

Open Banking and What It Could Mean for the U.S.

Adava Jefferson

When it comes to switching from one bank to another, or deciding what kind of savings account to open, the average person is not an expert. The opinion of a friend or a video recently seen on the internet may influence one's decision on a banking institute or savings account. Outside word of mouth or the internet, it is difficult to make an informed decision without spending money for advice. To help make these decisions easier, the Consumer Financial Protection Bureau (CFPB) has proposed a rule to shift towards open banking.

Open banking is “a banking practice that provides third-party financial service providers open access to consumer banking, transaction, and other financial data from banks and non-bank financial institutions through the use of application programming interfaces (APIs).”¹ APIs are used to “grant secured access to financial services to third-party platforms.”² With the use of APIs, customers will have the option to grant access to their financial data, which can be used by lenders or consumers themselves to get a clearer picture of the consumer's financial situation.³ Lenders may use this information to assess risk level, while consumers may use this information to do something such as getting a better estimate for a mortgage loan.⁴ Currently, platforms like Mint attempt to combine consumer information in one place, but this poses potential security risks and the information is not always entirely accurate.⁵ The CFPB is not the first to propose the idea of open banking and America would not be alone if open banking becomes more common.⁶

While open banking provides the potential to change the way we bank for the better, it also comes with potential risks. There is the obvious risk of a data breach, but with a data breach there is also the question of who is liable.⁷ With so many parties involved, it's difficult to determine which financial institution is at fault for a breach. There is also the risk of technology failure because an open banking ecosystem relies on technology.⁸ If the technology fails, there will be no benefit of the open banking system. Finally, there is the risk of an inability to create fair standards across industries.⁹ For example, will banks be responsible for the standards that fall under current HIPAA regulation? While these risks are far in the future for the U.S., there are others we can look to for strategies and advice.

¹ The Investopedia Team, *Open Banking: Definition, How It Works, and Risks*, INVESTOPEDIA, <https://www.investopedia.com/terms/o/open-banking.asp> (last updated Apr. 4, 2022).

² *What Are APIs and Why Do You Want Them for Business Banking?*, BANKPROV: BAAS, <https://bankprov.com/what-are-apis-and-why-do-you-want-them-for-business-banking/#:~:text=What%20is%20API%3F,build%20products%20around%20banking%20services.> (last visited Nov. 19, 2023).

³ The Investopedia Team, *Open Banking: Definition, How It Works, and Risks*, INVESTOPEDIA, <https://www.investopedia.com/terms/o/open-banking.asp> (last updated Apr. 4, 2022).

⁴ *Id.*

⁵ MINT, <https://mint.intuit.com/> (last visited Nov. 19, 2023); *Id.*

⁶ *Open Banking Explained: History, Industry, and APIs*, ADAPTIGENT, <https://www.adaptigent.com/resources/open-banking-explained-history-industry-apis/> (last visited Nov. 19, 2023).

⁷ Frank Saavedra-Lim, *Look Out for Risks in Open Banking!*, TERADATA: ARTICLES (June 19, 2021), <https://www.teradata.com/Blogs/Look-Out-for-Risks-in-Open-Banking.>

⁸ *Id.*

⁹ *Id.*

In Australia, open banking was first announced with a commission of the Consumer Data Right (CDR) federal legislation, which gives consumers both more control of their data and the ability to securely share it.¹⁰ The CDR exists at the treasury level and works along with the Australian Competition and Consumer Commission (ACCC) for accreditation and the Office of the Australian Information Commissioner (OAIC) for regulating compliance.¹¹ The CDR initiative was created in hopes of promoting competition and development of new financial products and services.¹² So far, CDR reforms have been rolled out in the banking and energy sectors.¹³ Australia has also made open banking more accessible by providing different models such as the Unrestricted ADR, among others.¹⁴ Unrestricted ADR is a model of open banking which provides “unrestricted access to receive raw CDR data” which “[e]nables organizations to provide CDR services and act as a sponsor or principal.”¹⁵ Australia is not the only place where open banking has been implemented, the EU is another pioneer in the field.

In the EU, the second Payment Services Directive (PSD2) was put in place to change the way consumer data was controlled.¹⁶ This regulation offers a different way for consumers to share their data with third parties.¹⁷ Under the PSD2, there is a high standard of regulation in order to move open banking in a certain direction.¹⁸ This regulation includes allowing non-bank payment service providers (PSPs) access to all EU payment systems (with safeguards), removing obstacles to open banking, and reinforcing the enforcement powers of “national competent authorities.”¹⁹ While Australia and the EU have embraced open banking by intertwining it with government regulation and enforcement, the U.S. has proposed a new rule.

Differing from the implementation by Australia and the EU, the CFPB has proposed a new rule which would activate a dormant provision of law enacted by Congress.²⁰ Currently, access to financial data in the U.S. is inconsistent among different financial institutions.²¹ This is due to a lack of consistent regulation of access to financial data. Under the new rule, consumers could (1) get their data without paying “junk fees,” (2) have a legal right to share their data, and (3) have the freedom to change financial institutions by easily shifting their data.²² By giving consumers more control over their data, the CFPB is hoping to prevent misuse of data, provide industry standard setting, and move away from risky data collection practices such as screen scraping (which requires people to share usernames and passwords with third parties).²³ The first

¹⁰ Victor Leung, *The Definitive Guide to Open Banking in Australia*, BASIQ: BASIQ INSIGHTS (June 1, 2023), <https://www.basiq.io/blog/the-definitive-guide-to-open-banking-in-australia/>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Press Release, Eur. Comm’n, Payment Serv.: Revised Rules to Improve Consumer Prot. and Competition in Elec. Payments (June 28, 2023) (on file with author); Chris Hooper, *Difference in Open Banking in Europe vs US*, GOCARDLESS: BLOG, <https://gocardless.com/en-us/guides/posts/difference-in-open-banking-in-europe-vs-us/> (last updated May 2022).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Press Release, Eur. Comm’n, Payment Ser.: Revised Rules to Improve Consumer Prot. and Competition in Elec. Payments (June 28, 2023) (on file with author).

²⁰ Press Release, Consumer Fin. Prot. Bureau, CFPB Proposes Rule to Jumpstart Competition and Accelerate Shift to Open Banking (Oct. 19, 2023) (on file with author).

²¹ *Id.*

²² *Id.*

²³ *Id.*

phase of implementation will involve personal financial data sharing standards and protections.²⁴ While Australia and the EU have the advantage of hindsight, the U.S. will have to implement the plan and shift as we learn what does and does not work.

Personally, I think open banking is a great idea because it will give consumers the chance to better access their financial information. With that being said, I also believe it is a scary idea if not implemented and regulated correctly. The way Australia and the EU have merged open banking into the government is impressive and I can only hope the U.S. goes in the same direction to ensure data protection. Another area of concern is that consumers will have to agree to this process. With the already current fear of technology in the U.S., it will take a lot of explanation and compromise to make open banking a reality. Open banking is an exciting prospect, but one that I will be wary of until the rules are more developed.

²⁴ *Id.*