textual] provision lends itself to two possible interpretations, and if one of those interpretations would make another provision in the [text] superfluous, then interpreters ordinarily should prefer the other interpretation.’”) (brackets in original).

³² Dodd-Frank Wall Street Reform and Consumer Prot. Act, Pub. L. No. 111-203, § 122(b)(1)(C), 124 Stat. 1376, 1411 (2010) (codified at 12 U.S.C. § 5332(b)(1)(C)); *id.* § 989(d), 124 Stat. 1376, 1941 (2010) (not codified).

³³ Restatement (Third) of Agency § 1.01 (2006), *supra*; Scalia & Garner, *supra*, at 426, 437 (canon of imputed common law meaning and presumption against change in common law, respectively).

³⁴ *Representative*, Webster’s Third New Int’l Dictionary, *supra*, at 1926–27; *Representative*, Black’s Law Dictionary, *supra*; Scalia & Garner, *supra*, at 428–29, 435 (fixed-meaning canon and ordinary-meaning canon, respectively).

Use of terms appearing similar to, but meaningfully contrasting from, representative within the Dodd-Frank Act further forecloses readings of the term representative that narrow it to only a class of entities that have fiduciary duties. The Act uses the term “legal representative” in multiple sections whose subject-matter and content connotes the fiduciary duties of the attorney-client relationship.³⁵ This contrasts with the broader class of entities, with or without fiduciary duties, that the CFPB definition of representative encompasses. Had Congress wanted to clearly imbue the CFPB definition of representative with the fiduciary duties attaching to an attorney-client relationship or similar relationships, it could have used the term legal representative or a synonym. But it did not, meaning that Congress chose for representative to carry its contemporary ordinary meaning of a broad spectrum of entities with and without fiduciary duties.

This does not mean that third parties, acting as representatives, do not owe obligations to individuals that have authorized the third party to act on behalf of the individual. As stated before, Congress chose that the full range of entities with and without fiduciary duties contained in the contemporary ordinary meaning of the term representative apply. Therefore, it is possible for representatives to possess fiduciary duties.³⁶ But, it is also possible for representatives to not possess fiduciary duties but still owe obligations, for example, where relationships between individuals and third parties are based in contract where failure to perform contractual obligations would create a legal cause of action.

In conclusion, the definition of representative in the CFPB as incorporated by DFA 1033 includes nonfiduciary third parties that a consumer affirmatively authorizes to access their personal financial data.

II. Consumer Financial Data Privacy under DFA 1033

a. Consumer Financial Data Should Be Subject to Uniform Privacy Standards Regardless of the Type of Entity in Possession of Such Data

It is well-established that most, if not nearly all, entities engaged in the offering, provision, servicing, administration, or other aspects of consumer financial products and services are already subject to the consumer financial data privacy provisions of Subtitle A of Title V of GLBA.³⁷

First, Title V, Subtitle A of GLBA incorporates an incredibly broad definition of covered “financial institution” as “any institution the business of which is engaging in financial activities

³⁵ Dodd-Frank Wall Street Reform and Consumer Prot. Act, Pub. L. No. 111-203, § 748, 124 Stat. 1376, 1739–46 (see subsection codified at 7 U.S.C. § 26(c)(1)(B)(i)(II)); *id.* § 913, 124 Stat. 1376, 1824–30 (codified at 15 U.S.C. § 78o note) (Study and Rulemaking Regarding Obligations of Brokers, Dealers, and Investment Advisers); *id.* § 922, 124 Stat. 1376, 1841–49 (see subsection codified at 15 U.S.C. § 78u-6(c)(1)(B)(i)(II)).

³⁶ *See, e.g.*, Investment Advisers Act, Pub. L. No. 76-768, Title II, 54 Stat. 789, 847–57 (1940), and *Sec. & Exch. Comm’n v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 191 (1963) (“The Investment Advisers Act ... reflects a congressional recognition ‘of the delicate fiduciary nature of an investment advisory relationship[.]’”).

³⁷ Gramm-Leach-Bliley Act, Pub. L. No. 106-102, Title V, Subtitle A, 113 Stat. 1338, 1436–45 (1999) (codified at 15 U.S.C. §§ 6801–6809).

as described in section [4(k) of the Bank Holding Company Act (BHCA)].”³⁸ Thus, the consumer financial data³⁹ privacy provisions of GLBA, incorporating section 4(k) of the BHCA, define a financial institution as any entity engaged in an activity that is “financial in nature[,] [] incidental to such financial activity[,] or is complementary to a financial activity[.]”⁴⁰

Title I of GLBA, in adding section 4(k) to the BHCA,⁴¹ created a new class of financial firm that had not existed before: the financial holding company (FHC). An FHC is a bank holding company (BHC) that can engage in financial activities that a BHC would otherwise be prohibited from engaging in. GLBA’s addition of section 4(k) to the BHCA supplies the authority for the additional activities in which an FHC can engage, in addition to the BHC activities in which it can engage.

For an FHC, Section 4(k) of the BHCA lists activities that are financial in nature⁴² and charges the Board of Governors of the Federal Reserve System (FRB) with defining what activities are financial in nature or are incidental or complementary thereto.⁴³ As such, an FHC may engage in any of the permissible banking and nonbanking activities of a BHC,⁴⁴ the BHCA section 4(k) list of activities that are financial in nature,⁴⁵ and the list of activities that are financial in nature or incidental or complementary thereto as defined by the FRB in regulation.⁴⁶

As a result, GLBA Title V, Subtitle A’s incorporation of this list of permissible financial activities for an FHC into its definition of “financial institution” means that most entities that will be affected by DFA 1033 and related regulations are already subject to the consumer financial data privacy requirements of GLBA Title V, Subtitle A and its implementing regulations, Regulation P,⁴⁷ as it relates to consumer financial data in their possession or control. This incredibly broad and nearly comprehensive range of covered financial activities under GLBA Title V, Subtitle A’s definition of financial institution includes those financial activities performed by, among others, banks and BHCs,⁴⁸ credit unions,⁴⁹ broker-dealers, investment companies, investment advisers,⁵⁰ insurance companies,⁵¹ automotive lenders,⁵² consumer

³⁸ 15 U.S.C. § 6809(3)(A).

³⁹ Note that GLBA Title V, Subtitle A uses the term “nonpublic personal information” to refer to “[nonpublic] personally identifiable financial information ... provided by a consumer to a financial institution; resulting from any transaction ... or any service performed for the consumer; or otherwise obtained by the financial institution.” 15 U.S.C. § 6809(4). For the purposes of this comment letter, the term “consumer financial data” will be used as a catchall, given the use in DFA 1033 of the related terms “information” and “data”, and should be considered synonymous with “nonpublic personal information” as that term is defined in GLBA Title V, Subtitle A.

⁴⁰ 12 U.S.C. § 1843(k)(1).

⁴¹ Gramm-Leach-Bliley Act, Pub. L. No. 106–102, § 103, 113 Stat. 1338, 1342–51 (1999) (codified at 12 U.S.C. § 1843(k)).

⁴² 12 U.S.C. § 1843(k)(4).

⁴³ 12 U.S.C. § 1843(k)(1).

⁴⁴ 12 U.S.C. § 1843(c); 12 C.F.R. §§ 225.22, 225.28.

⁴⁵ 12 U.S.C. § 1843(k)(4).

⁴⁶ 12 C.F.R. §§ 225.86, 225.101–225.145.

⁴⁷ 12 C.F.R. §§ 1016.1–1016.17.

⁴⁸ 12 C.F.R. § 225.28(b); *see also* 15 U.S.C. § 6805(a)(1).

⁴⁹ 12 C.F.R. § 225.28(b)(1), (2), (10), (12), (13); *see also* 15 U.S.C. § 6805(a)(2).

⁵⁰ 12 C.F.R. § 225.28(b)(6), (7), (8); *see also* 15 U.S.C. § 6805(a)(3)–(5).

⁵¹ 12 C.F.R. § 225.28(b)(11); *see also* 15 U.S.C. § 6805(a)(6).

⁵² 12 C.F.R. § 225.28(b)(1), (2); *see also* 15 U.S.C. § 6805(a)(7).

finance companies,⁵³ consumer real estate lenders,⁵⁴ trust companies,⁵⁵ industrial loan companies,⁵⁶ other third parties that are engaged in financial activities,⁵⁷ and data aggregators.⁵⁸

Second, even if an entity is not directly subject to GLBA Title V, Subtitle A, they are still subject to its limitations on reuse of consumer financial data.⁵⁹ Under this provision, any entity that is a nonaffiliated third party⁶⁰ that receives consumer financial data from a financial institution may not, directly or through an affiliate, disclose consumer financial data to a second nonaffiliated third party unless the first nonaffiliated third party itself complies with the requirements of GLBA Title V, Subtitle A. In Regulation P, the CFPB has interpreted this to mean that a nonaffiliated third party may only disclose such consumer financial data if the disclosure would be consistent with the original financial institution's privacy policy.⁶¹

The applicability of either of these avenues, that an entity is a financial institution under the GLBA Title V, Subtitle A definition or is subject to the limitation on reuse of consumer financial data, means that all entities with possession or control of consumer financial data are already subject to a uniform set of consumer financial data privacy requirements under GLBA Title V, Subtitle A.

When it enacted DFA 1033, Congress mandated that the CFPB prescribe regulations applying to entities that are defined in the CFPA as “covered person[s]”,⁶² namely, “person[s] that engage[] in offering or providing a consumer financial product or service; and any affiliate of [such a] person ... if such affiliate acts as a service provider[.]”⁶³ This covered person definition captures entities engaged in a broad range of financial activities defined as “consumer financial product[s] or service[s]”⁶⁴ in a fashion similar to the GLBA Title V, Subtitle A definition of financial institution insofar as the latter applies to entities providing a consumer financial product or service. It is worth noting that the CFPA definition of “covered person” as it incorporates the definition of “consumer financial product or service” includes “financial product[s] or service[s] ... permissible for ... a *financial holding company* to offer or to provide

⁵³ 12 C.F.R. § 225.28(b)(1), (2); *see also* 15 U.S.C. § 6805(a)(8).

⁵⁴ 12 C.F.R. § 225.28(b)(1), (2).

⁵⁵ 12 C.F.R. § 225.28(b)(5).

⁵⁶ 12 C.F.R. § 225.28(b)(4).

⁵⁷ 12 U.S.C. § 1843(k)(4); 12 C.F.R. §§ 225.28, 225.86, 225.101–225.145.

⁵⁸ 12 U.S.C. § 1843(k)(4)(F); 12 C.F.R. § 225.28(b)(14); 12 C.F.R. § 225.86(a)(1), (a)(2)(iii), (e)(1)(iii).

⁵⁹ 15 U.S.C. § 6802(c).

⁶⁰ GLBA Title V, Subtitle A and Regulation P delineate between financial institutions and their affiliates on the one hand and nonaffiliated third parties on the other. Affiliates are any company that controls (holding company), is controlled by (subsidiary), or is under common control with (common holding company affiliate) a financial institution. 15 U.S.C. § 6809(6) (mirroring the BHCA definition of “affiliate” at 12 U.S.C. § 1841(k)); 12 C.F.R. § 1016.3(a)(1) (doing the same). In contrast, nonaffiliated third parties are entities that are not affiliates of a financial institution under any of the preceding categories. 15 U.S.C. § 6809(5); 12 C.F.R. § 1016.3(o).

⁶¹ 12 C.F.R. § 1016.11(b)(2)(ii).

⁶² 12 U.S.C. § 5533(a), (e).

⁶³ 12 U.S.C. § 5481(6).

⁶⁴ 12 U.S.C. § 5481(5) (defining “consumer financial product or service” in reference to a list at 12 U.S.C. § 5481(15) which includes extensions of credit, loan servicing, real estate-related financial services, deposit taking activities, money transmission, custodial activities, payment instruments provision, check cashing, financial data processing products and services, financial advisory services, consumer report compilation and administration, debt collection, and any financial product or service permissible for an FHC).

under any provision of a Federal law or regulation [with] ... a material impact on consumers.”⁶⁵ Thus, the entities covered by DFA 1033 and GLBA Title V, Subtitle A are the same.

Relatedly, when Congress enacted DFA 1033, it mandated that the CFPB consult with the Federal banking agencies and Federal Trade Commission (FTC),⁶⁶ themselves each possessing consumer financial data privacy regulatory and enforcement authorities under GLBA Title V, Subtitle A⁶⁷ to ensure that regulations implementing DFA 1033 “impose substantively similar requirements on covered persons[.]”⁶⁸ The clear implication is that Congress wanted the CFPB to draw from existing statutory and regulatory frameworks that apply to covered persons, especially where such frameworks already apply to covered persons uniformly.

Given that covered persons under DFA 1033 are already subject to a uniform set of consumer financial data privacy requirements under GLBA Title V, Subtitle A, the CFPB should incorporate the requirements of GLBA Title V, Subtitle A into the privacy requirements for covered persons under DFA 1033. This would preserve resources that would otherwise be expended on creating a new consumer financial data privacy regulatory regime, avoid onerous compliance costs for covered persons associated with a new and duplicative consumer financial data privacy framework, and align with consumers’ expectations that their personal financial data receive the same level of privacy protections at one entity as at another.

III. Consumer Financial Data Security under DFA 1033

a. *Consumer Financial Data Should Be Subject to Uniform Security Standards Regardless of the Type of Entity in Possession or Control of Such Data*

It is well-established that most entities engaged in the offering, provision, servicing, administration, or other aspects of consumer financial products and services are already subject to the consumer financial data security provisions of Subtitle A of Title V of GLBA⁶⁹ and the data security standards promulgated thereunder by various federal agencies for the financial institutions within their respective jurisdictions.⁷⁰ This is so through GLBA Title V, Subtitle A’s incredibly broad definition of covered “financial institution” as “any institution the business of which is engaging in financial activities as described in section [4(k) of the BHCA].”⁷¹

⁶⁵ 12 U.S.C. § 5481(15)(A)(xi)(II) (emphasis added).

⁶⁶ 12 U.S.C. § 5533(e).

⁶⁷ 15 U.S.C. §§ 6804, 6805.

⁶⁸ 12 U.S.C. § 5533(e)(1).

⁶⁹ 15 U.S.C. § 6801(b).

⁷⁰ 15 U.S.C. §§ 6801(b), 6805(a); 12 C.F.R. § Pt. 30, App. B (OCC); 12 C.F.R. § Pt. 208, App. D-2 (FRB); 12 C.F.R. § Pt. 225, App. F (FRB); 12 C.F.R. § Pt. 364, App. B (FDIC); 12 C.F.R. § Pt. 748, App. A (NCUA); 17 C.F.R. § 248.30 (SEC); Nat’l Ass’n of Ins. Comm’rs, Model L. 672: Standards for Safeguarding Customer Information Model Regulation (Apr. 2002) (state insurance commissioners; adopted and codified by 30 states and the District of Columbia); 12 C.F.R. §§ 314.1–314.6 (FTC; applying to “entities includ[ing], but [] not limited to, mortgage lenders, ‘pay day’ lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors and other financial advisors, tax preparation firms, non-federally insured credit unions, [non-SEC-registered] investment advisors ..., and entities acting as finders.” 16 C.F.R. § 314.1(b)).

⁷¹ 15 U.S.C. § 6809(3).

We incorporate the prior analysis here to reach the same conclusion: most entities that will be affected by DFA 1033 and related regulations are already covered by and subject to the consumer financial data security requirements of GLBA Title V, Subtitle A and its various agency-specific implementing regulations for entities within respective agencies' jurisdictions.

GLBA Title V, Subtitle A tasks each of the agencies of jurisdiction with “establish[ing] appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards ... to insure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of such records; and to protect against unauthorized access to or use of such records or information[.]”⁷² Such consumer financial data security standards have long been promulgated in regulation⁷³ by each of the agencies charged with enforcement⁷⁴ of these standards and provide the foundational data security framework for the entire U.S. financial services industry and the different types of financial institutions found therein.

As noted previously, when Congress enacted DFA 1033, it mandated that the CFPB prescribe regulations applying to entities that are defined in the CFPA as “covered person[s]”,⁷⁵ namely, “person[s] that engage[] in offering or providing a consumer financial product or service; and any affiliate of [such a] person ... if such affiliate acts as a service provider[.]”⁷⁶ This covered person definition captures entities engaged in a broad range of financial activities defined as “consumer financial product[s] or service[s]”⁷⁷ in a fashion similar to the GLBA Title V, Subtitle A definition of financial institution insofar as the latter applies to entities providing a consumer financial product or service. Specifically, the CFPA definition of “covered person” incorporates the definition of “consumer financial product or service” which includes “financial product[s] or service[s] ... permissible for ... a *financial holding company* to offer or to provide under any provision of a Federal law or regulation [with] ... a material impact on consumers.”⁷⁸ Thus, the entities covered by DFA 1033 and GLBA Title V, Subtitle A are the same.

Relatedly, when Congress enacted DFA 1033, it mandated that the CFPB consult with the Federal banking agencies and FTC,⁷⁹ themselves each possessing consumer financial data security standard-setting authorities under GLBA Title V, Subtitle A⁸⁰ to ensure that regulations

⁷² 15 U.S.C. § 6801(b).

⁷³ 12 C.F.R. § Pt. 30, App. B (OCC); 12 C.F.R. § Pt. 208, App. D-2 (FRB); 12 C.F.R. § Pt. 225, App. F (FRB); 12 C.F.R. § Pt. 364, App. B (FDIC); 12 C.F.R. § Pt. 748, App. A (NCUA); 17 C.F.R. § 248.30 (SEC); Nat'l Ass'n of Ins. Comm'rs, Model L. 672: Standards for Safeguarding Customer Information Model Regulation (Apr. 2002) (state insurance commissioners); 16 C.F.R. §§ 314.1–314.6 (FTC).

⁷⁴ 15 U.S.C. § 6801(b); 15 U.S.C. § 6805(a).

⁷⁵ 12 U.S.C. § 5533(a), (e).

⁷⁶ 12 U.S.C. § 5481(6).

⁷⁷ 12 U.S.C. § 5481(5) (defining “consumer financial product or service” in reference to a list at 12 U.S.C. § 5481(15) which includes extensions of credit, loan servicing, real estate-related financial services, deposit taking activities, money transmission, custodial activities, payment instruments provision, check cashing, financial data processing products and services, financial advisory services, consumer report compilation and administration, debt collection, and any financial product or service permissible for an FHC).

⁷⁸ 12 U.S.C. § 5481(15)(A)(xi)(II) (emphasis added).

⁷⁹ 12 U.S.C. § 5533(e).

⁸⁰ 15 U.S.C. § 6801(b); *see also* 15 U.S.C. § 6805(a).

implementing DFA 1033 “impose substantively similar requirements on covered persons[.]”⁸¹ The clear implication is that Congress wanted the CFPB to draw from existing statutory and regulatory frameworks that apply to covered persons, especially where such frameworks already apply to covered persons uniformly. The DFA 1033 final rule promulgated in November 2024 (2024 Final Rule) recognized this implication, incorporating the GLBA Title V, Subtitle A consumer financial data security framework as its data security standard for entities subject to DFA 1033.⁸²

For the aforementioned reasons, covered persons under DFA 1033 are already subject to a uniform set of consumer financial data security requirements under GLBA Title V, Subtitle A. Incorporating the requirements of GLBA Title V, Subtitle A into the security requirements for covered persons under DFA 1033 would preserve resources that would otherwise be expended on creating a new consumer financial data security regulatory regime, avoid onerous compliance costs for covered persons associated with a new and duplicative consumer financial data security framework, and align with consumers’ expectations that their personal financial data receive the same level of security protections at one entity as at another.

b. *Use of Screen Scraping as a Consumer Financial Data Access Method*

As consumer financial data portability emerged in the early years of the first decade of this century, screen scraping was a primary means by which authorized third parties accessed a consumer’s financial data from that consumer’s financial institution. The days of consumer financial data portability’s infancy are over and other methods, such as use of an application programming interface (API), exist for authorized third parties to access a consumer’s financial data at that consumer’s financial institution.

When Congress enacted DFA 1033, it mandated that the CFPB consult with the Federal banking agencies and FTC,⁸³ themselves each possessing consumer financial data security standard-setting authorities under GLBA Title V, Subtitle A⁸⁴ to ensure that regulations implementing DFA 1033 “take into account conditions under which covered persons do business both in the United States and in other countries[.]”⁸⁵ GLBA Title V, Subtitle A charges both the Federal banking agencies and the FTC, as well as other agencies, with “establish[ing] appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards ... to insure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of such records; and to protect against unauthorized access to or use of such records or information[.]”⁸⁶

⁸¹ 12 U.S.C. § 5533(e)(1).

⁸² Required Rulemaking on Personal Financial Data Rights, 89 Fed. Reg. 90838, 90993, 90997 (finalized Nov. 18, 2024) (codified at 12 C.F.R. §§ 1033.311(e)(2), 1033.421(e)).

⁸³ 12 U.S.C. § 5533(e).

⁸⁴ 15 U.S.C. §§ 6801(b), 6805(a).

⁸⁵ 12 U.S.C. § 5533(e)(2).

⁸⁶ 15 U.S.C. § 6801(b).

DFA 1033—with its clear implication that Congress wanted the CFPB to draw from existing statutory and regulatory frameworks applying to covered persons⁸⁷ and the related ability for the CFPB to incorporate the consumer financial data security requirements of GLBA Title V, Subtitle A—⁸⁸gives the CFPB the authority to “insure the security and confidentiality of ...[,] protect against any anticipated threats or hazards to ...[,] and protect against unauthorized access to or use of [customer] records or information” of a financial institution.⁸⁹ It is critical that the CFPB provide flexibility for smaller financial institutions that may not have the knowledge, staffing, and financial and other resources to provide their customers and their customers’ authorized third parties with data access through more complex technological methods like an API.

We appreciate your work on preserving the ability of consumers to meaningfully control and use their personal financial data for their financial betterment while maintaining a robust and secure consumer data portability ecosystem.

Sincerely,

A handwritten signature in blue ink that reads "French Hill".

French Hill
Chairman

A handwritten signature in blue ink that reads "Bill Huizenga".

Bill Huizenga
Vice Chairman

⁸⁷ 12 U.S.C. § 5533(e).

⁸⁸ 12 U.S.C. § 5533(e).

⁸⁹ 15 U.S.C. § 6801(b).