

CFPB Issues Advisory Opinion for Large Bank Consumer Information Requests

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On October 11, 2023, the Consumer Financial Protection Bureau (CFPB) issued an [advisory opinion](#) interpreting a lesser known customer service provision of the Consumer Financial Protection Act (CFPA). Section 1034(c) of the CFPA^[1] generally requires banks and credit unions with assets over \$10 billion to comply, in a timely manner, with a consumer's request for information in the control or possession of the institution. According to the CFPB, section 1034(c) is intended to ensure that large financial institutions continue to meet customer service needs by requiring timely responses to requests for consumer account information, such as information needed to avoid fees, identify and resolve errors, and to close unneeded accounts.

By way of background, section 1034(c) is applicable to a wide variety of consumer financial products and services, including deposit and savings accounts, mortgage loans, credit cards, and loan servicing. As stated in the advisory opinion, information concerning such accounts is broadly interpreted to include balance, interest rate, and transaction information appearing on periodic statements or online accounts, recurring transaction information, fee schedules, and other terms and conditions of a consumer's account. Financial institutions subject to section 1034(c) must also timely respond to requests for "supporting written documentation", which, according to the advisory opinion, could include past periodic statements, check images, or account agreements. These provisions apply not only to the relevant information in a financial institution's possession, but also to the relevant information it legally controls or is authorized to access. Section 1034(c) also includes four exceptions to its requirements, including when the information requested is confidential commercial or supervisory information, or is otherwise confidential by law.

Based on the mandatory duty for financial institutions to comply with consumer requests for information, the advisory opinion concludes that institutions cannot impose conditions that unreasonably impede information requests. For example, the advisory opinion states that imposing a fee or other charge in response to a consumer's information request is "likely to unreasonably impede consumers' ability to exercise"

their rights under the statute in violation of section 1034(c). According to the advisory, this “likely” holds true for fees charged in response to requests for account or loan balance information, requests for supporting documentation, or for time spent on such inquiries. However, the advisory leaves open the possibility that a fee could be charged in certain narrow situations, such as when a request is repeatedly made for identical information.

Beyond the charging of fees, the advisory opinion also concludes that a violation of section 1034(c) may occur if other conditions or obstacles are imposed that “unreasonably” impede a consumer’s ability to make an information request under the statute. Notably, the advisory states that impermissible obstacles may include situations in which consumers are forced to endure excessively long wait times to make an information request, requiring the same request be made multiple times, or forcing a consumer to interact with an ineffective customer service chatbot. However, reasonable conditions, such as those needed for data security or identify verification, would not result in a violation of section 1034(c).

The CFPB advisory opinion also highlights the importance of “timely” compliance by financial institutions subject to section 1034(c). Timeliness, according to the advisory, will be evaluated by the CFPB on a case-by-case basis based on, for example, the complexity of the request or availability of the information. Furthermore, if a federal law or regulation outside of section 1034(c) governs the timing of a response, such requirements will take precedence over section 1034(c). Finally, the advisory concludes that the information provided in response to a request for information under section 1034(c) must be accurate and complete, otherwise a violation will result.

Takeaways

While the advisory opinion is applicable only to large banks and credit unions over \$10 billion in assets, financial institutions of all sizes should take the opportunity to review their current procedures for responding to the types of customer service interactions described in the advisory, and, in particular, those in which a fee is charged.

It’s important to note the advisory opinion will become effective upon its publication in the Federal Register, but the CFPB has also stated, in its discretion, that it will not be seeking monetary relief for section 1034(c) violations occurring prior to February 1, 2024.

[1] 12 U.S.C. § 5534(c)