American Bankers Association

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Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

RE: CFPB Advisory Opinion: Consumer Information Requests to Large Banks and Credit Unions

Dear Director Chopra:

The American Bankers Association (ABA)[1] appreciates your acknowledgment that financial service providers and the consumers they serve benefit from clear rules. As you noted in your written testimony to Congress in April 2022, "Laws work best when they are easy to understand, easy to follow, and easy to enforce."[2] You also promised that the Consumer Financial Protection Bureau (CFPB) would "[D]ramatically increase its issuance of guidance documents, such as advisory opinions, compliance bulletins, policy statements, and other publications."[3]

You have followed through on this commitment, overseeing the agency's issuance of a steady stream of guidance documents, which have had a significant impact on industry—and the products and services available in the consumer financial marketplace. However, this impact has not always been positive, and the guidance issuances have not always provided legal clarity or useful advice and information to regulated entities.

As discussed in ABA's white paper, *Effective Agency Guidance*,[4] this is sometimes the result of a failure to follow the mandatory process of the Administrative Procedure Act (APA),[5] which is required for guidance that is a binding "legislative rule." In other cases, the guidance may in fact be an "interpretive rule" or "general statement of policy" that is not subject to the APA, but the failure to confer with regulated entities to understand their interpretive questions, operational impacts, and system constraints limits the utility of the guidance, undermines its acceptance, and may limit its durability as administrations change.

Because ABA and its members welcome guidance that complies with legal requirements while providing useful information and advice, we are offering industry feedback on certain

[1] The American Bankers Association is the voice of the nation's $23.4 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard $18.6 trillion in deposits and extend $12.3 trillion in loans.
[2] https://www.consumerfinance.gov/about-us/newsroom/written-testimony-director-rohit-chopra-before-the-senate-committee-on-banking-housing-and-urban-affairs/.
[3] *Id.*
[4] ABA, Effective Agency Guidance (Feb. 6, 2024), https://www.aba.com/advocacy/policy-analysis/wp-effective-agency-guidance.
[5] *See* 5 U.S.C. § 553.

recently published guidance documents. Our goal is to provide constructive feedback on the legal and operational issues presented, the benefits and costs, and to identify interpretive questions that remain—in other words, to provide the comments industry would have offered had the CFPB sought public comment prior to issuing the guidance. Our intent is for the Bureau to issue guidance documents that are transparent, consistent with the law, and focused on promoting the interests of consumers in a strong, vibrant, and innovative market for consumer financial products and services.

Summary of the Comment

Banks are highly responsive to customer requests and committed to delivering excellent customer service. The American banking industry is extremely competitive,[6] and banks compete on both price and customer service to attract and retain customers. Unsurprisingly, the evidence shows bank customers are overwhelmingly satisfied with their banks. In ABA's 2023 national survey, 94% of surveyed consumers rated their bank's customer service as "excellent," "very good" or "good," and 84% said they are "very satisfied" or "satisfied" with their primary bank.[7] As part of their efforts to fulfil customers' requests, some banks charge modest fees when those requests generate unusual or avoidable costs. For example, they might charge a fee to cover the costs associated with printing or mailing paper copies of records a consumer could access online for free, providing balance information over other banks' ATM networks, or providing duplicate copies of documents the bank previously sent the consumer.

In October 2023, presumably as part of the Biden Administration's coordinated campaign against fees,[8] the CFPB issued an "advisory opinion" on subsection 1034(c) of the Dodd-Frank Act; it was the first time the CFPB issued guidance on that provision since it was enacted in 2010. Subsection 1034(c) is a straightforward directive that banks and credit unions with over $10 billion in assets respond to customers' requests for information.[9] The CFPB's advisory opinion, however, goes far beyond the statute, including prohibiting charging fees for the additional costs of responding to certain customer requests and regulating how banks provide customer service.[10]

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[6] *See e.g.* ABA et al., Letter to Bureau of Consumer Financial Protection regarding Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services 4 (Apr. 11, 2022), available at https://www.aba.com/advocacy/policy-analysis/fees-imposed-by-providers-of-consumer-financial-products; Francisco Covas & Paul Calem, Five Important Facts About the Competitiveness of the U.S. Banking Industry, Bank Pol'y Inst. (Feb. 24, 2022), available at https://bpi.com/five-important-facts-about-the-competitiveness-of-theu-s-banking-industry/.

[7] ABA, National Survey: U.S. Consumers Remain Happy with Their Bank, Competitive Financial Services Marketplace (Oct. 9, 2023), https://www.aba.com/about-us/press-room/press-releases/consumer-survey-consumers-happy-and-competitive (publishing the results of a national consumer survey conducted by Morning Consult on behalf of ABA).

[8] White House Press Release: Biden-Harris Administration Announces Broad New Actions to Protect Consumers From Billions in Junk Fees (Oct. 11, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/11/biden-harris-administration-announces-broad-new-actions-to-protect-consumers-from-billions-in-junk-fees/.

[9] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203 (2010), codified at 12 U.S.C. 5534(c).

[10] *See generally*, CFPB Advisory Opinion: Consumer Information Requests to Large Banks and Credit Unions, 88 Fed. Reg. 71279 (Oct. 16, 2023).

Although the CFPB frames its advisory opinion as interpreting 1034(c), that provision is silent regarding fees, customer service, and other issues. The advisory opinion imposes new prohibitions and standards that are not expressed or implied in text of the statute and are inconsistent with the agency's interpretation of other laws.

The CFPB also failed to seek public comment before publishing the advisory opinion. Putting aside the fact that the advisory opinion exceeds the CFPB's statutory authority, we note that it creates substantive legal obligations, which should have been issued through notice-and-comment rulemaking under Administrative Procedure Act. This process would have required the CFPB to articulate the basis and purpose of the new requirements and would have given all interested members of the public advance warning and the opportunity to question the facts and conclusions relied upon, to identify vague and contradictory statements and to offer important information about implementation challenges and potential unintended consequences.

By issuing the advisory opinion without the benefit of this process, the CFPB has exacerbated regulatory uncertainty. Our members have important questions about what the advisory opinion requires. Moreover, because it appears to require banks to needlessly duplicate the information they provide customers, the advisory opinion generates little consumer benefit. And because the advisory opinion will make it more expensive to provide consumer bank accounts, it will make it more difficult for many Americans to access basic banking services.

A. The 1034(c) Advisory Opinion is Ultra Vires

The CFPB's advisory opinion exceeds the Dodd-Frank Act's narrow directive that banks with over $10 billion in assets comply with customers' requests for information, and instead creates new law.

Subsection 1034(c) is short and simple, consisting of two sentences. The first sentence requires banks with more than $10 billion in assets to comply with certain consumer requests for information:

> A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.[11]

The second sentence of 1034(c) sets forth exceptions for certain categories of information.[12] Subsection 1034(c) simply requires covered banks to give customers account information upon request and in a timely manner.[13] Despite this simple and unambiguous directive, the CFPB has

[11] 12 U.S.C. 5534(c).

[12] The exceptions are for (1) confidential commercial information, (2) information collected for the purpose of preventing or detecting fraud, money laundering, and other unlawful conduct, (3) information required to kept confidential under other laws, or (4) any nonpublic or confidential information.

interpreted the statute to prohibit charging fees to respond to requests for information[14] and to regulate customer service issues including telephone hold times and automated online support.[15]

Nothing in the statutory text prohibits (or authorizes the CFPB to prohibit) banks from engaging in any activity, including charging fees. Nor does this or any other provision of the Dodd-Frank Act permit the CFPB to dictate how banks provide customer service, including telephone response times or website chat assistance. And, in the 14 years since Congress enacted the Dodd-Frank Act, the CFPB has not previously interpreted subsection 1034(c) to impose the substantive requirements and prohibitions the CFPB has now discovered in the statute.[16]

If Congress had intended to prevent banks from charging fees for the costs of responding to information requests, it would have expressly prohibited this, as it did in the Real Estate Settlement Procedures Act.[17] And if Congress had intended for the CFPB to regulate fees for these services it would have said so expressly, as it did in portions of the Truth in Lending Act.[18] In fact, when Congress has been silent on fees in other consumer disclosure statutes, the CFPB has interpreted this to allow banks to charge fees.[19]

The CFPB argues 1034(c) prohibits conditions that "unreasonably impede" customers from receiving covered information.[20] However, this standard is not articulated in statute, nor does the CFPB cite any precedent for it. And, by opting to create a blanket presumption that almost any fee is prohibited, the CFPB appears to be less focused on ensuring access to information and more focused on pursuing the White House's campaign against fees generally.[21]

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[14] Advisory Opinion at 11. ("That likely includes charging fees (1) to respond to consumer inquiries regarding their deposit account balances; (2) to respond to consumer inquiries seeking the amount necessary to pay a loan balance; (3) to respond to a request for a specific type of supporting document, such as a check image or an original account agreement; and (4) for time spent on consumer inquiries seeking information and supporting documents regarding an account.")

[15] Advisory Opinion at 11-12. ABA and other trade associations previously submitted a letter to CFPB regarding its unauthorized overreach of authority in targeting customer service. https://www.aba.com/-/media/documents/comment-letter/clcustomerservicerfi20220822.pdf?rev=f30cdbf3c68b4d4e93a6bdbeba63adba.

[16] When issuing an RFI seeking information on customer service, purportedly relating to the CFPB's authority to enforce 1034(c) RFI's release, Director Chopra stated the CFPB is "taking steps to ensure the legally enshrined right to obtain basic customer service." CFPB, CFPB Launches Initiative to Improve Customer Service at Big Banks (Jun. 14, 2022), available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-initiative-to-improvecustomer-service-at-big-banks/.

[17] *See* 12 U.S.C. § 2605(k)(1) ("A servicer of a federally related mortgage shall not . . . charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section").

[18] *See* 15 U.S.C. § 1665d (Expressly stating that credit card late fees must be "reasonable and proportional," and setting forth factors for making such a determination).

[19] For example, Section 161(b)(2) of the Truth in Lending Act, which CFPB interpreted to allow lenders to charge a fee for documentation of extensions of credit, and Section 264(b) of the Truth in Savings Act, which CFPB interpreted to allow depository institutions to charge a fee for providing check copies. *See* Ballard Spahr Mortgage Banking Update, CFPB Issues Advisory Opinion on Fees Charged by Large Banks and Credit Unions to Respond to Information Requests, (Oct. 19, 2023).
, https://www.ballardspahr.com/insights/alerts-and-articles/2023/10/19-mortgage-banking-update.

[20] Advisory Opinion at 9.

[21] *See e.g.,* White House Press Release: Biden-Harris Administration Announces Broad New Actions to Protect Consumers From Billions in Junk Fees (Oct. 11, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/11/biden-harris-administration-announces-broad-new-actions-to-protect-consumers-from-billions-in-junk-fees/.

Regardless, the CFPB has not demonstrated that fees "unreasonably impede" access to information. The advisory opinion states it would violate 1034(c) to charge a fee to request account information, apparently contemplating only one exception, i.e. for duplicative requests. The CFPB asserts that it should interpret the statute to contain this general prohibition because even a small fee is an unreasonable impediment for some who would be unable to afford it and others who would be deterred by it.[22] However, there is no evidence suggesting consumers are routinely unable to access account information because some banks charge a fee to recover the cost of providing unusual services. Indeed, the CFPB typically points to consumer complaints in support of policy action, but none has been cited here.

In fact, banks work extraordinarily hard to ensure their customers are informed and in control of their accounts. Banks uniformly provide consumers free, 24/7 access to account information through online and mobile banking, answer questions by telephone, online chat, and in bank branches, and they provide detailed information through regular statements and comprehensive disclosures. While some banks charge modest fees to respond to requests for information that require unusual expenses or time-consuming research, banks already provide consumers with free, easy, and convenient access to relevant information about their accounts.

B. The CFPB's Advisory Opinion Was Promulgated Without Required Notice and Comment

The CFPB's advisory opinion imposes substantive legal obligations and should have followed the rulemaking procedures required by the Administrative Procedure Act (APA). The APA requires agencies to promulgate substantive legal requirements through notice and comment rulemaking.[23] This is an essential good governance measure Congress requires of agencies to promote transparency, due process, and public accountability when exercising delegated legislative power. Notice and comment rulemaking allows the public to provide feedback *before* rules take binding effect and requires the agency to consider their substantive concerns and explain its decisions. Critically, it also ensures the agency has important information about policies *before* they become binding rules, including the expected effects on regulated entities and on consumers. Nothing less satisfies the due process clause of the US Constitution.

As explained in ABA's white paper,[24] courts generally distinguish between legislative rules on the one hand, and interpretive rules and guidance documents on the other, by looking at whether the rule or document at issue binds the public, or confers rights or imposes legal obligations beyond existing statutes and regulations.[25] As contemplated by the APA, interpretive

[22] Advisory Opinion at 10.
[23] *See* Administrative Procedure Act, 5 U.S.C. §§ 553, 551(4).
[24] ABA, Effective Agency Guidance (Feb. 6, 2024), https://www.aba.com/advocacy/policy-analysis/wp-effective-agency-guidance.
[24] *See* 5 U.S.C. § 553.
[25] *See Brown Exp., Inc. v. United States*, 607 F.2d 695, 700 (5th Cir. 1979) ("Generally speaking, it seems to be established that 'regulations,' 'substantive rules' or 'legislative rules' are those which create law, usually implementary to an existing law; whereas interpretative rules are statements as to what the administrative officer thinks the statute or regulation means." (quoting *Gibson Wine Co. v. Snyder*, 194 F.2d 329, 331 (D.C.Cir.1952)); *see also id*. at 702 ("[W]hen a proposed regulation of general applicability has a *substantial* impact on the regulated industry, or an important class of the members or the products of that industry, notice and opportunity for comment should first be provided." (citation omitted)).

rules advise and guide the public; they do not bind it.[26] When the document itself purports to bind the public, regardless of whether the issuing agency styled the document guidance or legislative rule, courts will treat it as a legislative rule that must go through notice-and-comment in order to comply with the requirements of the APA. However, some documents are styled as guidance and do not purport to bind the public, but courts nevertheless determine that they should be considered legislative rules because of their practical effect.[27] For example, if a guidance document limits the discretion that agency employees can exercise, that lack of discretion can have an effect on the public such that the guidance document is actually a legislative rule.[28] If a "so-called policy statement is in purpose or likely effect one that narrowly limits administrative discretion, it will be taken for what it is—a binding rule of substantive law."[29]

Although the CFPB characterizes its advisory opinion as merely interpreting subsection 1034(c), it has the hallmarks of a legislative rule. As discussed above, the advisory opinion goes beyond a mere interpretation of statutory text and establishes substantive prohibitions and standards. Indeed, the advisory opinion announced an intention not to seek monetary relief before February 1, 2024,[30] which could be read as a tacit admission that the Bureau recognizes it is announcing a new, binding, legal rule and is giving regulated entities time to comply.

Even if the CFPB had the authority to promulgate these new requirements under 1034(c), it should have done so through notice-and-comment rulemaking as required by the APA. Notice and comment could not have cured the statutory overreach. But it would have given the agency greater information on the costs and challenges of implementing the advisory opinion as written. Because the CFPB did not solicit public comment, banks have many unanswered questions about how to implement the advisory opinion.

C. Guidance Should Clarify the Law, But the Advisory Opinion Increases Legal Uncertainty

ABA's members welcome guidance that provides regulatory clarity and helps banks understand how to follow the law. Unfortunately, the 1034(c) advisory opinion does not resolve

[26] *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 109 (2015) (Scalia, J., concurring) ("An agency may use interpretive rules to *advise* the public by explaining its interpretation of the law. But an agency may not use interpretive rules to *bind* the public by making law, because it remains the responsibility of the court to decide whether the law means what the agency says it means." (emphasis in original)).
[27] *Lewis-Mota v. Secretary of Labo*r, 469 F.2d 478, 481–82 (2d Cir. 1972) ("[T]he label that the particular agency puts upon its given exercise of administrative power is not, for our purposes, conclusive; rather it is what the agency does in fact.").
[28] *Cf. Texas v. United States*, 86 F. Supp. 3d 591, 670–71 (S.D. Tex.), *aff'd*, 809 F.3d 134 (5th Cir. 2015), as revised (Nov. 25, 2015) (DHS memo relating to administration of program "virtually extinguished" any agency discretion, and therefore it had "binding effect" on the public, "[i]n stark contrast to a policy statement that does not impose any rights and obligations and that *genuinely* leaves the agency and its decisionmakers free to exercise discretion." (internal quote marks omitted) (emphasis in original)).
[29] *Cmty. Nutrition Inst. v. Young*, 818 F.2d 943, 948 (D.C. Cir. 1987).
[30] While ABA appreciates the CFPB's intent to give banks implementation time, it will be difficult for banks to meet the compliance date of Feb 1, 2024. There is still widespread uncertainty about what the advisory opinion requires. Banks need time to obtain further clarity from the CFPB about how to implement the advisory opinion and to make any needed changes to their compliance programs, fees, and operational processes.

uncertainty, but it raises new questions. This uncertainty exacerbates the operational challenges and costs of certain new requirements articulated in the advisory opinion.

i. Timeliness

The advisory opinion does not clarify how the agency will assess whether banks' responses are timely under 1034(c). Because 1034(c) does not establish a specific time limit to respond, the CFPB states it will consider the complexity of the request and difficulty of responding, and likely will not consider it to conflict with any corresponding deadlines in other applicable Federal laws.[31] The opinion does not provide parameters for, or examples of, what timeline is reasonable.

Critically, the CFPB does not clarify how the CFPB will evaluate covered entities' compliance and whether this will affect their recordkeeping requirements. If the CFPB demands that covered banks create records of response times for its examiners to review, this would create significant new compliance costs and burdens. Tracking and recording information about response times would require intensely manual processes. Most covered banks do not have software that allows them to track response times or log information showing the complexity of the information request and difficulty of responding. Doing so would require not only creating new software or modifying existing programs, but also ongoing staff time inputting detailed information about each request and response. To avoid this disproportionate burden, the CFPB should have clarified that banks do not need to track this information.

ii. Form of response and duplicative information

The advisory opinion makes confusing statements about the form in which covered banks must provide information to customers. The advisory opinion correctly notes that Congress did not require banks to provide customers' information in a specific form under subsection 1034(c), in contrast with section 1033 where Congress specified that banks must provide certain information electronically.[32] And, the CFPB's sole example of a reasonable fee is when a consumer "repeatedly requested and received the same information," which is focused on the information and not the form in which it is received.[33]

It seems evident, therefore, that under 1034(c) a bank should be able to charge a fee to provide information it already provided the consumer in a different form. For example, if a bank's policy is to respond to covered requests only in electronic form, 1034(c) would not require the bank to also print and mail the information. If the bank can altogether refuse to send the information on paper, *a fortiori*, it cannot be "unreasonable" for the same bank to offer to send it on paper and charge a fee to cover printing and mailing costs.

However, the advisory opinion confuses matters by saying it would violate 1034(c) to charge a fee for account information "through whichever channels the bank uses to provide information to consumers."[34] The CFPB also says 1034(c) allows the consumer to request information they have already received on required disclosures and statements, including

[31] Advisory Opinion at 12-13.
[32] Advisory Opinion at 8-9.
[33] Advisory Opinion at 11.
[34] Advisory Opinion at 10.

"account information that appears on periodic statements or on online account portals, such as the amount of the balance in a deposit account, the interest rate on a loan or credit card, and information regarding transactions or payments involving an account," and "copies of past periodic statements."[35] This apparently contradictory language could be read to indicate the bank cannot charge a fee to provide information through any usual channel, even if it already made the same information available in a different form.

The CFPB should have made it unambiguously clear that a bank does not have to provide requested information in a particular form if it is already available to the customer in another form.

iii. Receipt

The text of 1034(c) requires covered financial institutions to "comply with a consumer request" for certain information,[36] however, the advisory opinion characterizes 1034(c) as giving consumers "a right to request and receive account information that falls within the scope of the provision."[37] This characterization introduces uncertainty. The plain text of the statute does not establish a strict liability standard. It addresses the financial institution's obligation to comply with a request, not the consumer's receipt of the information. However, the wording of the advisory opinion suggests that even if a bank sends information in response to a consumer's request, the CFPB may hold the bank liable if the consumer does not receive the information. It does not state whether the CFPB will presume the consumer has received information the bank sends, similar to consumer financial regulations such as Regulation Z.[38] The advisory opinion should have clarified that the bank is only responsible for sending the information, or expressly adopted a presumption of receipt.

i. Customer service calls

The advisory opinion states that other conditions may "unreasonably impede" consumers' access to covered information depending on the facts and circumstances," including "excessively long wait times to make a request to a customer service representative."[39] As noted, the CFPB lacks statutory authority to regulate customer service. ABA appreciates that the CFPB acknowledged reasonableness depends on the circumstances, but the advisory opinion should have expressly acknowledged wait times reasonably may vary, including for reasons outside of banks' control(for example, in the event of a natural disaster like the recent COVID pandemic, an unexpected technical problem affecting bank software, or a host of other circumstances). In such circumstances, banks may face a sudden increase in customers contacting customer service, or a sudden reduction in capacity to respond. The CFPB should have clarified that it will not hold banks liable for wait times in unusual circumstances.

[35] Advisory Opinion at 6-7, *see also id.* n. 16.
[36] 12 U.S.C. 5534(c).
[37] Advisory Opinion at 9.
[38] *See* 12 C.F.R. § 1026.20(e)(5)(iii).
[39] Advisory Opinion at 11.

D. The New Cost Burdens Will Likely Drive Up the Price of Basic Bank Accounts

The regulatory confusion and uncertainty generated by the advisory opinion will likely increase the cost of basic banking services.

Printing and mailing paper statements, providing balance information over other banks' ATM networks, conducting complex research, and other activities impose costs in the form of personnel hours, materials, postage, software investments, and core provider services. The CFPB has not considered the cost burden associated with providing these services without assessing a fee.

As previously discussed, banks currently offer their customers a variety of means to access account information, which banks have factored into the cost of providing accounts. The pandemic accelerated the adoption of online and mobile banking, and consumers continue to prefer digital banking, even after the height of the pandemic.[40] Online and mobile portals allow customers to access information about their accounts on an ongoing basis, including balances, transactions, prior monthly statements, check images, and more. In fact, most of the information referenced in the advisory opinion is already provided to consumers free of charge, either on statements and disclosures at account opening and periodically thereafter, or electronically via online and mobile banking.

Additionally, consumers will have access to extensive information about their accounts when the CFPB finalizes its rule to implement Section 1033 of the Dodd-Frank Act. The proposed rule imposes new obligations on banks to provide information about consumers' accounts through specific electronic means.[41] The proposed 1033 rule would also prohibit banks from charging reasonable fees to provide this information through these means.[42] The 1034(c) advisory opinion appears largely to apply to information consumers will soon be able to access under the 1033 rule.

While the advisory opinion identified a single "limited circumstance[]" in which the CFPB might consider it reasonable to charge a fee – for duplicative information requests – this will likely do little to offset covered banks' costs. As discussed previously, most covered banks do not have systems to track customers' information requests. Further, it is not clear whether a request to provide the same information in a different form would be considered duplicative (as discussed above), or even how many duplicate requests the bank must receive before it can charge a fee.

Adding further, duplicative obligations through the advisory opinion will not provide additional consumer benefits. But it will increase the costs associated with all consumer accounts, including basic checking and savings accounts. If banks cannot charge a reasonable fee

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[40] *See e.g.* ABA, National Survey: Bank Customers Turn to Mobile Apps More Than Any Other Channel to Manage Their Accounts: COVID-19 accelerated move toward digital banking channels (October 25, 2021), https://www.aba.com/about-us/press-room/press-releases/bank-customers-turn-to-mobile-apps-more-than-any-otherchannel-to-manage-their-accounts# (publishing the results of a survey by Morning Consult on behalf of ABA, finding that during the pandemic the frequency of digital channel use increased, while branch banking fell, and that consumers were still using mobile apps more than any other channel to manage their bank accounts.)

[41] CFPB, NPRM on Required Rulemaking on Personal Financial Data Rights, 88 Fed. Reg. 74796 (Oct 31, 2023).

[42] *Id.* at 979 (proposed § 1033.301(c)).

for these increased costs generated by some customers they will have to be absorbed by all customers, increasing the price of consumer bank accounts and reducing access to banking.

Conclusion

ABA urges the CFPB to rescind the advisory opinion, strike its new substantive requirements, narrow it to the scope of 1034(c), and reissue it as proposed guidance that invites all stakeholders to comment on the issues identified and any additional concerns. If you have questions about our comments, please contact Hallee Morgan at hmorgan@aba.com.

Sincerely,

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American Bankers Association