Combining Open Finance and Data Protection for Low-Income Consumers

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Webinar Logistics

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Speakers

Ariadne Plaitakis

David Medine
Open Banking Is a Journey Towards Open Data

Open Banking

Open Finance

Open Data

Open APIs
Open Finance and Financial Inclusion

Benefits:
- Promote competition
- Develop innovative financial products and services
- Create products with improved value for underbanked
- Lower prices resulting in more affordability

Open Finance products help overcome typical challenges faced by the poor:

- Volatile and irregular income
  - Savings trackers and automatic saving sweepers
- No access or inappropriate credit product
  - Increase access to credit through alternative data
- Lack of control over budget and funds
  - Personal finance management
- High tariffs for household bills (poverty premium)
  - Utility switching and personal finance management tools
- Lack of ID to access financial services
  - Collaborative approach to CDD
Open Finance Needs Data Protection to Develop Consumer Confidence

A Data Protection Framework:

- Is critical to adoption of open finance, particularly for low income and excluded people in EMDEs by promoting customer trust to respond to customer preferences for privacy.

- If absent, results in all rules relating to data being either regulated by private contract (with the consumer being the weaker party) or left unregulated, exposing consumers to the risk of abuse, fraud and exploitation and resulting in a loss of trust in Open Finance and even banking.

According to CGAP research, poor consumers care deeply about the privacy of their financial information and are willing to pay a premium for financial products that protect their data.
How Regulatory Frameworks Can Protect Customer Data

In adopting open finance, regulators need to decide if the current data protection laws in their country are sufficiently robust to protect consumers from the data risks of open finance.

General data protection law that applies to Open Finance

Pro: Level playing field for market participants
Con: Provisions do not take into account specific issues raised by Open Finance

Open Finance law that covers data protection issues

Pro: Tailored to open finance context
Con: Potential lack of level playing field for entities that may compete but not be covered by Open Finance law

General data protection law and separate Open Finance law

Pro: Have laws that require data sharing as well as data protection
Con: May have conflicting definitions and provisions as the two laws were not designed to work together

*Another option is an Open data law that has open finance-specific provisions to address the flow of financial data
Open Finance and Data Protection Terminology

Open Finance
- **Data Subject**: person identified in the data
- **Data Holder**: responsible for sending data to accredited data recipient at consumer's request
- **Data Intermediary/User**: permitted to receive and make use of the consumer data

Data Protection
- **Data Subject/Fiduciary/Principal**: an identifiable natural person
- **Data Controller**: determines the purposes and means of processing of personal data
- **Data Processor**: processes personal data on behalf of the controller
Open Finance Complexity

- Technology
- Ecosystem
- Overlapping legal frameworks
Basic Data Protections
Consumer Control Over Data

- Notify
- Consent
- Authenticate
- Authorize
Responsible Use of Data

Restricting data usage

- Data holder - refuse transfer if could result in physical or economic harm
- Data subject - revoke prior consent
- Data minimization - collect only what you need & keep it only as long as needed
- Cross border transfers /data localization - restrict processing/store outside the country

Permissive data usage

- Disclosures permitted or required by law, beyond consent
  - Court orders, legal obligations, credit reporting, contractual purposes (subject to legitimate purposes principle)
Advantages of Open Finance:
- Use of secure APIs, instead of "screen scraping"

Risks of Open Finance:
- Massive amount of sensitive data moving through system

Safeguards include:
- Protect data at rest and in transit
- Authenticate requestors
Implementation

- RECORDKEEPING
- RESPONSE TIME FOR REQUESTS
- COSTS TO CONSUMERS
- LIABILITY ALLOCATION
- DISPUTE RESOLUTION
Focus on EMDEs
Open Finance & Data Protection: Considerations for EMDE Consumers

**Benefits**

- Better tailored solutions
- Greater inclusion
- More products/services to choose from
- Lower prices

**Disadvantages**

- Risk of "Digital Divide" - may not have requisite technology
  - Some limited to USSD
- Costs may bar participation
- Literacy/numeracy challenges
  - Affects ability to understand disclosures and identify culpable actors if there is wrongdoing
- Challenges with multiple languages
- Wariness with risk to scarce finances
- Concerns of data protection not always appreciated by providers and regulators
Recommendations to support EMDE Consumers

**Notice**
In order to be meaningful, notices should be:
- Written at the appropriate level of data and language fluency;
- Avoid the use of legalistic language; and
- Take into account literacy and technology challenges for EMDE consumers

**Consumer rights**
- Make it easy to provide and revoke consent
  - ease the burden of consent by limiting use of data to specified purposes
  - have consent expire after a set period of time
- Provide access/correction/deletion/objection rights
- Provide limited or no costs to exercise open finance rights

**Dispute resolution**
- Allow consumer associations to support complaint resolution for open finance disputes
- Allow regulators to use social media messaging platforms or mobile apps to directly receive complaints from consumers
- Permit class action lawsuits to be filed against firms involved in open banking.

Data minimization may reduce the consumer’s decision-making burden
Open Finance & Data Finance: Considerations for EMDE Regulators

Benefits
• Catalyze competition in the financial services industry
• Support further inclusion
• Push further innovation

Disadvantages
Burden on regulators
• May not have experience regulating:
  o APIs and related technology
  o Data protection
• May not prioritize open finance given (at least initially); low adoption levels
• Resource constrained
• Regulatory jurisdiction may not be clear
• May be missing certain legal frameworks
When is the right time to introduce comprehensive data protection in the context of Open Finance?

• Risks of premature application on providers
  o Only larger financial service providers might be able to afford to comply
  o Even large players might be disincentivized to serve the lower end of the market as compliance costs bear more heavily on low value accounts and transactions

• Balanced with marginal cost of compliance if ecosystem mainly digital & strong consumer concerns about sensitive data
Dealing With Regulatory Burden on Regulators

- Complexity of jurisdictional mandates – important that the jurisdictional mandates for data protection and open finance are identified and cooperation formalized if there is concurrent jurisdiction

- Burden placed on resource – limited regulators – can consider leveraging technology, including use of Regtech and Suptech

- Taking into account the legal and technology environment in the country, regulators may decide to phase in data protections over time

“Data . . . is just plain complicated.”
- Professor Bhaskar Chakravorti
Further Recommendations for EMDE Regulators

- Assess how best to protect open finance consumers’ data in light of the country’s existing legal structure and willingness to adopt new laws
- Promulgation of implementing regulations
- Enhance consumer education, especially in early years of Open Finance
  - Employ guidance, such as use of graphics showing how consumers’ data will move through the system
- Provide assurances regarding third party disclosures of customer data
- Consider requiring real time notice of data transfer as a check to make sure data transmissions were authorized
- Mandate meaningful consent for data transfers
  - Consider alternatives to consent, e.g., legal mandates, court orders, contract performance
- Harmonize data protection and open finance legal obligations
- Provide compliance guidance to providers
- Restrict data usage, e.g., due to potential physical or economic harm
- Consider cross-border transfers/data localization restrictions
- Accredit data users
- Breach notification requirements
- Mandate implementation provisions:
  - Recordkeeping, response times for consumer data requests, limits on costs imposed on consumers, security requirements, liability for losses, complaint resolution mechanisms including use of social media and consumer associations, redress mechanisms
CGAP Technical Paper: Combining Open Finance and Data Protection for Low-Income Consumers

Resources on Open Finance

Working Paper / Focus Note:
- Open Banking: How to Design for Financial Inclusion
  - [https://www.cgap.org/research/publication/open-banking-how-design-financial-inclusion](https://www.cgap.org/research/publication/open-banking-how-design-financial-inclusion)
- Making Data Work for the Poor

Blogs:
- Open Banking: 7 Ways Data-Sharing Can Advance Financial Inclusion
- How Can Data Sharing Support Inclusion?
  - [https://www.cgap.org/blog/how-can-data-sharing-support-inclusion](https://www.cgap.org/blog/how-can-data-sharing-support-inclusion)

Leadership Essay:
- Open Data and the Future of Banking

Webinars:
- Open Banking: How to Design for Financial Inclusion
  - [https://www.cgap.org/events/open-banking-how-design-financial-inclusion](https://www.cgap.org/events/open-banking-how-design-financial-inclusion)
- Spotlight on Regulators: Open Banking and Financial Inclusion
Thank you

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