

air Alliance for Innovative Regulation

Rethinking Financial Regulation

Toward a More Flexible, Collaborative & Adaptive Model

Jerry Buckley • November 2026

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EXECUTIVE SUMMARY

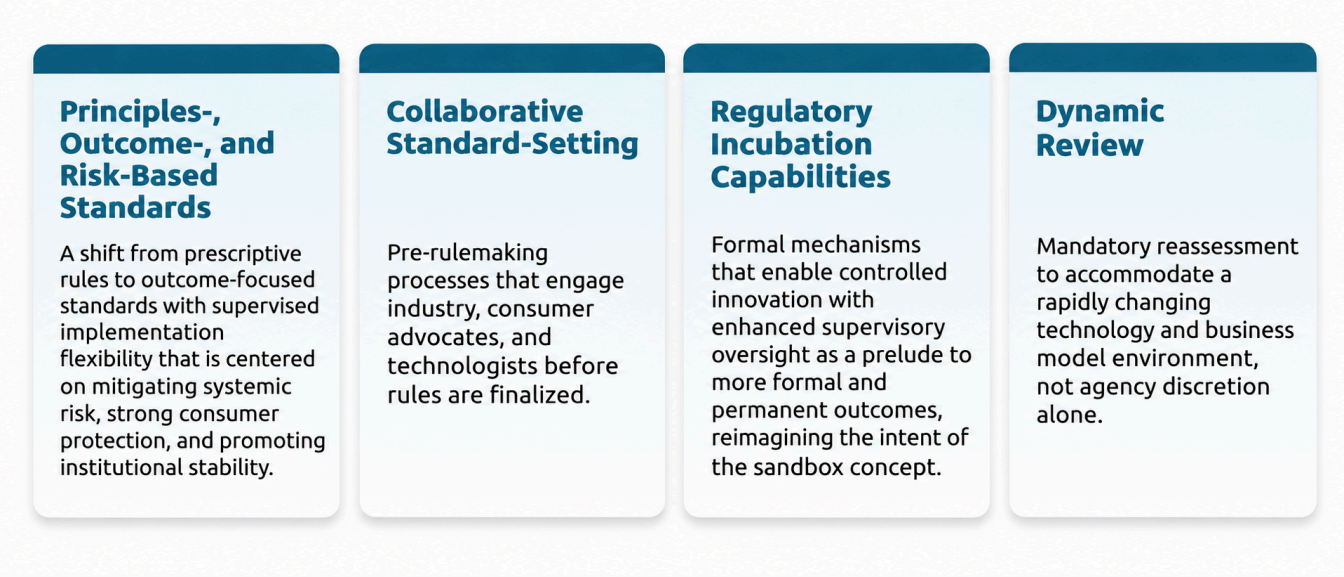
The United States financial regulatory framework was built for a world of paper forms, physical branch offices, and human intermediaries. Its foundational architecture, detailed prescriptive rules written by agencies through multi-year notice-and-comment processes, was designed for a different era. That era is ending.

This paper argues that the problem is not simply a matter of Congress failing to update specific statutes. The deeper problem is structural: the current regulation-writing model is too slow, too rigid, and too fragmented to respond effectively to rapid technological change. The solution is not merely new rules but a new model for making rules — one that is more adaptive, more collaborative, and more capable of establishing durable principles alongside flexible implementation mechanisms.

Of course, any such model must take into account and be implemented in the new regulatory and legal environment shaped by recent judicial decisions, most notably Loper Bright Enterprises v. Raimondo and Corner Post, Inc. v. Board of Governors of the Federal Reserve System.

The paper surveys the building blocks for that model drawn not from theory but from precedents already embedded in federal law and practice: negotiated rulemaking; industry-organized standard-setting, including the SPeRS model; the SEC's long-standing delegation to self-regulatory organizations; and the FDIC's reported exploration of an industry standard-setting organization for fintech-bank partnerships. In this context, we may also draw from the MISMO model and Treasury's release of the Financial Services AI Risk Management Framework. We then analyze how much of the proposed reform can be achieved under existing Administrative Procedure Act authority, and what would require Congressional action. Throughout, we argue that Congress should be kept informed of and consulted about any material change to the rulemaking process, whether or not legislation is formally required.

We propose a framework built around four core reforms:



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1. THE CURRENT MODEL AND ITS DISCONTENTS

How Financial Regulation Gets Made

Federal financial regulation is produced through a system that has changed little in its basic architecture since the New Deal. Congress enacts enabling legislation that grants rulemaking authority to one or more agencies. Those agencies then exercise that authority through the notice-and-comment rulemaking process established by the Administrative Procedure Act, typically over a period of years. Final rules are codified in the Code of Federal Regulations, where they remain until the agency initiates a new rulemaking to amend or repeal them.

The system has genuine virtues. Notice-and-comment rulemaking creates a public record. It forces agencies to consider and respond to opposing views. It provides regulated entities with advance notice of legal requirements and an opportunity to shape them. Judicial review provides accountability. These are not trivial benefits.

But the system also has serious structural deficiencies that are more damaging today than they were when the APA was enacted in 1946.

The Speed Problem

A major financial rulemaking typically takes three to seven years from the initial regulatory agenda listing to final implementation. The CFPB's Open Banking Rule under Section 1033 was under development for over a decade before its finalization in 2024. The pace of AI development is measured not in years but in months.

By the time an agency has identified a new technology-driven risk, convened staff, developed a proposed rule, received and processed public comment, and finalized a rule, the technological landscape has often shifted significantly. The consequence is a persistent and widening regulatory lag. Rules that were well-calibrated at drafting are already dated at finalization. Rules that were dated at finalization are obsolete at implementation.

The Rigidity Problem

Even setting aside the speed problem, the current model produces rules that are difficult to adapt once enacted. Prescriptive rules specify conduct requirements in considerable detail: disclosures must contain specific language, forms must be structured in particular ways, calculations must follow defined methodologies. When technology changes in ways that make a prescriptive requirement unnecessary or counterproductive, amendment requires a full new rulemaking cycle.

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The mortgage disclosure rules illustrate the point. For decades, the Truth in Lending Act disclosure and the RESPA disclosure were separate documents required to contain specified language produced at specified points in the transaction. When these disclosures were finally integrated into the TILA-RESPA Integrated Disclosure (TRID) rule (issued in 2013 and effective in 2015), the project consumed years of agency resources — not because the underlying policy goals were in dispute, but because the prescriptive legacy requirements had to be unwound, reconciled, and replaced one by one.

The Fragmentation Problem

The current regulatory landscape for financial services is divided among multiple federal agencies — the CFPB, the Federal Reserve, the OCC, the FDIC, the SEC, the CFTC, the FTC, and others — with overlapping and sometimes conflicting jurisdiction. State regulators add another layer. The jurisdictional boundaries were drawn for a world in which banks were banks, brokers were brokers, and the two did not often collide. Emerging AI-enabled financial services will not always fit within these boundaries.



2. MODELS FOR MORE FLEXIBLE REGULATION

The reforms proposed in this paper are not untested. They draw on models already embedded in federal law and administrative practice, some decades old and others more recent. Examining each in turn illuminates both the possibilities and the design constraints of more adaptive regulation.

Negotiated Rulemaking: Pre-Rulemaking Consensus-Building

The Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, codified at 5 U.S.C. §§ 561–570 and made permanent in 1996 by Pub. L. 104–320) authorizes federal agencies to use facilitated, multi-stakeholder negotiations to develop proposed rules before publishing them for notice-and-comment. Rather than an agency drafting a proposed rule unilaterally, negotiated rulemaking convenes a committee of representatives from affected interests (industry, consumer organizations, state agencies, and other stakeholders) to develop a consensus text that the agency then publishes as its proposed rule.

The theory is appealing. If the parties who will be bound by a rule participate in drafting it, the rule is more likely to reflect practical realities, less likely to generate surprise opposition, and more likely to achieve its objectives.

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HISTORICAL PRECEDENT — The HUD/RESPA Negotiated Rulemaking Experience

In the 1990s, the Department of Housing and Urban Development sponsored a negotiated rulemaking effort to address yield spread premiums and settlement costs under the Real Estate Settlement Procedures Act. A diverse committee of lenders, settlement service providers, real estate professionals, and consumer advocates was convened. The process was genuine and engaged: participants included experienced practitioners who brought direct knowledge of industry practice to the table.

The effort ultimately was not successful in producing consensus rules, illustrating both the promise and the friction points of the negotiated rulemaking process. The interests at the table were genuinely diverse, and reaching consensus on rules that cut directly against the financial interests of some participants proved extremely difficult. What the process demonstrated, however, was that the framework existed and that meaningful stakeholder engagement was achievable even on contentious issues. A revised design including clearer scoping, stronger neutral facilitation, and explicit consensus protocols might have produced a different outcome.

Negotiated rulemaking has been used successfully in several regulatory contexts. The Coast Guard's 1992 rulemaking on oil spill vessel response plans is among the clearest examples, with a 28-member negotiating committee developing recommendations within months and the agency crediting the process with a better rule than notice-and-comment alone would have produced. Its use, however, has declined significantly since the early 1990s. The Administrative Conference of the United States (ACUS), which provided critical support and facilitation capacity for negotiated rulemaking, was defunded by Congress in 1995 (reauthorized in 2004 and revived in 2010, but without the same centrality to federal rulemaking practice). The Office of Information and Regulatory Affairs has at times been skeptical of negotiated rulemaking on the ground that consensus agreements can constrain presidential ability to direct regulatory policy.

Industry-Organized Standard-Setting: The SPeRS Model

The development of electronic commerce law in the early 2000s offers a different model: one in which industry organized the standard-setting process itself, in response to enabling legislation that established principles without prescribing implementation mechanisms.

HISTORICAL PRECEDENT — SPeRS: Standards and Procedures for Electronic Records and Signatures

When Congress enacted the Electronic Signatures in Global and National Commerce Act (E-SIGN) in 2000, it established a principles-based framework: electronic signatures and records would have the same legal force as their paper equivalents, with limited exceptions. Congress deliberately did not provide for rule writing to avoid regulations that hold back the advance of new technology. It also did not assign any agency the responsibility to prescribe technical standards. That task was left to industry.

In response, a coalition of industry participants organized a collaborative standard-setting effort that developed what became known as Standards and Procedures for Electronic Records and Signatures (SPeRS). The effort engaged technologists, legal experts, and industry practitioners in developing common vocabulary, technical standards, and

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implementation protocols. The resulting standards were published as ANSI X9 TR-4:2004, a voluntary industry standard that provided the practical foundation for the electronic commerce that E-SIGN enabled.

SPeRS illustrates a model in which Congress or an agency establishes the legal framework (principles-based enabling legislation), and industry organizes the technical specification process. The public-private division of labor allows Congress to establish legislative policy, while practical implementation standards evolved in the marketplace.

The SPeRS model is most naturally suited to domains in which: (1) enabling legislation has established clear principles without prescribing implementation; (2) there is sufficient industry convergence of interest to support collaborative standard development; and (3) the standards involved are primarily technical rather than policy-laden. It is less suited to domains in which the substantive content of standards is itself contested along industry-versus-consumer or competitive lines.

The SEC/SRO Model: Delegated Standard-Setting with Agency Oversight

The longest-running and most thoroughly developed model for delegated standard-setting in financial services is the Securities and Exchange Commission's framework for self-regulatory organizations. The Securities Exchange Act of 1934 authorizes and requires securities exchanges and certain broker-dealer associations to register as SROs and to adopt and enforce rules governing their members' conduct. The Financial Industry Regulatory Authority (FINRA) is the largest and best-known SRO in this framework.

FEDERAL FRAMEWORK — SEC/SRO: Exchange Act Section 19 and the FINRA Model

Under Section 19 of the Securities Exchange Act, SROs must file proposed rule changes with the SEC before they take effect. The SEC reviews proposed SRO rules and may approve, disapprove, or abrogate them. SRO rules operate as binding requirements on members — with enforcement authority backed by the SRO's own examination and disciplinary mechanisms — but they are adopted through an industry-organized process subject to agency oversight.

This framework has operated continuously for nearly ninety years. It provides the strongest precedent for the proposition that standard-setting in financial services can be meaningfully delegated to non-governmental bodies while retaining robust public accountability through agency oversight. The SRO model has not been without controversy as the question of whether broker-dealer SROs adequately represent investor interests has been a persistent debate. This model demonstrates that the legal and institutional architecture for delegated standard-setting can be sustained over very long periods.

The SRO model is grounded in statutory authorization (Exchange Act Section 19) that would need to be replicated or adapted for any new context. Agencies operating under other enabling statutes do not have the same explicit authority to delegate standard-setting to private bodies and to enforce compliance through those bodies' own mechanisms.

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The CFPB Section 1033 Framework: Recognition of Standard-Setting Bodies

The CFPB's final Open Banking Rule, issued in October 2024 under Section 1033 of the Dodd-Frank Act, proposed the most detailed existing federal framework for agency recognition of industry standard-setting bodies. The rule requires data providers to make consumer financial data available in standardized formats, but rather than prescribing those formats directly, it authorizes the CFPB to recognize independent standard-setting bodies whose standards providers may use to satisfy the rule's requirements.

FEDERAL FRAMEWORK — CFPB Section 1033: Criteria for Recognized Standard-Setting Bodies

To achieve recognition under the Section 1033 rule (12 CFR § 1033.141, finalized separately in June 2024), a standard-setting body must satisfy five criteria: openness (participation open to all materially affected interests); transparency (proceedings and standards publicly accessible); balanced decision-making (not dominated by any single constituency); consensus-based standard development; and due process (including opportunities to comment and appeal). Recognition is time-limited to five years. The CFPB retains authority to monitor recognized bodies and to revoke recognition for cause.

The CFPB's rule does not confer a safe harbor. Compliance with standards issued by a recognized body satisfies the rule's format requirements, but it does not insulate a data provider from liability for other violations of the rule or applicable law. This design choice of recognition without safe harbor reflects the agency's judgment that it must retain enforcement flexibility even as it delegates standard-setting to private bodies.

The Section 1033 framework represents the most detailed existing model for how a federal financial regulator can create a formal, criteria-based pathway for private standard-setting while retaining meaningful agency oversight. Its design choices — particularly the recognition criteria, the five-year limitation, and the no-safe-harbor approach — provide a template that other agencies and Congress could adapt for other domains. The broader rule is currently enjoined and under CFPB reconsideration (as of mid-2026), but the CFPB has recognized the Financial Data Exchange (FDX) as its first standard-setting body, through January 2030, and the reconsideration has not so far reopened the recognition framework.

The FDIC-Fostered Standard-Setting Organization (SSO) Initiative: Emerging Bank-Fintech Partnership Standards

The most recent development in this space concerns the FDIC. According to press reports, the agency has been exploring the creation of an independent, industry-run standard-setting organization (SSO) for relationships between banks and their fintech and other third-party service providers. This is a domain in which the absence of clear, shared standards has created both consumer protection concerns and operational uncertainty for market participants. The FDIC has not published a proposal. What is publicly known rests on press accounts, which began with a Bloomberg Law report in August 2026 and were followed by trade-press coverage that cites a senior FDIC official and a draft term sheet. This paper therefore treats the initiative as reported, not as an adopted or formally proposed program, and its details may change.

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REPORTED INITIATIVE (2026) — FDIC-Fostered Standard-Setting Organization: Proposal Not Yet Released

As reported, the FDIC has held preliminary discussions with industry trade groups about a draft term sheet dated July 2026 for an independent, nonprofit SSO. Under that outline, the organization would publish standards drawn from existing supervisory expectations for bank-vendor relationships; develop standardized questions for vendors to answer; rely on a separate independent assessor to evaluate the responses; and issue certificates that banks could accept as evidence of due diligence. Participation by banks and vendors would be voluntary, and banks would remain responsible for monitoring their vendors. No timeline has been announced, and the reports do not say whether the organization would be built on existing industry efforts or operate separately.

The reported FDIC initiative differs from the Section 1033 framework in one critical respect: it would operate without a formal regulatory recognition framework, and compliance would not carry formal regulatory significance. Whether it matures into a formally recognized standards body using the Section 1033 model, or whether that would be a desirable outcome, remains to be seen. Its emergence nonetheless suggests continued regulatory interest in industry-organized standard-setting in fintech, even in the absence of an established recognition framework.

The Financial Services AI Risk Management Framework: Sector-Built Controls from a General Framework

A sixth precedent is the most recent and bears directly on the AI questions this paper addresses. In February 2026, the U.S. Department of the Treasury released the Financial Services AI Risk Management Framework (FS AI RMF) together with a shared AI Lexicon. The materials were developed through the Financial and Banking Information Infrastructure Committee and the Financial Services Sector Coordinating Council, with the Cyber Risk Institute leading the drafting, and drew on the work of more than 100 financial institutions and on input from government agencies, including NIST.

RECENT SECTOR INITIATIVE (2026) — FS AI RMF: Financial Services AI Risk Management Framework

The FS AI RMF adapts the NIST AI Risk Management Framework to the operational, regulatory, and consumer protection considerations of financial services. It retains NIST's four functions (Govern, Map, Measure, and Manage) and translates them into 230 control objectives set out in a Risk and Control Matrix, supported by an adoption-stage questionnaire, an implementation guidebook, and a control objective reference guide. Institutions begin with a limited set of foundational controls and add more as their use of AI matures. The framework is voluntary and creates no new legal obligations, although commentators expect it to influence supervisory expectations. Notably, the FS AI RMF focuses on AI adoption by financial institutions. It does not specify standards for agents interacting with those institutions on behalf of consumers.

The FS AI RMF resembles SPeRS in that a general framework is converted into detailed practice by industry rather than by agency rule, and it resembles the reported FDIC-fostered SSO in that it operates without a

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formal recognition mechanism. Its distinguishing features are the Treasury's public release of the product and its maturity-based structure, which scales expectations to an institution's actual use of AI.

Together, these six models constitute a rich body of precedent for more flexible and collaborative financial regulation. They establish that the concept is not novel, that legal and institutional frameworks exist to support it, and that multiple design variations are available depending on the domain, the statutory context, and the regulatory objectives at stake.



3. ELEMENTS OF A BETTER MODEL

Principles- and Outcome-Based Standards

The most fundamental reform is a shift from detailed prescriptive rules to principles-based standards: clear statements of what outcomes the regulation is designed to achieve, paired with supervised flexibility in how regulated entities achieve those outcomes.

This approach is not new in financial regulation. It underlies the "safety and soundness" standard that bank examiners apply to capital and risk management. It is how the Securities Exchange Act addresses broker-dealer conduct. It is how ERISA governs the conduct of plan fiduciaries.

Applied to emerging financial technology, a principles-based approach establishes what outcomes are required: genuine consumer benefit, transparency, data protection, meaningful authorization, without specifying the exact technical mechanisms by which those outcomes must be achieved. This allows the regulatory framework to remain meaningful across a range of technological implementations and to adapt as technology evolves without requiring a new rulemaking cycle for each adaptation.

A shift to more principles-based regulation is increasingly viable because of the improved ability for both government and industry to gather and analyze data to measure outcomes against principles.

Collaborative Pre-Rulemaking Standard-Setting

Drawing on the models surveyed in Section 2, we propose formal collaborative standard-setting processes convened by or in partnership with federal regulators that bring together industry participants, consumer advocates, technologists, and academic experts to develop and iteratively test consensus-based standards before or alongside formal rulemaking. These processes should be interactive and exploratory, using tools

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such as simulations or TechSprints to test proposed standards against likely outcomes for market participants and to refine them before adoption.

While the CFPB's Section 1033 rulemaking is cited as an example of the slowness of rulemaking under the current APA methodology, its recognition criteria provide a developed existing template for the relationship between an agency and a recognized standard-setter. Those five criteria (openness, transparency, balanced decision-making, consensus-based development, and due process) could be treated as a baseline for any new collaborative standard-setting process in financial services.

Regulatory Incubation Capabilities

In recent years, many regulators created “sandboxes” in which industry could test innovations that might not fit squarely within the regulatory prescriptions but could remain consistent with the principles that the rule was designed to implement. That original concept could evolve from simply providing temporary regulatory flexibility into a regulatory incubation capability designed to test innovations, generate evidence, and create pathways to durable regulatory outcomes. A properly designed capability provides a time- and scope-limited environment in which novel products, services, standards, or regulatory approaches can be tested under enhanced supervisory oversight, appropriate regulatory flexibility, baseline consumer protections, and defined data-sharing requirements.

These programs should include clear graduation pathways. Successful experiments could be capable of leading to: (1) a charter, license, or other appropriate authorization; (2) market-wide adoption of a new standard, interpretation, or permissible guidance; or (3) initiation of formal rulemaking. This evolution would make sandboxes more than isolated experiments, turning them into structured mechanisms for regulatory learning and modernization.

Regulators should also expand use of simulation modeling as they weigh regulatory change. It has become feasible to model the economy or parts of it and run tests to gauge the impacts of various regulatory actions.

Dynamic Review Mechanisms

When Congress enacts enabling legislation or an agency finalizes a rule, it would specify defined triggering conditions such as quantitative thresholds, technology adoption metrics, changes in market structure or risk, or other objective indicators that initiate a formal review when met. These triggers would not automatically change the rule; they would require the agency to assess whether it remains fit for purpose, creating a public record of that assessment and, where warranted, initiating a new rulemaking. This would make continuous review a built-in feature of the regulatory system rather than something dependent solely on agency initiative or political will.

An ongoing standard-setting advisory body, with rotating membership, could not only serve as a resource for standards setting but also be a sounding board for a regulatory agency as its personnel implement rules through issuance of guidance, examinations, supervisory actions, and enforcement.

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4. WHAT AGENCIES CAN DO UNDER EXISTING AUTHORITY AND WHAT REQUIRES CONGRESS

A threshold question for any reform agenda is the source of legal authority. Some elements of a more adaptive regulatory model can be implemented by agencies acting under existing Administrative Procedure Act authority and their organic statutes. Others would require Congressional action to be established on a durable legal basis.

Congress should be kept informed of and consulted about any material change to the rulemaking process — not merely because some changes will require legislation, but because updating the architecture of financial rulemaking is itself a matter of democratic significance.

The following table summarizes our assessment of which elements of the proposed framework fall within existing agency authority and which would require Congressional action.

Reform Element	Authority Required	Assessment
Principles-based guidance and policy statements	Existing APA authority	Agencies may issue guidance documents, policy statements, and interpretive rules under existing APA authority without notice-and-comment. Such documents are not legally binding in themselves but shape regulatory expectations and inform examination and enforcement.
Principles-based rules with binding legal effect, displacing prescriptive requirements	Existing APA authority	Agencies may conduct notice-and-comment rulemaking to adopt principles-based rules under existing statutory authority, provided those rules are consistent with the enabling statute. No new legislation is required to shift rule design philosophy, though specific statutory mandates for particular disclosure forms or procedures may constrain the shift.
Negotiated rulemaking under the Negotiated Rulemaking Act of 1990	Existing authority (1990 statute)	The NRA explicitly authorizes agencies to use negotiated rulemaking as a supplement to, not a replacement for, APA notice-and-comment. No new legislation is required. Federal Advisory Committee Act (FACA) requirements apply to the negotiating committee. The practical constraint is resources and facilitation capacity, not legal authority.
Advisory committees and collaborative standard-setting convened by agencies	Existing authority (with FACA constraints)	Agencies may convene advisory committees under FACA. Agencies can give informal weight to standards developed through advisory processes, but cannot, absent specific statutory authorization, make compliance with privately-developed standards a binding legal requirement or formal safe harbor without conducting notice-and-comment rulemaking to adopt those standards by reference.

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Reform Element	Authority Required	Assessment
Recognition of private standard-setting bodies (CFPB Section 1033 model) with compliance credit	Depends on statutory context	The CFPB's Section 1033 authority is grounded in Dodd-Frank language specifically authorizing the Bureau to prescribe data standards. Agencies lacking comparable statutory authorization would need Congressional action to establish a formal recognition framework with binding compliance effect. Agencies may, however, issue guidance indicating that compliance with voluntary standards will be weighed favorably in examination.
Regulatory sandboxes providing formal regulatory relief	Partial — full program may require legislation	Agencies may decline enforcement through existing prosecutorial discretion and may issue no-action letters. But formal suspension of statutory requirements typically requires statutory authorization. A comprehensive sandbox framework with statutory safe harbors would require Congressional action.
Self-Regulatory Organization framework for new domains, with binding rulemaking authority	Requires Congressional action	The SEC/SRO model is grounded in Exchange Act Section 19, which explicitly grants SROs rulemaking and enforcement authority subject to SEC oversight. No comparable authority exists for banking or consumer financial regulators. Extending an SRO-like framework to new domains requires statutory authorization.
Mandatory dynamic review provisions requiring agencies to reassess rules when triggering conditions occur	Requires Congressional action	Agencies may voluntarily commit to reviewing rules on a defined schedule, but cannot bind future administrations through agency action alone. A mandatory dynamic review mechanism that obligates an agency to conduct and publish a review when specified conditions are met requires Congressional enactment.
Formal interagency coordination mechanisms with binding effect for multi-agency financial products	Requires Congressional action	FSOC provides an existing interagency forum, but its authority is focused on systemic risk. An interagency mechanism with authority to coordinate and harmonize rules across banking regulators, the CFPB, the SEC, and others for integrated financial products would require statutory authorization.

The Role of Congressional Consultation

The table above distinguishes between what agencies can do now and what requires legislation. But that distinction should not be read as suggesting that agencies should proceed with the reforms that fall within existing authority without Congressional engagement. Congress should be kept informed of and consulted about any material change to the rulemaking process — not merely because some changes will require legislation, but because updating the architecture of financial rulemaking is itself a matter of democratic significance.

Agencies that make significant structural changes to their rulemaking processes without Congressional awareness run the risk that those changes will be perceived as circumventing legislative intent, generating oversight reactions that undermine the reforms' durability. The most productive approach is a phased strategy: agencies exercise existing authority to pilot the reforms that can be implemented now, generating evidence of their effectiveness; Congress is engaged throughout that process, with an eye toward statutory enactment of the elements that require legislation to be made permanent and binding.

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The APA Baseline and Its Limits

The APA itself imposes some constraints on the more flexible rulemaking models we propose. Agency guidance documents that are not issued through notice-and-comment rulemaking are not legally binding on regulated entities and are not enforceable as such. An agency that relies primarily on guidance to establish the standards governing a new domain faces the risk that courts will find its enforcement actions unsupported by binding legal authority.

What the APA does not prevent is conducting notice-and-comment rulemaking more collaboratively — using negotiated rulemaking processes, drawing on standards developed by recognized bodies, and designing rules to be principles-based rather than prescriptive. The APA governs process, not design philosophy.



5. GOVERNANCE DESIGN FOR ADAPTIVE REGULATION

A more adaptive regulatory model raises governance concerns that must be addressed honestly. Flexibility can be a cover for regulatory capture. Collaborative standard-setting can be dominated by industry. Sandbox programs can become paths around consumer protection requirements.

Preventing Regulatory Capture

The CFPB's Section 1033 criteria — openness, balanced decision-making, consensus-based development, transparency, and due process — represent a carefully considered baseline for addressing the capture risk. Genuine multi-stakeholder representation requires more than formal seats: consumer advocates and independent technologists must have meaningful participation, which may require public or philanthropic funding, since consumer organizations lack the institutional capacity that industry associations possess.

Retained agency authority is non-negotiable. Collaborative standard-setting must be understood as supplementing, not replacing, agency authority. Agencies with leadership appointed by the President and confirmed by the Congress must retain the authority to reject, modify, or override standards developed through collaborative processes. The threat of formal rulemaking is what gives collaborative processes their incentive structure.

Maintaining Consumer Protection During Innovation

Sandbox programs and safe harbors can be misused as mechanisms for avoiding consumer protection requirements. Clear guardrails are necessary: baseline consumer protections must apply regardless of

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sandbox status; enhanced consent must be required for sandbox participation; and consumer harm during sandbox periods must be remediated regardless of the regulatory relief the sandbox provides.

Managing Uncertainty for Regulated Entities

Principles-based regulation creates legal uncertainty that can be genuinely costly for regulated entities. Guidance and interpretive releases should be issued generously and quickly as novel questions arise. No-action processes should be streamlined so that regulated entities can obtain reliable guidance before committing to implementation. Safe harbor provisions should be designed to provide certainty where possible.



6. A PATH FORWARD

The models surveyed in this paper demonstrate that more flexible and collaborative financial regulation is not a theoretical proposition. It is an established practice with a track record, a body of design knowledge, and a set of well-understood failure modes.

The current model served a different era reasonably well, but technology is driving change in financial services faster than that model can accommodate, and the building blocks for a better model already exist. What is required is the political will and institutional commitment to assemble those building blocks into a coherent framework — and to do so with the transparency, stakeholder engagement, and Congressional consultation that such a significant change in regulatory architecture deserves.

We recommend a phased approach:

- **Near term (agency action under existing authority):** Financial regulators should issue principles-based guidance for novel technology; pilot negotiated rulemaking processes for complex multi-stakeholder implementation questions; expand sandbox and no-action programs; build or tap market simulation tools; and signal in examination guidance the weight that will be given to compliance with voluntary standards developed by bodies meeting the Section 1033 recognition criteria.
- **Medium term (stakeholder process):** Agencies and industry should invest in establishing collaborative standard-setting bodies in domains where the absence of standards creates consumer risk and regulatory uncertainty. The Section 1033 criteria provide the baseline design template; agency recognition should follow as formal rulemaking authority allows.

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- **Longer term (Congressional action):** Congress should consider statutory enactment of the elements that require legislation: formal recognition frameworks with binding compliance effect; mandatory dynamic review provisions; interagency coordination mechanisms for integrated financial products; and SRO-like structures for new financial services domains where delegated standard-setting offers advantages over traditional rulemaking.

Throughout this process, Congress should be kept informed and consulted. The rulemaking process is itself a form of public governance, and changes to its architecture, however well-designed, should not be made without democratic accountability. The goal is a financial regulatory model that protects consumers more effectively, supports responsible innovation, and remains capable of adapting to technological change at the pace that change now demands.

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About the Author



Jerry Buckley joined AIR as a Counselor Advisor in July 2026, where he leads new work on agentic AI, consumer empowerment, and the future of consumer finance.

Jerry brings decades of experience in consumer financial services law, financial policy, electronic commerce, and regulatory modernization. He was a founder of Buckley LLP, a leading national financial services law firm that combined with Orrick, Herrington & Sutcliffe in 2023. Chambers USA has described him as "a recognized dean of the consumer finance bar."

Early in his career, Jerry served as Minority Staff Director of the United States Senate Banking Committee and played an important role in drafting many of the laws that impact the consumer financial services industry today.

Jerry has long focused on how technology can improve the delivery of financial services. He was a leader in advocating for passage of the federal E-Sign Act, served as counsel to the Drafting Committee for Standards and Procedures for Electronic Records and Signatures (SPeRS), and co-authored *The Law of Electronic Records and Signatures*. He was an active participant in the HUD RESPA negotiated rulemaking. He also served as the principal House of Representatives counsel supporting the enactment of the Federal Advisory Committee Act (FACA).

Jerry co-hosts RegFi, a podcast exploring how financial regulation may change in the years ahead. He is an Adjunct Associate Professor of Law at American University's Washington College of Law and received the Senator William Proxmire Lifetime Achievement Award from the American College of Consumer Financial Services Lawyers in 2015.

About AIR

The Alliance for Innovative Regulation (AIR) is a nonprofit, non-membership organization working to make the financial system fully inclusive, fair and resilient through responsible use of new technology. By connecting regulation, finance, technology and society, AIR drives global innovation and collaboration to address rapid technology change. Learn more at regulationinnovation.org.

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APPENDIX: CITATIONS FOR LAWS, REGULATIONS, AND CASES REFERENCED

Statutes

- **Administrative Procedure Act** (Sections 1, 2, 4): Pub. L. No. 79-404, 60 Stat. 237 (1946), codified as amended at 5 U.S.C. §§ 551–559, 701–706. Notice-and-comment rulemaking: 5 U.S.C. § 553.
- **Negotiated Rulemaking Act of 1990** (Section 2; Section 4 table): Pub. L. No. 101-648, 104 Stat. 4969, codified at 5 U.S.C. §§ 561–570a; made permanent by the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870.
- **Administrative Conference of the United States** (Section 2): 5 U.S.C. §§ 591–596; reauthorized by Pub. L. No. 108-401, 118 Stat. 2255 (2004); further amended by Pub. L. No. 110-290, 122 Stat. 2914 (2008).
- **Federal Advisory Committee Act** (Section 4 table): Pub. L. No. 92-463, 86 Stat. 770 (1972), now codified at 5 U.S.C. §§ 1001–1014 (formerly 5 U.S.C. app.).
- **Electronic Signatures in Global and National Commerce Act (E-SIGN)** (Section 2): Pub. L. No. 106-229, 114 Stat. 464 (2000), codified at 15 U.S.C. §§ 7001–7006, 7021, 7031.
- **Securities Exchange Act of 1934, including Section 19** (Sections 2, 4): Pub. L. No. 73-291, 48 Stat. 881, codified at 15 U.S.C. § 78a et seq.; Section 19 (SRO rule filings and SEC review), 15 U.S.C. § 78s.
- **Dodd-Frank Wall Street Reform and Consumer Protection Act** (Sections 1, 2, 4): Pub. L. No. 111-203, 124 Stat. 1376 (2010). Section 1033 (Consumer Financial Protection Act of 2010, Title X), 12 U.S.C. § 5533. Financial Stability Oversight Council (Title I), 12 U.S.C. § 5321 et seq.
- **Truth in Lending Act** (Section 1): 15 U.S.C. § 1601 et seq. Real Estate Settlement Procedures Act (Sections 1, 2): 12 U.S.C. § 2601 et seq.
- **Employee Retirement Income Security Act (ERISA)** (Section 3): Pub. L. No. 93-406, 88 Stat. 829 (1974), codified at 29 U.S.C. § 1001 et seq.; fiduciary duties, 29 U.S.C. § 1104.
- **Oil Pollution Act of 1990** (authority for the Coast Guard vessel response plan rulemaking, Section 2): Pub. L. No. 101-380, 104 Stat. 484; vessel response plans, 33 U.S.C. § 1321(j)(5).

Regulations and Agency Actions

- **CFPB Personal Financial Data Rights Rule** (Sections 1, 2): 12 C.F.R. pt. 1033; Required Rulemaking on Personal Financial Data Rights, 89 Fed. Reg. 90838 (Nov. 18, 2024) (final rule issued Oct. 22, 2024).
- **CFPB industry standard-setting (recognition criteria)** (Section 1): Required Rulemaking on Personal Financial Data Rights; Industry Standard-Setting, 89 Fed. Reg. 49084 (June 11, 2024) (effective July 11, 2024), now codified in 12 C.F.R. pt. 1033, including § 1033.141.
- **CFPB reconsideration of the Section 1033 rule** (Section 2): Personal Financial Data Rights Reconsideration, 90 Fed. Reg. 40986 (Aug. 22, 2025) (advance notice of proposed rulemaking) (Docket No. CFPB-2025-0037; RIN 3170-AB39).
- **TILA-RESPA Integrated Disclosure (TRID) rule** (Section 1): Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 78 Fed. Reg. 79730 (Dec. 31, 2013) (codified at 12 C.F.R. pts. 1024, 1026) (issued Nov. 20, 2013), amended by 80 Fed. Reg. 8767 (Feb. 19, 2015); effective date delayed to Oct. 3, 2015, 80 Fed. Reg. 43911 (July 24, 2015).

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- **Coast Guard vessel response plans** (Section 2): Vessel Response Plans, 61 Fed. Reg. 1052 (Jan. 12, 1996), 33 C.F.R. pt. 155 (adopting, with changes, the interim final rule at 58 Fed. Reg. 7424 (Feb. 5, 1993), which followed the proposed rule at 57 Fed. Reg. 27514 (June 19, 1992)).
- **HUD RESPA mortgage broker fee negotiated rulemaking** (Section 2): Notices at 60 Fed. Reg. 47650 (Sept. 13, 1995) and 60 Fed. Reg. 54794 (Oct. 25, 1995); HUD's subsequent proposed rule, Real Estate Settlement Procedures Act (RESPA): Disclosure of Fees Paid to Mortgage Brokers, 62 Fed. Reg. 53912 (Oct. 16, 1997).

Cases

- Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) (overruling Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984)).
- Corner Post, Inc. v. Bd. of Governors of the Federal Reserve System, 603 U.S. 799 (2024).
- Forcht Bank, N.A. v. Consumer Fin. Prot. Bureau, No. 5:24-cv-00304-DCR, ECF No. 90 (E.D. Ky. Oct. 29, 2025) (granting preliminary injunction against enforcement of the Personal Financial Data Rights Rule pending reconsideration).

Standards and Other Non-Statutory Sources

- **ANSI X9 TR-4:2004** (SPeRS), Standards and Procedures for Electronic Records and Signatures (Section 2).
- **Financial Services AI Risk Management Framework (FS AI RMF)** (Section 2): U.S. Department of the Treasury, Treasury Releases Two New Resources to Guide AI Use in the Financial Sector (Feb. 19, 2026), home.treasury.gov/news/press-releases/sb0401.
- **FDIC-fostered standard-setting organization (reported)** (Section 2): Bloomberg Law, FDIC Floats Standard-Setting Body for Banks' Fintech Partners (Aug. 2026), news.bloomberglaw.com/banking-law/fdic-floats-standard-setting-body-for-banks-fintech-partners; American Banker, FDIC Proposes Standard-Setting Body for Banks and Fintechs (Aug. 12, 2026), americanbanker.com/news/fdic-proposes-standard-setting-body-for-banks-and-fintechs. No FDIC proposal has been published.
- **NIST AI Risk Management Framework (AI RMF 1.0)** (Section 2): Nat'l Inst. of Standards & Tech., U.S. Dep't of Com., Artificial Intelligence Risk Management Framework (AI RMF 1.0), NIST AI 100-1 (Jan. 2023).

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