



DIGITAL
COMMERCE ALLIANCE™

"Trade for Good"

February 4, 2021

Tom Devlin, Managing Counsel, Office of Regulations
Will Wade-Gery, Office of Innovation Deputy
Max Bentovim, Financial Analyst, Office of Consumer Credit, Payments, and Deposit Markets
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552
Email: 2020-ANPR-1033@cfpb.gov

Re: Docket No. 2020-0034: Request for Information Regarding Proposed Rulemaking for
Consumer Access to Financial Records

Dear Mr. Devlin, Mr. Wade-Gery, and Mr. Bentovim:

The Digital Commerce Alliance ("DCA") appreciates the opportunity to submit commentary to the Bureau of Consumer Financial Protection (the "Bureau") in response to the Advance Notice of Proposed Rulemaking regarding consumer access to financial records under Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

Executive Summary

DCA is the premier, multi-industry trade association focused on promoting online-to-offline commerce and card-linking worldwide. DCA possesses broad expertise in the area of online commerce and consumer financial information. DCA's membership includes leading banks, merchants, payment networks and technology companies.¹ As a result, DCA's voice is distinct from other associations in that it is one that reflects a diverse set of perspectives from multiple industries. Further, DCA's established presence in the data access ecosystem uniquely positions it as both a subject matter expert and industry leader. Our members play a pivotal role in the world of digital commerce. Before the issuance of the Section 1033 ANPR, DCA's members have led the way on important initiatives that are designed to protect consumers while also eliminating friction for digital commerce. Such initiatives include establishment of the [DCA Consumer Data Transparency Rights](#).

The ever-evolving data landscape warrants an advanced yet nimble standards body that can swiftly react to technological developments with consumer protection implications. DCA's multi-industry membership, consisting of the world's most sophisticated technology providers, publishers, payment processors, payment networks, and retailers creates an inherent system of checks and balances, resulting in standards that are beneficial to all. Sound principles that should be considered include the DCA Consumer Data Transparency Rights. Below, we discuss our

¹ Current members include Microsoft, Bank of America, Discover, FIS, TransUnion and Hilton among many others.



DIGITAL
COMMERCE ALLIANCE™

"Trade for Good"

Transparency Rights, and how the Bureau can enhance the benefits that consumers receive from accessing financial records.

The DCA Consumer Data Transparency Rights

Years ago, we acknowledged that there are significant complexities and different regional, national, and global regulatory approaches to consumer financial data. In October 2019, DCA and its members collectively announced the organization's own aspirational principles for consumer financial data, in furtherance of establishing cross-industry consumer data standards. Our intent in developing these principles is two-fold: (1) to support DCA members' implementation of data-driven products and (2) to inform policymakers like the Bureau.

The principles are broad in scope, and consumer-focused. The principles outlined in this framework promote the fair, efficient, and effective use of consumer data across all industries that have access to consumer financial data. The DCA principles reflect the combined aspiration of our members to implement common industry best practices and standards for the safe and effective use of financial data.

We view consumer protection as additive to the process of growth. Namely, DCA's members believe that establishing consumer data rights is an integral component to the continued growth and innovation in our industry and others. The DCA Consumer Data Transparency Rights are:

- ***The Right to Transparency*** – Consumers shall have the right to be provided with clear understandable statements that help inform them about financial data collection, use, sharing, and retention in connection with their enrollment in a third-party program that includes such data. This includes being presented with a clear notice about the purpose of the data collection and the context of the relationship between the consumer and the company requesting enrollment of their credit/debit card in the program.
- ***The Right to Consent*** – Consumers that enroll in a program shall have the right to be presented with an explicit consent, for example, similar to the CardLinx Consent Honeybee Standard, that helps them understand the purpose of processing their personal credit/debit card details within the context of the relationship between the individual to whom the data pertains and the organization requesting the enrollment of the credit/debit card.
- ***The Right to Consumer Choice and Control*** – Companies that provide programs to consumers with enrolled debit/credit cards shall have appropriate controls to allow a consumer the right to have a choice over how their financial and associated data is used, and limit disclosure. Unless required to perform the service, and where it is not covered under a company's privacy statement or a law enforcement request, consumers should also have the right to know what personal financial and associated data is disclosed to third-parties, to request such disclosure not take place, or prohibit marketing of personal data.
- ***The Right to Access*** – Consumers shall have the right to reasonable access to the personal data held by the organization providing the program in which the consumer has



DIGITAL
COMMERCE ALLIANCE™

"Trade for Good"

enrolled, including observational data, inferences derived from browsing history, social media, or location tracking.

- **The Right to Data Portability** – Consumers shall have the right to receive a copy of their personal financial data from the company providing the program (in which the consumer has enrolled) in a portable, commonly used and machine-readable format.
- **The Right to Correct and Delete Data** – Consumers shall have the right to ensure that financial and associated data should be correct and accurate. Consumers shall also have, where reasonable, the right to correct inaccuracies of such data and have such data deleted.
- **The Right to Data Security** – Consumers shall have the right to ensure that their data should be appropriately secured in a way that is commensurate with the sensitivity of the data and current/established standards.

Within the context of the above principles, DCA submits the following perspectives:

First, the Bureau should encourage and expect broad-based standard-setting by data access ecosystem participants, including DCA, to enable and facilitate consumer data access.

Consumers are not the only beneficiaries of broad data access standards. Firms engaged in the business of online commerce are also positioned to benefit from an even playing field inevitably created by such principles. Granted, these standards must be set by ecosystem participants who are themselves fairly balanced and well-intentioned. The Bureau can ensure the existence of these equitable standard bearers by specifically appointing firms to perform this function in the form of a committee or other Bureau supervised group. Alternatively, the Bureau's creation of specific rules, such as the creation of financial API standards and requirements, could also result in the independent emergence of these actors in the market as has been seen in the in two-sided payment card markets. The technical complexities invoked by financial data access standards – e.g., data privacy, data monetization, and cybersecurity – will require the cooperation of market participants for their success. Accordingly, implementation of section 1033 access rights should take into account, or even directly rely upon, standard-setting by system participants such as DCA.



DIGITAL
COMMERCE ALLIANCE™

"Trade for Good"

Second, the Bureau should coordinate with data access ecosystem participants to establish standardized formats for information that can be obtained by means of section 1033 data access rights.

As a government agency, the Bureau inherently lives outside of the private financial data market, and therefore has limited insight into the rapidly evolving state of the consumer data field. Nonetheless, the Bureau faces the opportunity to play a crucial role in this area, one which only the Bureau can fulfill.

Namely, by coordinating with market participants in the form of trade associations, committees, or other specifically designated organizations, the Bureau has a means to bridge this gap and maintain a regulatory presence on the cutting edge of technology to further its consumer protection objectives in real time. As firms innovate and present their ideas to the designated organization, the diverse membership can holistically evaluate the technology and spot potential consumer protection issues as the Bureau's surrogate, prior to a broader public launch or standardization of the new format. The Bureau then has the opportunity to play a proactive role, rather than a reactive role, within the private financial data market. This can be achieved through the rulemaking process by establishing procedures which any such group must operate, including specific reporting obligations to the Bureau. Transparency should be a central tenet of this framework, both between the organization and the bureau itself, as well as amongst the organization's members.

Coordination with data access ecosystem participants puts the Bureau in a unique position to anticipate recent development before such inventions become mainstream. This, in turn, gives the Bureau leverage as the new technological formats become standardized. This proactive approach can only be achieved by the Bureau through bilateral collaboration with financial data market participants and should be seriously considered in the Bureau's rulemaking process.

Third, the Dodd-Frank Act definition of "consumer" grants individuals the broad right to appoint an agent, trustee, or representative to act on his or her behalf, and the Bureau should defer to this consumer right.

Appointment of an agent by a consumer to act on his or her behalf is inherent to the conception of section 1033 data access rights. The Dodd-Frank Act defines "consumer" as "an individual or an agent, trustee, or representative acting on behalf of an individual." The necessity of consumer agency should be a strong consideration in the Bureau's rulemaking process.

A consumer may choose to have an agent for a variety of reasons. Most commonly, a consumer might not possess the technological know-how to properly access his or her data, or even where to find it. Consumer agents (in most cases, technology companies) serve to bridge this gap for the consumer. Many agents also act as "safe houses" where a consumer can reliably maintain their data in a secure location, which may not always be possible on a local hard drive or other physical form. Some agents may bundle their access services with other offerings that benefit



DIGITAL
COMMERCE ALLIANCE™

"Trade for Good"

consumers. For example, the agent may use the accessed data to find and provide deals or other financial incentives for the consumer. The benefits of consumer agency are clear.

Of course, deference to the consumer's right to choose and use an agent does not require a total hands-off approach. Rather, the Bureau should carefully consider how to ensure agents themselves properly handle consumer data. Many agents already face strict regulation under the California Consumer Protection Act (CCPA) and other states' privacy legislation. International actors may also be subject to the European Union's General Data Protection Regulation (GDPR). Adoption of similar privacy protections at a federal level would serve to ensure agents handle consumer data securely and responsibly.

The obvious benefits of using an agent, combined with the consumer's right to control his or her data warrant clear deference by the Bureau in the rulemaking process, with the focus being on ensuring the agents themselves act properly.

The Digital Commerce Alliance appreciates the opportunity to provide our comments and support the Bureau in its proposed rulemaking regarding consumer access to financial records. We look forward to the opportunity to partner with you in these endeavors. Please do not hesitate to contact us if you have any questions regarding these comments and if we can be of any assistance.

Best,

Silvio Tavares
President and Chief Executive Officer
The Digital Commerce Alliance