

Court Pauses Section 1033 Lawsuit*

Section 1033 of the Consumer Financial Protection Act of 2010 (CFPA) provides that, subject to rules prescribed by the CFPB, a covered person (which includes financial institutions such as banks and credit unions) must make information in their control or possession concerning consumer financial products or services available to a consumer upon request. On October 22, 2024, the CFPB published the final rule to carry out the personal financial data rights established by Section 1033 ("PFDR Final Rule").

To briefly recap, the PFDR Final Rule requires financial institutions with more than \$850 million in total assets that offer or provide certain types of consumer-purpose financial products and services (namely deposit accounts and credit cards) to participate in the "open banking" system. Under the PFDR Final Rule, the regulatory framework the CFPB has established around the open banking system primarily regulates persons acting as either: (i) "data providers" (which include financial institutions that hold consumer financial data); or (ii) "authorized third parties" (which generally refers to persons or entities that have received the consumer's authorization to obtain data from a data provider). The PFDR Final Rule requires subject institutions to create interfaces that would permit consumers and their authorized third parties to obtain their consumer financial data from covered institutions upon request. Refer to Part Seven of BCG Standard Procedures Manual #20, *Financial Privacy & Information Security*, for a detailed discussion of the PFDR Rule.

As the law firm previously reported to BCG Members, on October 23, 2024, Forcht Bank, N.A., the Kentucky Bankers Association, and the Bank Policy Institution (collectively, the "Plaintiffs") filed a lawsuit seeking to invalidate the PFDR Rule. Specifically, the Plaintiffs requested an order which sets aside the PFDR Final Rule in its entirety and an injunction which prohibits the CFPB from enforcing the PFDR Final Rule against the Plaintiffs. *Forcht Bank, N.A. v. Consumer Financial Protection Bureau*, 5:24-cv-00304-DCR (E.D. Ky. filed Oct. 22, 2024). While the CFPB initially defended the validity of the PFDR Rule, on May 30, 2025, the CFPB changed its position and filed a motion for summary judgment, requesting that the court set aside the PFDR Rule because it violates the Administrative Procedures Act (APA).

The CFPB has now changed its position in this lawsuit (again). Specifically, on July 29, 2025, the CFPB filed a motion to stay the lawsuit on the basis that it has elected to initiate a new rulemaking to reconsider and substantially revise the PFDR Final Rule. Additionally, in the motion, the CFPB stated that it plans to engage in an "accelerated rulemaking process" and that, within three weeks, it plans to issue an advance notice of proposed rulemaking to serve as the starting point for a new rule. The CFPB also agreed to file status reports with the court every

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* Janet Bonnefin has retired from the firm.

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90 days (from the date the order is granted) to keep it apprised of progress on the planned rulemaking. Therefore, the CFPB has essentially pulled back from its initial request to have the court throw out the PFDR Final Rule in its entirety. Instead, it now indicates that it will substantially revise the rule on an accelerated timeline.

On the same day the motion to stay was filed, the court granted the CFPB's motion, thereby staying the lawsuit until the CFPB completes its new Section 1033 rulemaking. Thus, the lawsuit is on hold until the CFPB issues an updated PFDR Final Rule.

For more information, contact John Davis at **JDavis@ABLawyers.com**.