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Banks Seek Guidance on Who's Liable for Open Banking Data Fraud

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Kim Phan, a partner in Troutman Pepper's Consumer Financial Services Practice Group, is quoted in the October 31, 2022 *Bloomberg Law* article, "[Banks Seek Guidance on Who's Liable for Open Banking Data Fraud.](#)"

"Scam artists have always been out there. They just have more tools available to them," said Kim Phan, a partner at Troutman Pepper Hamilton Sanders LLP.

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In other instances, banks and other financial services providers have negotiated their own liability arrangements for credit cards and ACH transfers, the system of electronic deposits and debits into and out of bank accounts.

Those liability schemes only came after a push from Congress or regulators, Phan said.

The CFPB could set parameters for liability or set safe harbors for banks and other data providers. These parameters could include laying out indemnification principles so that banks that do things correctly don't face consumer lawsuits or accrediting data aggregators and other firms to engender consumers and banks' trust, she said.

Banks could theoretically then figure out more detailed questions on liability on their own, as they have in the past, Phan said.

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