

**Written Submission for the
Pre-Budget Consultations
in Advance of the
Upcoming Federal Budget**

By: FDATA North America

Summary of Recommendations

Recommendation 1: That the government should include language in Budget 2022 implementing a customer-driven finance (CDF) regime in Canada. Such reforms must include clear definitions of consumer and small business financial data rights, scope, and portability.

Recommendation 2: That the government should include language in Budget 2022 to enshrine a new CDF Implementation Entity (IE) tasked with the design and implementation of open finance in Canada.

Introduction

To truly 'build back better' Canada must fully embrace a digital-first future for its financial sector, and a consumer-centric model for its privacy arena. An open finance regulatory environment, also known as customer-directed finance (CDF), can be a cornerstone of this future system. The federal government can realize a more economically vibrant financial sector by securing the right of consumers and small businesses to safely share their financial data with, and between, all of their financial service providers - including fintechs - safely and securely.

This new legal framework will improve access to financial services, ensure a more level regulatory system for financial service providers, improve competitiveness, and foster innovation, all of which will contribute to healthy and sustained macroeconomic growth.

The open finance regulatory environments embraced by nations including the U.K., Australia, and Singapore are already improving global competitiveness and enhancing financial inclusion among their citizenries. The U.K.'s Open Banking Implementation Entity recently announced that more than three million net new consumers across the country have adopted tools deployed under its Open Banking regime¹. Likewise, Australia recently launched a Consumer Data Right which will eventually provide their consumers with full utility over the totality of the data they generate². By stark contrast, there exists no distinct legal assertion of a customer's legal right to access and permission their financial data in Canada.

Without this framework, Canada will remain in a financial status quo where consumers and other end users lack control of their personal information and cannot benefit from financial innovation. By delaying this approach, Canada risks falling further behind as a world leader in digital innovation and misses an opportunity to provide cutting-edge financial services to its consumers and small businesses. In the absence of a legally-binding CDF framework, market participants have sought in Canada to deliver open finance through the execution of bilateral data access agreements and technology standards; however the experience in the marketplace over the last several years strongly indicates that only proactive, legally-binding government policy standards can provide for uniform customer protections and capabilities in an open finance framework.

Therefore, the first step towards an open finance marketplace must be a formal assertion of a CFDR for consumers and small business, enshrining into law the legally binding notion that the end user, not the financial institution, is empowered with control over their financial data. Canadian financial institutions currently exert significant control over their customers' ability to grant access to their own financial data with competing service providers. This means that even

¹ [Open Banking: Annual Report 2020](#)

² [Australian Competition and Consumer Commission: Consumer Data Right Project Overview](#)

if a customer wishes to use a certain financial product or service offered by a third party that requires access to their financial data, such as a payment or savings tool, their financial institution may deny access and prevent use of that tool. While the expressed rationale for these restrictions is usually security related, these data restrictions or blockages often target products or services that compete directly with those offered by the financial institution itself.

Millions of Canadians already share their financial data with third-party service providers, but do so in the absence of appropriate regulations. As a result, customer rights and protections are not currently universally provided across the marketplace. If properly designed and implemented, an open finance regime mitigates risks and protects consumers and small businesses by ensuring that providers' privacy protections meet regulatory standards, that customer privacy is assured regardless of whether their chosen service provider is a financial institution or non-bank fintech, and that, in the event of a data breach, recourse mechanisms exist to make affected consumers whole.

Detailed Recommendations

CDF Regime: An effective open finance framework must place the end user at the center of its design. With this in mind, FDATA North America strongly recommends that the data included within the scope of Canada's CDF system be as expansive as possible, to include all information relevant to a consumer or a small business' finances. All customers should expect that when they sign up for a third-party financial application, their data will be available to power that application and that they will be provided with a consistent set of protections, regardless of which combination of applications and financial institutions they choose.

A regime under which some financial accounts are included in a CDF system but others are not creates confusion and introduces unnecessary complexity into the transition towards a more innovative financial services marketplace. We have seen this dynamic play out in Europe and the United Kingdom under the second payment services directive (PSD2) and Open Banking. With both frameworks initially limited only to payment accounts, the limitations to innovation, as well as inadequate, uneven customer experiences, have driven both jurisdictions towards considering an ex post facto expansion of their regimes to include all types of financial accounts. We respectfully offer that Canada can learn from these developments and best take advantage of its current position by setting out, from the inception of its CDF system, the most expansive scope of covered accounts possible, with the understanding that the timeline of onboarding all of the account types may be tiered over time.

In addition to setting forth a comprehensive scope of covered account types within Canada's CDF framework, FDATA North America encourages Canadian policy makers to create a legally



binding customer financial data right that would require all non-proprietary data to be made available and portable to consumers and small businesses. The objective of this requirement is to ensure that all relevant information is available to the consumer or SME to freely utilize with the third party of their choosing. Importantly, since financial products and services are constantly in development, so too are new forms of financial data that also ultimately belong to consumers. The scope should therefore be expansive enough to cover current data types but also sufficiently flexible to incorporate new data elements as they arise in the future, facilitating an innovative marketplace that can adapt, over time, to customer needs.

This approach would provide as much opportunity as possible to consumers and SMEs to benefit from innovative financial applications. It would also set forth clear requirements that eliminate ambiguity to market stakeholders, and reduce barriers to development of new products and services that could be introduced in the years ahead.

It is important to recognize that competitive incentives currently exist for data holders to restrict access to data, as they see new entrants offering competing services generated using customer-permissioned data. As the Financial Consumer Agency of Canada noted in its response to the Minister of Finance’s Advisory Committee on CDF consultations, “entities may limit what data consumers can see in their online banking portals if certain types of data were to be placed in scope. Since the goal of an open banking system is to empower consumers, they should not end up with access to less information than they have access to today.” A broad scope of data can also serve to constrain competitive incentives that otherwise might harm consumers and SMEs by restricting their access to superior products.

To be clear, the applicability of the financial data right we propose should not be limited only to financial institutions. Since customer centricity is the critical element to any successful open finance framework, reciprocity should also be built into Canada’s CDF framework. A third-party provider in the CDF system should also be required to make the same non-proprietary data available to its customers to share with financial institutions and other third-party providers so long as the appropriate, sanctioned customer consents and authorizations have been received. Under this reciprocal design, the same standards should apply to any recipient of financial data under the CDF framework based not on their status as a financial institution, but instead what role they are playing in the exchange of data in a particular data exchange: a data holder or a data recipient. The formation of the CDF Implementation Entity as soon as possible would provide the medium through which to begin delivery of these outcomes.

Implementation Entity: To guard against commercial dynamics influencing the development and governance of the CDF system, and to address pragmatic concerns regarding the limitations of the federal government’s regulatory jurisdiction over third-party providers, it is essential that a strong, centralized governance entity oversee both the rollout of the system and



its ongoing operation. FDATA North America does not believe that any entity currently exists that could assume this responsibility and sees a significant risk that the current vacuum that exists in the absence of a strong Implementation Entity will be filled by commercially-driven actors. This is why we urge the government to include language in Budget 2022 to enshrine a new Implementation Entity (IE) specifically for this purpose. This IE should be led by an empowered chief executive reporting to the government, with strong subject matter expertise in financial services, innovation, and consumer financial data, and include an advisory board evenly composed of representatives from financial institutions, third-party providers, and consumer and SME advocates. Such legislative language could either create this entity directly, or grant delegated authority to the Department of Finance to do so.

The CDF IE should also have a limited role in the oversight of third-party providers that choose to participate in the system; however, the IE itself should not be responsible for conducting audits or attestations affirming compliance from third-party service providers. This is a key insight from other jurisdictions that have already built and deployed open finance regimes: governance and accreditation should not be the responsibility of the same entity. Instead, the IE should have the authority to certify external auditing firms to accredit third-party financial technology providers against a prescriptive set of standards outlined in the legislation or decree. A financial technology firm operating in the CDF system would, under this framework, be required to subject itself to an audit by a firm accredited by the governance entity before it could gain access to the CDF system, and would be required to submit to periodic reviews, perhaps annually, following its initial certification. This structure would allow for the maximum amount of innovation, data security, and consumer protection, and limit unnecessary centralization and government intervention.

About FDATA North America

FDATA North America's members collectively serve nearly four million Canadian consumers and small and medium-sized enterprises by providing personal and SME financial management and accounting tools, digital banking services, access to investment and savings platforms, affordable credit products, and other financial services.

FDATA North America was founded in early 2018 by several firms whose technology-based products and services allow consumers and small businesses to improve their financial wellbeing. We count innovative leaders such as the Alliance for Innovative Regulation, APImetrics, Basis Theory, Betterment, BillGo, Codat, Direct ID, Equitable Bank, Envestnet Yodlee, Experian, Fiserv, Flinks, Interac, Intuit, Inverite, Kabbage, Marble, Mogo, Morningstar, M Science, MX, Petal, Plaid, Questrade, Quicken Loans, SaltEdge, Trustly, ValidiFi, VoPay, Wealthica, Xero among our members.



We are a regional chapter of FDATA Global, which was the driving force for Open Banking in the United Kingdom, and which continues to provide technical expertise to policymakers and to regulatory bodies internationally that are contemplating, designing, and implementing open finance frameworks. With chapters in North America, Europe, Australia, South America, and India, FDATA Global has established itself as an expert in the design, implementation, and governance of open finance standards and frameworks globally since its inception in 2013.