

Congress of the United States

Washington, DC 20515

September 25, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra,

We appreciate the Consumer Financial Protection Bureau's ("CFPB" or "the Bureau") meaningful steps toward finalizing rules implementing § 1033 of the Dodd-Frank Act. We strongly support a financial ecosystem that is governed by clear rules allowing consumers to control and share their financial data to access the services that best meet their financial needs. To this end, we write today to respectfully urge the Bureau to include payroll data in the rule's purview. We believe that excluding payroll data and the entities that hold it would hinder the Bureau's efforts to enhance consumers' control of their financial lives.

The CFPB's recent proposed rulemaking plan, as widely reported and articulated in its Small Business Regulatory Enforcement Fairness Act (SBREFA) Outline of Proposals and Alternatives under Consideration, is much narrower than the scope of § 1033 contemplated by the statute. The Bureau appears to be drafting a rule that, if finalized, would only apply to "financial institutions" as defined by Regulation E, and "card issuers" as defined by Regulation Z.¹ Importantly, these entities only represent a small subset of covered persons contemplated under § 1033. Specifically, as the CFPB has pointed out, nonbanks offer a rapidly growing range of consumer financial products and services² and collect and share a wide range of consumer information.³

More specifically, leaving data held by covered persons other than financial institutions and card issuers outside the scope of the proposed rule risks harming consumers who have been excluded from the traditional banking system. For example, consumers are often precluded from accessing housing and credit due to the market's reliance on credit scoring data that can be incomplete, inaccurate, or prone to errors. Alternative data, such as payroll information, can be instrumental in allowing consumers to build an accurate financial history, which can be leveraged by consumers seeking to access essential products and services. Proceeding further in the rulemaking process without broadening its coverage risks depriving consumers of access to huge amounts of financial data held by types of covered persons beyond financial institutions and card issuers.

According to Bureau research, one in ten adults in the U.S., or 26 million people, are "credit invisible," and another 19 million adults in the U.S. have "unscorable" credit records.⁴ Together, this accounts for almost 20 percent of the entire U.S. adult population. The information in payroll platforms, such as gross and net pay, length of employment, hours worked, and job title can be used by lenders to build a complete profile of the borrower to expand their pool of serviceable applicants previously limited by underwriting models that only factor in credit scores. At the June 2023 House Financial Services Committee hearing, you acknowledged the importance of transaction data and cash flow data to mortgage and auto lenders, highlighting that data

¹ CFPB, *SBREFA Outline of Proposals and Alternatives under Consideration* (Oct. 27, 2022).

² CFPB, *CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers* (Apr. 25, 2022).

³ 88 Fed. Reg. 16951, 16953 (Mar. 21, 2023).

⁴ CFPB Office of Research, *Data point: Credit invisibles* (May 5, 2015).

demonstrating consumers' income can present an important alternative to reliance on credit scores.⁵ Access to payroll data enables consumers to quickly and easily switch their direct deposit between financial institutions, which aligns with the underlying purpose of § 1033, to move towards open banking by empowering people to choose banks that provide the services that best meet their needs.⁶ Furthermore, these sentiments were reflected in recent comments responding to the Bureau's SBREFA Outline. We encourage the Bureau to recognize the wide consensus among fintech companies, consumer groups, and other respondents that consumers would benefit greatly from expanding the proposed rule's coverage to include payroll providers.

At a recent hearing before the House Financial Services Committee, you testified that the CFPB is "very open to figuring out ways to expand [the rulemaking]," but see the 1033 rulemaking process as a sequencing.⁷ In light of these recent remarks, we urge the CFPB to avoid taking a sequenced approach. While we understand the value of sequencing generally, the time-consuming nature of the rulemaking process risks leaving some especially vulnerable consumers without access to their financial information for an extended period of time.

In conclusion, the CFPB has an important opportunity to achieve the full potential of § 1033 by ensuring that its final rule enables consumers to access and leverage their payroll data. We recognize that the § 1033 rulemaking process is an extremely complex and significant undertaking. Therefore, we encourage the Bureau to include payroll data and the entities that hold this information under the scope of the rulemaking the first time, rather than waiting to recognize the importance of payroll data in the future. Waiting would undermine the Bureau's ambitions to move toward open finance and create long-term uncertainty for consumers seeking to access and utilize the full scope of their financial data.

We appreciate the Bureau's focus on this critically important issue and look forward to continued collaboration to promote consumer choice, financial innovation, and competition as the CFPB moves towards implementing § 1033.

Sincerely,



Gregory W. Meeks
Member of Congress



Al Green
Member of Congress



Bill Foster
Member of Congress

⁵ House Financial Services Committee, *Hearing Entitled: The Semi-Annual Report of the Bureau of Consumer Financial Protection* (Jun. 14, 2023).

⁶ See CFPB, *Director Chopra's Prepared Remarks at Money 20/20* (Oct. 25, 2022) ("While not explicitly an open banking or open finance rule, the rule will move us closer to it, by obligating financial institutions to share consumer data upon consumer request, empowering people to break up with banks that provide bad service, and unleashing more market competition.").

⁷ House Financial Services Committee, *Hearing Entitled: The Semi-Annual Report of the Bureau of Consumer Financial Protection* (Jun. 14, 2023).



Joyce Beatty
Member of Congress



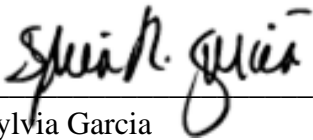
Juan Vargas
Member of Congress



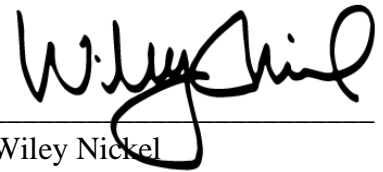
Josh Gottheimer
Member of Congress




Sean Casten
Member of Congress



Sylvia Garcia
Member of Congress



Wiley Nickel
Member of Congress



Brittany Pettersen
Member of Congress