

Open Banking Overview

Presentation to NASCUS


Andrew C. Glass

Gregory N. Blase

June 17, 2024

Agenda

- Purpose of the CFPB's proposed rule
- Scope of coverage
- New protocol for data sharing
- Burden allocation/challenges of implementation
- Benefits
- Exclusions
- Staggered compliance deadlines
- Lessons learned from EU example

The image features a white rectangular area in the center, containing text. The background is a vibrant blue with abstract, overlapping geometric shapes and gradients, creating a modern and professional look.

Purpose of the CFPB's proposed rule

Purpose of the CFPB's proposed rule

- Implements Section 1033 of the Dodd-Frank Act by requiring data providers to make available to consumers, and entities designated by consumers, data concerning consumers' banking and credit card accounts. 12 CFR Part 1033
- Credit unions will generally fall into definition of data provider.
- The rule is intended to promote the development of industry standards, and application programming interfaces (APIs)/developer interfaces, for the sharing of consumer data with third parties pursuant to the consumer's request and authorization.

Purpose of the CFPB's proposed rule

- The CFPB has stated that the rule is meant to promote competition, innovation, and increased consumer choice in the financial services and fintech spaces.
- The rule seeks to eliminate screen scraping, where a consumer provides log-in credentials to third parties to access the consumer's data but may create issues:
 - Third parties do not receive machine-readable data, so translation errors can alter the consumer's data.
 - Data providers cannot evaluate whether the consumer has authorized access or whether the access is fraudulent.
 - Third parties access more data than the consumer has authorized and retains the data for longer than the consumer intends.

Purpose of the CFPB's proposed rule

- CFPB envisions that through an easier and more accurate system of exchanging data, third parties and data providers themselves will be able to improve consumer offerings, including:
 - Providing a greater range of products and services to consumers.
 - Reaching more consumers, including those with thin credit profiles, than those who are currently reached by the financial services market.
 - Increasing competition among providers of products and services and lowering the cost of those services.

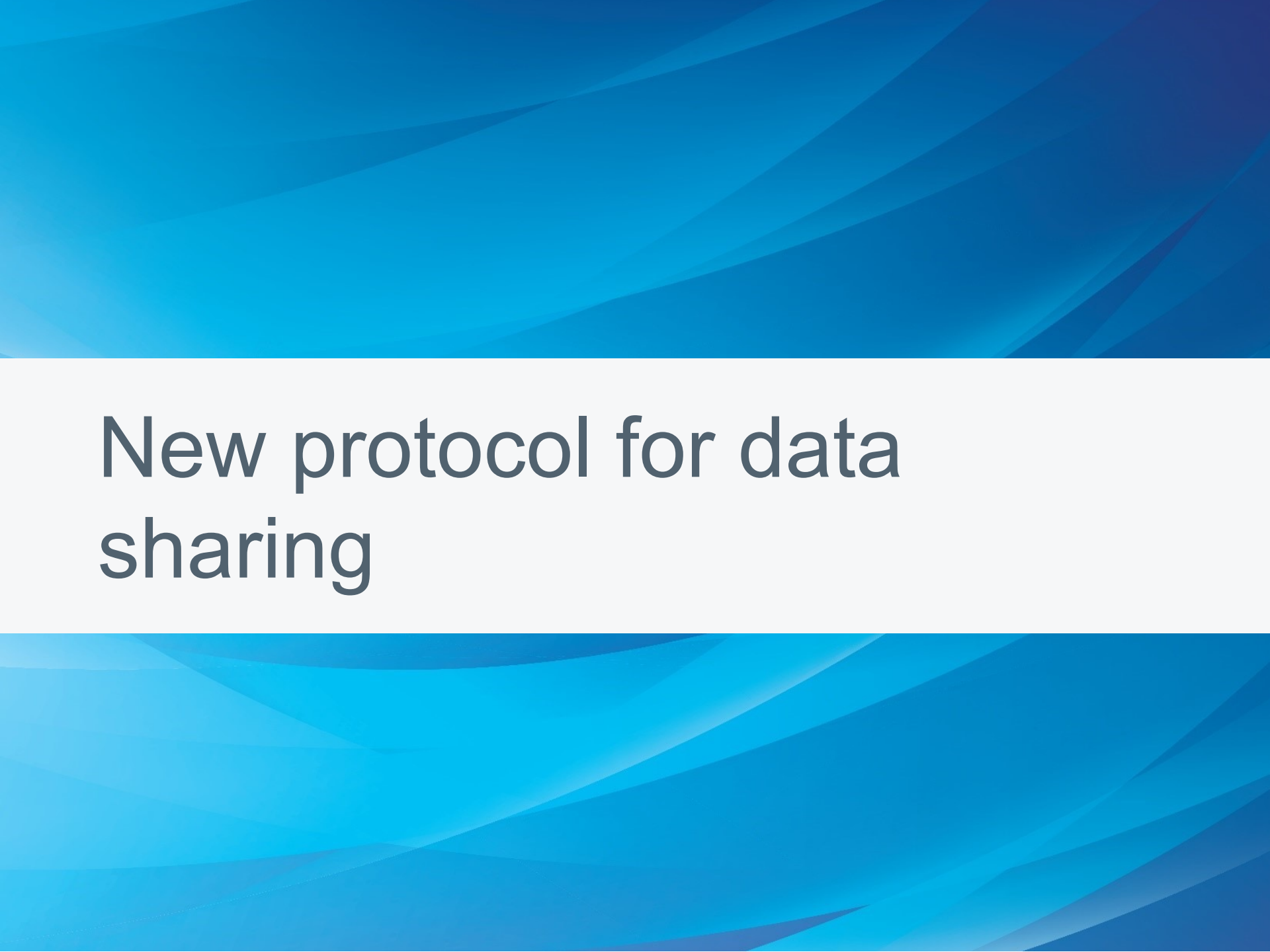
Scope of coverage

Scope of coverage

- The rule defines “data provider” to include the following:
 - A “financial institution” as defined in Reg E, 12 CFR 1005.2(i).
 - A “card issuer” as defined in Reg Z, 12 CFR 1026.2(a)(7).
 - Any other person that controls or possesses information concerning a covered consumer financial product or service that the consumer obtained from that person.
- The definition of “financial institution” would include institutions such as credit unions.
- The rule may cover digital wallet providers or neobanks that facilitate occasional remittances from consumers.

Scope of coverage

- A “data provider” will be required to comply with the rule with respect to the following “covered consumer financial products or services:”
 - Reg E accounts (checking and savings accounts).
 - Reg Z credit cards.
 - Facilitation of payments from a Reg E account or a Reg Z credit card.
- CFPB is considering whether to include state-provided, needs-based payments loaded on pre-paid cards (such as food stamps) in the final rule, in later rule-making, or at all.

The image features a central white horizontal band containing the text. The background above and below this band consists of overlapping, semi-transparent blue shapes in various shades, creating a dynamic, layered effect.

New protocol for data sharing

New protocol for data sharing

- The rule will require data providers to set up developer interfaces for third parties to access consumer data where authorized by the consumer.
- Developer interfaces are meant to facilitate sharing of consumer data in a manner that:
 - Seeks avoids fraudulent access and limits scope of shared data to the data authorized by the consumer.
 - Provide machine-readable format, free from error (proposed rule requires 99.5% accuracy rate).

New protocol for data sharing

- CFPB expects that the market will develop the standards and protocols for exchanging data.
 - CFPB has mandated that the standards and protocols are developed in a transparent and inclusive manner, without favoring any segment of the financial services industry.
- The rule would implement a protocol for the sharing of consumer data under yet-to-be-developed industry standards.

New protocol for data sharing

- On June 5, 2024, the CFPB issued the final rule outlining the qualifications to become an industry standard setting body.
 - 12 CFR § 1033.131 defines a “qualified industry standard” as a standard issued by a standard-setting body that is fair, open, and inclusive.
 - Under 12 CFR § 1033.141, a standard-setting body is fair, open, and inclusive when it provides for openness, balance, due process, appeals, consensus, transparency, and recognition by the CFPB as an issuer of qualified industry standards within the last three years.

The background consists of a white horizontal band across the center, with blue abstract shapes in shades of light and dark blue above and below it. The text is centered within the white band.

Burden allocation and challenges of implementation

Burden allocation and challenges of implementation

- The rule will require the creation of a set of policies and procedures that will involve coordination among numerous aspects of a covered data provider's business and will require significant time and monetary investment to monitor performance under the rule.
- The rule would place the burden on the most regulated section of the industry—that is, on data providers—to ensure compliance with numerous aspects of the rule:
 - Tracking authorizations.
 - Preventing fraudulent access to interface.
 - Preventing overly broad access to data, that is, more than that which the consumer authorized.

Burden allocation and challenges of implementation

- Some commentators have noted that distributing the burden of avoiding risk to third parties as well as to data providers might promote more innovative systems for accessing data and monitoring access authorization.
- Creating a developer interface will require a significant monetary investment by a data provider either through development of the interface in-house or through a third-party vendor.
 - The rule will demand a high level of accuracy (99.5%), requiring frequent testing.

Burden allocation and challenges of implementation

- The proposed rule would not permit data providers to charge a fee for the development of the developer interface or for the sharing of data.
- Some commentators have raised concern that the inability to charge a fee will stifle the creation of the best and most efficient data interfaces and that the data interfaces might be cumbersome or slow.
 - For small market participants, CFPB contemplates that the market will offer third-party solutions.
- The rule does not reconcile data providers' obligations under OCC and other regulators' data privacy rules.

CLE VERIFICATION CODE 1 OF 2

A7G8

Please record both codes on the
CLE Verification Form provided for this program

The image features a central white horizontal band. Above and below this band are abstract, layered blue shapes in various shades, creating a sense of depth and movement. The word "Benefits" is centered within the white band.

Benefits

Benefits

- Increased ability to underwrite to address needs of consumers with credit-thin profiles and to expand credit opportunities to those populations, including the underbanked and new arrivals to the United States.
 - Data sharing will enable telecoms, utilities, and national or regional landlords to more easily share payment information with third parties, including credit unions who would like to reach underserved members of the consumer market.
- Allow smaller market financial services providers and fintechs to compete with larger market participants through more easily accessing consumer data.

Exclusions

Exclusions

- The rule contains very few exclusions.
- The rule excludes data providers who have not established a “consumer interface,” defined to include all consumer-facing online banking facilities prior to the applicable compliance date.
- Based on NCUA data, CFPB estimates that only 21% of credit unions with few than 1,000 deposit accounts maintain online banking facilities.

Exclusions

- The proposed rule does not have a grace period for compliance by a depository that establishes a consumer interface after the effective date
- CFPB sought comment on whether to include a grace period for data providers who implement consumer interfaces after the effective date of the final rule.

Staggered compliance deadlines

Staggered compliance deadlines

- Data providers would be required to grant access to the interfaces contemplated by Section 1033.301 to consumers and third parties by the following deadlines after publication of the final rule:
 - Within 6 months: depository institutions that hold at least \$500 billion in total assets and non-depository institutions that are projected to generate at least \$10 billion in revenue in the current calendar year.
 - Within 1 year: depository institutions that hold at least \$50 billion to \$500 billion in total assets and non-depository institutions that generated less \$10 billion in revenue in the prior year and that are projected to generate less than \$10 billion in the current calendar year.

Staggered compliance deadlines

- Data providers would be required to grant access to the interfaces contemplated by Section 1033.301 to consumers and third parties by the following deadlines after publication of the final rule:
 - Within 2.5 years: depository institutions that hold at least \$850 million to \$50 billion in total assets.
 - Within 4 years: depository institutions that hold less than \$850 million in total assets.

Lessons learned from EU example

Lessons learned from EU example

- The EU's open banking directive has been in place for several years.
 - Institutions found that they needed longer lead time is needed to create policies and procedures necessary to implement the directive.
 - Needed more time to develop and standardize developer interfaces and the data exchange protocol.
 - Developer interfaces required more testing than originally anticipated.

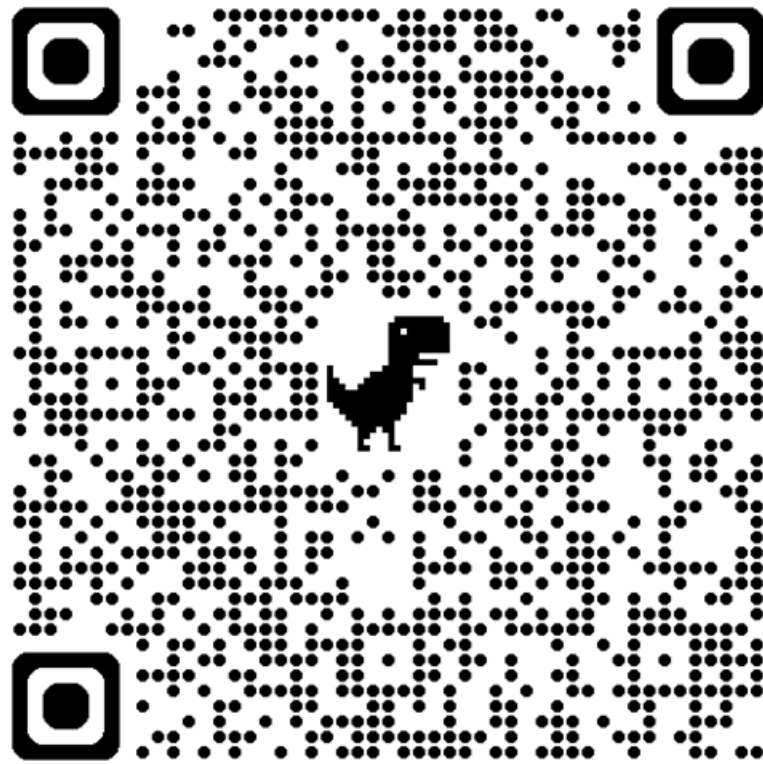
CLE VERIFICATION CODE 2 OF 2

G2B3

Please record both codes on the
CLE Verification Form provided for this program.

Thank you!

**SCAN THE BELOW CODE TO REQUEST
CLE CREDIT**



The image features a central white horizontal band. Above and below this band is a blue abstract background composed of overlapping, semi-transparent, wavy shapes in various shades of blue, creating a sense of depth and movement.

Thank you!

Andrew C. Glass – andrew.glass@klgates.com

Gregory N. Blase – gregory.blase@klgates.com

K&L GATES