



Statement for the Record
House Financial Services Committee
Task Force on Financial Technology

"Preserving the Right of Consumers to Access Personal Financial Data"

September 21, 2021

10:00 a.m.



Introduction

Pinwheel was founded in 2018 with the mission to create a fairer financial system by unlocking consumer access to their payroll information. In 2019, Pinwheel built the first application programming interface (API) into payroll platforms, and by 2020, Pinwheel was integrated with every major payroll provider and gig economy platform, covering roughly 70% of paid Americans. Over half of the direct deposit switches in the neobank marketplace will be completed through Pinwheel's API by the end of 2021, making it one of the most powerful tools available to consumers who require the safe and efficient flow of payroll data to effectuate a financial transaction.

We appreciate the Task Force's efforts in this area and agree that the right of a consumer to access their personal data *and* permission the use of that data should be preserved *and* expanded. As the Consumer Financial Protection Bureau (CFPB) acknowledged in the announcement of their advanced notice of proposed rulemaking:

"When consumers use financial products and services, the providers of those products and services generally accumulate data about those consumers and their use of those products and services. Consumer access to these data allow consumers to manage their financial accounts and can enhance consumers' control of their financial matters. Consumers may realize these benefits by authorizing third parties to access these data on their behalf and allowing those third parties to deliver new or improved financial products and services. Use cases for consumer-authorized data include personal financial management, making and receiving payments, assisting consumers with improving savings outcomes, underwriting credit, and many other services."¹

For this statement, we focus on the following policy areas:

- Payroll data must be included in the definition of financial data and ultimately, Payroll providers must be included in the definition of "data holder."
- There are both benefits to the consumer of including payroll data and consequences of NOT including payroll data within the definition of "consumer financial information."
- When crafting the regulation, consumer permissioned access and security of that data are of utmost importance.

CFPB 1033 ANPR

The CFPB is in the middle of a consequential rulemaking process that will set the terms for how consumers can take control of their financial data in the future. Section 1033 of the Dodd-Frank Act directed the CFPB to draft rules that require a data holder to grant

¹<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-releases-advance-notice-proposed-rulemaking-consumer-access-financial-records/>.



consumers access to their data that is held by the data holder. The law gives the CFPB considerable latitude to determine the details of these rules.

This is a policy issue that the CFPB has been exploring for some time. In 2017, the CFPB issued a set of principles on data access². In 2020, the CFPB put out a call for comments³ on Section 1033 in an advanced notice of proposed rulemaking (ANPR) and received almost 100 comments from industry groups and other stakeholders. Within its ANPR, the CFPB defines “financial data” as “information in the control or possession of [a] covered person concerning a consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account, including costs, charges and usage data.”

Payroll data and ultimately payroll providers should be included within the CFPB’s 1033 rulemaking

Pinwheel holds the position that a consumer’s financial data belongs to the consumer regardless of the institution that holds it. The data on income and employment stored in payroll systems is financial information; given that classification and the significant benefits unlocking it can offer consumers, we believe the CFPB should make explicit the inclusion of payroll data in Section 1033 and ultimately, that payroll providers must be included in the definition of a “data holder.” Doing so will accelerate the innovation enabled by payroll connectivity, ultimately expanding access to financial products and services for all Americans.

To accomplish this goal, CFPB should include as a subset of “financial data,” a definition of “consumers’ payroll information.” In line with other industry stakeholders, we would recommend the following:

“Consumer Payroll Information means (1) any data that is (A) in connection with a consumer’s status or terms or condition of employment, such as whether the consumer is employed, is paid by an hourly rate (including such rate of pay), is a salaried employee or officer, or is a full-time or part-time employee; (B) related to accrued wages, deductions for benefits, frequency or timing of payment of wages or salary, tax information, or other data related to the processing of such payments; or (C) contained in, or related to, the employer’s file of data about a consumer, such as the consumer’s contact information. Without limiting the scope of paragraph (1)(C), any data about a consumer that is collected by a Payroll-Services Provider, or collected by an

²https://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation.pdf.

³<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-releases-advance-notice-proposed-rulemaking-consumer-access-financial-records/>.



employer which forwards the data to (or makes the data accessible to) the Payroll-Services Provider, constitutes Consumer Payroll Information.”⁴

Benefit of including Payroll data in “consumer financial information”

While access to consumer banking data has been a key driver in innovation over the last decade, payroll aggregation is the next step in the evolution of financial account connectivity, as it means retrieving income & employment data directly from the source and giving consumers the ability to edit their payroll account settings. More than 93% of US workers get paid via direct deposit⁵, meaning that payroll systems sit at the top of the financial stack and are essential to painting a holistic view of a consumer’s financial life. Unlocking access to this information helps drive innovation that could better serve the millions of Americans left behind by our financial system due to antiquated processes and technologies. It provides meaningful benefits to users, including the abilities to:

- Quickly and easily switch their direct deposit between financial institutions, taking control of their paycheck at the source and choosing the institution that offers them the best products and services.
- Share the wealth of income and employment data stored within a payroll system with financial institutions, unlocking lower-cost services. *More than half of the population has a poor credit score or no credit score at all. The information in payroll platforms, like gross and net pay, length of employment, shifts, and title can be used by lenders to build a more complete profile of the borrower to expand their pool of serviceable applicants previously limited by underwriting models that only factor in FICO scores.*
- Set up repayments directly from their paycheck, reducing risk for the lender and potentially unlocking even lower-cost loans
- Use payroll data to verify employment for job applications, background checks and other use cases.

Consequences of NOT including Payroll data among Consumer Financial information

Payroll data informs the picture of a consumer’s income. At times, this data may be the only data available in one’s financial life. Nearly 1 in 10 adults in the United States are credit invisible. Without payroll data in hand, one with limited financial data or perhaps no financial history at all would only encounter additional challenges when trying to obtain financial services.

Additionally, as one of the commenters to the 1033 ANPR stated,

⁴<https://www.regulations.gov/comment/CFPB-2020-0034-0083>.

⁵ <https://www.nationalpayrollweek.com/direct-deposit/>.



"Among other potential pitfalls, a consumer will face obstacles choosing how the consumer's funds from an employer are credited to the consumer's preferred bank account, and will pay higher costs for credit or deposit products—which adversely affects the consumer's liquidity or savings—because banks and other financial institutions will not be able to use and analyze payroll data to gain insights the consumer's earnings or work history."⁶

Payroll providers should be included as "data holders" in CFPB regulations

A payroll services provider is responsible for processing one's payroll and facilitating the transfer of that payroll from one's employer to one's designated bank account. The data that a payroll services provider holds include income and employment data. Payroll service providers can also be providers contracted through an employer. As the CFPB has the authority to regulate those "engaged in offering or providing consumer financial product or service",⁷ the underlying duties of a payroll provider qualify.

That being said, because there has been some uncertainty as to whether or how payroll services providers fit under the CFPB's authority, we'd recommend including a payroll service provider as a "data holder" or agent of the data, as defined in the CFPB's 1033 ANPR.

We support the recommendation by a commenter to the 1033 ANPR:

"The rule should expressly cover, as one of many types of *Covered Persons* (or "*Data Holders*"), a *Payroll-Services Provider*, which should be defined along the lines of:

"(1) *Payroll-Services Provider* means any person that offers or provides to a consumer (primarily for personal, family, or household purposes), directly or indirectly including through any employer, any: (A) payment to the consumer (as employee, contractor, or any other capacity for the consumer's performance of work or services); or (B) any data processing function, product, or service in connection with the collection of, classification or organization of, or provision or delivery to any person of Consumer Payroll Information.

"(2) *Exception*. *Payroll-Services Provider* shall not include a person that both: (A) directly employs the consumer in any capacity, including if the consumer is a salaried employee or officer; and (B) directly collects and maintains all such Consumer Payroll Information in the person's information systems which are not controlled or maintained by any service provider to such person."

⁶ <https://www.regulations.gov/comment/CFPB-2020-0034-0083>.

⁷ 12 U.S.C. § 5481(6)(A).



The key for finding that a *Payroll-Services Provider* is subject to the requirements of the rule under § 1033 is to recognize that the person is providing to a consumer (primarily for personal, family, or household purposes) any payment to the consumer (e.g., wages) or data processing functions relating to *Consumer Payroll Information*, as described in the definition proposed above. The Bureau has ample authority under the CFP Act to determine that, by offering or holding out to a consumer these types of payroll products or services, a person is a *Payroll-Services Provider*, regardless of whether the person also has a contract in place to act as a vendor for the employer. Accordingly, the definition for a *Payroll-Services Provider* must contain terms that are sufficient to defeat the false argument that a person's payroll activities may not be subject to the Bureau's rule under § 1033 because that person only serves the business interests of the employer; in this way, the definition proposed above states that a person qualifies as a *Payroll-Services Provider* if the person "offers or provides to a consumer [any of the covered products or services] . . . directly or indirectly including through any employer." The Bureau must not be deterred in regulating a *Payroll-Services Provider* under § 1033 by the circumstance in which the *Payroll-Services Provider* delivers its products and services, which center on the processing of *Consumer Payroll Information*, to both the employer and to the consumer."⁸

Including payroll service providers as "data holders" would enable employees to access and share this data on an ongoing basis (meeting the existing access requirements outlined in the proposed ANPR).

Data Security

We support the consumer's right to access their data in whatever manner they choose and with whatever application they desire. The key to this premise is the fact that it is based on whatever the consumer chooses. Consumers must have a clear understanding how their data is used and shared and affirmatively opt in to that data sharing. This is of utmost importance and the key tenant to permitting this data access for the industry.

Security of one's systems - and ultimately, the security of the data itself - is critical to the success of this regulation.

When a consumer authorizes data sharing through the Pinwheel API, we are working behind the scenes to protect personal and financial information. Our security policies and practices are designed to meet or exceed the industry standards that banks and leading technology companies use. They include:

⁸ <https://www.regulations.gov/comment/CFPB-2020-0034-0083>.



- End-to-end data encryption: The combination of the Advanced Encryption Standard (AES-256) and Transport Layer Security (TLS) help keep personal information safe end-to-end.
- Strong authentication: Pinwheel protects user data on our systems and requires multi-factor authentication for added security.
- Cloud security: Pinwheel uses secure cloud infrastructure technologies to enable users to connect quickly and safely.
- Robust monitoring: Pinwheel's API and all related components are continuously monitored by our information security team.
- Regular third-party security audits: Industry-leading security firms regularly audit Pinwheel's API and security controls. All data belongs to the user. That means:
 - We don't sell user data to any outside companies.
 - We don't share user data with anyone without user permission.
 - The user is in control of whom they share their data with and for how long.

We are grateful to be at the forefront of innovation in a space that is long overdue for widespread transformation, and to work with regulators in promoting consumer protection and financial inclusion. We would be happy to answer any questions you may have on this statement or as you continue to examine this policy issue.