

*Before the*  
**Consumer Financial Protection Bureau**  
Washington, D.C.

*In re*

Required Rulemaking on Personal Financial  
Data Rights

Docket No. CFPB-2023-0052

**COMMENTS OF**  
**THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

In response to the Notice of Proposed Rulemaking published in the Federal Register at 88 Fed. Reg. 74796 (October 19, 2023), the Computer & Communications Industry Association (“CCIA”)<sup>1</sup> submits the following comments to the Consumer Financial Protection Bureau (“Bureau”).

**I. Introduction**

CCIA appreciates the Bureau’s efforts to implement the Personal Financial Data Rights rule which aims at empowering consumers and increasing competition among financial institutions. However, the proposed restrictions on third parties go far beyond these aims and are unlawful. The Bureau should remove these provisions with the bright-line restrictions from any final rule.

**II. Discussion**

Competition between new and old financial institutions benefits consumers in a myriad of ways. The advancements in these financial products and services have also created new opportunities for countless people who were previously unbanked. The CFPB can use this

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<sup>1</sup> CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

rulemaking to build upon this progress around financial connectivity by providing regulatory clarity, and ensuring those who lack access to the formal financial system are empowered. Yet, key elements in the proposed rule’s restrictions on third parties that obtain consumer financial data from covered data providers undermine this progress and risk eliminating these opportunities, which hurts consumers and competition in the end.

The Bureau’s attempt to override consumer choice is built upon an unfounded premise that targeted advertising does not primarily benefit consumers.<sup>2</sup> The Bureau’s preliminary determination about targeted advertising is not based upon any record of concrete harm to consumers, let alone other information that would indicate harm from widespread patterns of unfair, deceptive, or abusive acts or practices. Concerns about targeted advertising can obscure the pro-consumer and pro-ecosystem effects created by this highly evolved method of consumer outreach. For the reasons explained herein, the final rule should remove the provisions containing these broad blanket bans.

*A. The proposed rule contains restrictions that exceed the CFPB’s rulemaking authority under Section 1033*

Congress recognized the importance of personal financial data rights in § 1033 of the Consumer Financial Protection Act of 2010 and tasked the Bureau with issuing a rule that empowers consumers and ensures competition remains robust. The Personal Financial Data Rights rule should provide consumers with important access and portability rights regarding their financial data. However, there are concerns regarding the provision that would limit an authorized third party’s collection, use, and retention of any covered data to what is “reasonably necessary to provide the consumer’s requested product or service.” Specifically, § 1033.421(a)(2) of the proposed rule would impose a “bright-line” ban against the use of such data for targeted advertising, cross-selling of other products or services, and the sale of covered data. With this proposed rule, the CFPB risks expanding its specific authority to set advertising policies for the entire country.

The Bureau describes how § 1033.421(a)(2) of the proposed rule seeks to grant consumers a limited statutory right to access certain personal financial data held by covered

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<sup>2</sup> 88 Fed. Reg. 74796, 74803 (Oct. 31, 2023).

providers of consumer financial products or services. However, the proposed rule would go far beyond this clear congressional goal by imposing a blanket ban on a broad swath of the digital economy. The proposed restrictions on targeted advertising exceed the scope of the CFPB’s rulemaking authority under § 1033 to the extent that the rule purports to regulate third parties engaging in transfers of covered financial data that do not rely on the access rights in § 1033. Further, even if a data exchange relies on the access right in § 1033, the proposed rule is still unlawful insofar as it overrides consumer choice and consent – and prohibits third parties from collecting, using, and retaining consumer financial data in ways that individual consumers have consented to. By restricting third parties from using consumer financial data for purposes to which consumers consent (including targeted advertising), the CFPB directly undermines the core purpose of § 1033 – ***empowering consumers to control and choose how their financial data is used.***

The agency should not commence a rulemaking that is not within the agency’s authority to conduct, especially one that would unnecessarily infringe upon consumer autonomy. Such a far-reaching regulation would impact a broad swath of consumers, businesses, and the overall economy needs to be thoughtfully studied and considered. Further, it is not clear how a ban on targeted advertising aligns with Congress’ directions to issue a rule that is focused on data rights including access to financial data. The proposed ban would extend beyond its express statutory authority and prescribe a rule that would affect large portions of the American economy.<sup>3</sup> The Supreme Court has cautioned against such agency overreach, “When Congress seems slow to solve problems, it may be only natural that those in the Executive Branch might seek to take matters into their own hands. But the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people’s representatives.”<sup>4</sup> The Bureau should avoid arbitrarily infringing upon consumer autonomy. CCIA strongly urges the

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<sup>3</sup> Digital advertising generates hundreds of billions of revenue per year in the United States. Zenith Media estimates that nearly \$183 billion was spent on digital advertising in 2021. Brad Adgate, *Agencies Agree; 2021 Was a Record Year for Ad Spending, with More Growth Expected in 2022*, FORBES (Dec. 8, 2021), <https://www.forbes.com/sites/bradadgate/2021/12/08/agencies-agree-2021-was-a-record-year-for-ad-spending-with-more-growth-expected-in-2022>.

<sup>4</sup> *West Virginia v. Env’t Prot. Agency*, 597 U.S. \_\_ (2022) (Gorsuch, J. concurring).

CFPB to modify its proposed rule to ensure that third parties may collect, use, and retain consumer data that consumers consented to.

*B. Targeted advertising benefits consumers and businesses.*

The collection, use, and retention of data for targeted advertising should not be restricted when authorized by consumers. The Bureau correctly determined that consumers generally are in the best position to provide meaningfully informed consent to third-party data collection, use, and retention. However, the Bureau's proposed rule contrasts with this finding and instead imposes a bright-line rule against targeted advertising even when authorized by consumers. Consumers need more choices and opportunities to discover new and beneficial products and services. The proposed rule fails to consider the benefits of advertising and the role it plays in creating these opportunities for consumers and allowing businesses of all sizes to compete.

For Consumers. Advertising provides consumers with access to relevant information and resources in order to make an informed decision about a business's financial products and services. Other agencies have recognized these benefits as well, with the Federal Trade Commission Bureau of Economics noting in 2020 that the benefit of advertising takes various forms that include reduced search costs and greater price competition between firms.<sup>5</sup> Banning this type of advertising would unnecessarily stagnate the market and limit consumer choice. Many consumers rely on affordable or free ad-supported options, and this broad restriction would force them into subscription models or limit their access to financial tools altogether. This is particularly harmful to low-income and vulnerable populations who rely on these resources. A majority of these essential financial tools and resources, including credit score trackers and personalized investment platforms, rely on ad-supported models for their free or low-cost access. The advertising restrictions would significantly reduce consumer access to these valuable tools, undermining financial literacy and inclusion efforts. The final rule needs to help consumers make informed choices rather than override their informed decisions.

For Businesses. The restrictions on target advertising would also harm competition, especially smaller businesses that are reliant on digital advertising. Small and mid-sized

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<sup>5</sup> Yan Lau, FED. TRADE COMM'N, A BRIEF PRIMER ON THE ECONOMICS OF TARGETED ADVERTISING (Jan. 2020), <https://www.ftc.gov/reports/brief-primer-economics-targeted-advertising>.

businesses depend on such advertising to compete and provide improved products and services – new companies would also face a heavy barrier to entry with the proposed ban. Moreover, ad-supported models allow companies to develop and offer user-friendly tools and services that are tailored to a myriad of consumer needs – fostering competition that ultimately benefits consumers with improved options and features. The proposed ban on advertising would disincentivize companies from developing innovative financial tools and resources. Lastly, CCIA is also concerned about the broad requirement for covered companies to build an API, without considering the usefulness of the data or the likelihood of access request.<sup>6</sup> The final rule needs to be more tailored to account for such factors and costs.

In sum, the restriction on advertising worsens the consumer experience, stalls innovation, and adversely impacts small and medium-sized companies’ ability to compete. CCIA recommends the Bureau explore alternatives to this blanket ban. One option could be to promote best practices around transparency so consumers have actionable information. The Bureau should continue to promote transparency and police against such harmful practices.

### **III. Conclusion**

To presume that targeted advertising is inherently a harmful practice, and adopt rules built on that presumption, threatens to upend the modern digital economy. CCIA urges the Bureau to remove the provisions with the bright-line restrictions from any final rule.

Respectfully submitted,

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<sup>6</sup> 88 Fed. Reg. 74796, 74848.