



Argyle Systems Inc.

169 Madison Ave #2136

New York, NY 10016

November 6, 2023

VIA ELECTRONIC SUBMISSION TO: CFPB_consumerreporting_rulemaking@cfpb.gov

Hon. Rohit Chopra
Director

Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Comments in Small Business Regulatory Enforcement Fairness Act Process regarding Outline of Proposals and Alternatives Under Consideration under the Fair Credit Reporting Act.

Dear Director Chopra,

Argyle Systems Inc. (“**Argyle**”) appreciates the opportunity to participate on the Consumer Financial Protection Bureau’s (“**CFPB**” or “**Bureau**”) Small Business Regulatory Enforcement Fairness Act (“**SBREFA**”) panel in connection with the outline of [proposals and alternatives](#) (“**Outline**”) being explored for a consumer reporting rulemaking under the Fair Credit Reporting Act (“**FCRA**”), and to submit these Small Enterprise Representative comments as part of that process.

Argyle is built on the premise that workers should have control over their payroll and other work-related personal data. We offer a fully consumer-permissioned, secure, and automated payroll connectivity and data portability platform that expands financial access for all types of workers, from traditional W2 employees to gig workers and other freelancers or independent contractors. Argyle offers its solutions to consumers both through its customers (*e.g.*, as embedded into a lenders’ loan application processes), and directly to consumers free of charge. We also provide tools that help financial services providers process that data to offer consumers innovative financial products and services.

Consumer-permissioned services like Argyle operate only on the specific instruction of consumers. Consumers use Argyle’s multi-sided payroll connectivity and data portability platform to select where they retrieve their data from, who they deliver that data to, and the duration of those deliveries. Argyle maintains integrations with over 450 payroll, gig company, and workforce management platforms, covering hundreds of thousands of employers and over 220 million consumers. In fact, consumers have chosen to use Argyle’s services to securely connect their



payroll and employment data to their financial service and other providers over 2 million times, improving and expanding their access to mortgage, personal lending, insurance, and gig-economy products and services while maintaining privacy and control over their data. Because Argyle works to empower consumers, it understands and supports the consumer-protective goals of the CFPB’s proposed rulemaking: to ensure that consumers are treated fairly, impartially, and with respect for their privacy.¹

At the same time, Argyle cautions against taking too broad of an approach that conflates businesses that process consumer-permissioned data with businesses that have no relationship with consumers. The CFPB notes that it is considering proposals to regulate “data broker activities.” The term “data broker,” though not defined in the proposal, generally refers to companies that have no relationship with consumers. But the proposal refers to a category of “data brokers that facilitate consumer-authorized data sharing,” suggesting that entities such as Argyle would be considered data brokers, which may, in turn, be considered consumer reporting agencies (“**CRA(s)**”).² Not only would such an approach be contrary to the statutory language of the FCRA, but it would also likely undermine the CFPB’s goal of giving consumers more transparency, choice, and autonomy to fulfill their financial goals. Sweeping consumer-permissioned data aggregators into the proposal would likely *harm* the very individuals, workers, and families the FCRA is intended to protect.

With this perspective in mind, we provide the following responses to a select number of the Bureau’s specific questions. This comment first addresses why consumer-permissioned data service providers like Argyle are not CRAs under the FCRA. Second, it discusses consumer protection and competition concerns that would result from consumer-permissioned data service providers like Argyle being considered CRAs. Finally, it briefly addresses the CFPB’s questions about aggregated and anonymized data.

I. CONSUMER-PERMISSIONED DATA SERVICE PROVIDERS ARE NOT CONSUMER REPORTING AGENCIES UNDER THE FCRA. (QUESTION 8)

The Outline states that, “[d]ata brokers that facilitate consumer-authorized data sharing by accessing consumer information held by data providers and communicating it to third party data recipients are typically engaged in activities that constitute ‘assembling or evaluating’ consumer information under existing precedent; thus, where they otherwise satisfy the definition of “consumer reporting agency,” they are subject to the FCRA.” But companies like Argyle that simply allow consumers to select where they retrieve their data from, who they deliver that data to, and the duration of those deliveries do not satisfy the definition of CRAs under the FCRA.

First, because companies like Argyle interact directly with consumers, the data these companies report represents their own “transactions and experiences” with consumers, which are exempt

¹ See CFPB Outline, at 1-2.

² See CFPB Outline, at 9-10.



from the definition of “consumer report” under the FCRA.³ Because an entity must furnish “consumer reports” to third parties in order to be considered a CRA, and the definition of consumer report excludes information about a consumer’s transactions and experiences with a company, consumer-permitted data providers like Argyle cannot be considered CRAs.

In *Hodge v. Texaco*,⁴ the Court explained that an employee drug test fell under the FCRA “transactions and experiences” exception. In that case, the employee had submitted a urine sample through a vendor and signed a form transmitting the sample to the vendor’s subprocessor. The Court held that the mere transmittal of the authorization forms and the urine through the vendor’s custody procedures did not change the basic nature of the subprocessor’s analysis any more than the use of the mail to receive information about a customer would break the chain of “first-hand experience.”

Similarly, Argyle’s activities are entirely powered by consumers, and their user experience remains firmly within their custody chain. When verifying income or employment, the consumer starts from the data recipient’s website or app. The consumer is then prompted to search their desired income source in our menu, logs in to the selected data source account, authorizes Argyle to connect their account and send their desired data to the intended recipient. The consumer’s data transmission is initiated, selected, authorized, and completed through a procedure akin to the one in the *Hodge* case. As the court noted, the fact that the consumer’s information is transmitted through a third party does not negate the fact that the consumer is engaging in its own transaction, just as they do when they select the U.S. postal mail service to mail a document. Argyle, as the vehicle for the consumer’s own transaction and experience information, cannot be considered a CRA because it is not transmitting a consumer report subject to the FCRA.

Second, companies like Argyle cannot be considered CRAs because they do not “assemble or evaluate” information. In *Zabriskie v. Federal Natl Mortgage Assoc.*,⁵ the court explained that a company is not “assembling or evaluating” information, and is therefore not a CRA, where its activity is limited to selling a software service.⁶ This reasoning is sound. Treating consumer-permitted data processors like Argyle as CRAs would be akin to treating the postal service as engaged in “assembly or evaluation” because it delivers pay stubs on behalf of employers. Just as

³ 15 U.S.C. § 1681a(d)(2).

⁴ 975 F.2d 1093, 1096 (5th Cir. 1992).

⁵ 940 F.3d 1022 (9th Cir. 2019).

⁶ See also [Fed. Trade Comm’n](#), *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretation*, at 29 (2011) (stating that “[a] seller of software to a company that uses the software product to process credit report information is not a CRA because it is not ‘assembling or evaluating’ any information”); see also at 30-31 (stating “[a]n entity acting as an intermediary on behalf of the consumer who has initiated a transaction does not become a CRA when it furnishes information to a prospective creditor to further the consumer’s application. Thus, a mortgage broker does not become a CRA by furnishing consumer reports to prospective creditors on behalf of a consumer that has sought the broker’s assistance in obtaining a loan. An entity does not become a CRA solely because it conveys, with the consumer’s consent, information about the consumer to a third party in order to provide a specific product or service that the consumer has requested.”).



the postal service is not “assembling or evaluating” consumer data when it delivers a printed pay stub that the consumer has printed after logging into their payroll platform, consumer-permissioned services like Argyle are similarly not “assembling or evaluating” data.⁷

In fact, treating consumer-permissioned data service providers as CRAs would lead to the natural conclusion that the consumer, as the party that is instructing the service provider to retrieve and share their data, is the “furnisher.” This result is contrary to the Furnisher Rule, which explicitly excludes consumers from the definition of furnisher.⁸ When a data aggregator retrieves data from a consumer’s payroll or other work-related technology platform at the behest of the consumer and shares that data with a third party selected by the consumer, the data aggregator merely acts as a conduit of the consumer’s will. Treating consumer-permissioned data aggregators as CRAs would lead to an absurd, circular result where consumers themselves would be considered furnishers subject to the FCRA’s accuracy and dispute investigation requirements.⁹

In addition to exceeding the statutory authority of the FCRA, treating consumer-permissioned data service providers as CRAs would violate the spirit and purpose of the statute. The FCRA aims to promote the accuracy, fairness, and privacy of information in consumer reports, while also satisfying the important commercial need for consumer reports in our modern economy.¹⁰ Clearly, the FCRA is intended to provide protection to consumers in situations where they *lack* the transparency and control over the data collected and transmitted about them, especially as it relates to the transmission of inaccurate data. The FCRA does not contemplate circumstances where entities collect and transmit data *at the consumer’s direction* and with transparency and consumer control.¹¹ In fact, many consumer-permissioned data aggregators advance the FCRA’s spirit and congressional purpose by empowering consumers to take control of their financial information.¹²

⁷ Moreover, unlike many data brokers that warehouse consumer data and commercialize it as an asset, redelivering or selling the same data multiple times, data service providers like Argyle create a unique, consumer-authorized pull from the specific data source. This is true, even if Argyle has already pulled that same information from that same data source for the same consumer in connection with a different loan, mortgage, or insurance. And because Argyle is retrieving from the same interface the consumer could use directly, the information is more likely to be complete and up-to-date.

⁸ 12 C.F.R. §1022.41(c)(3) (stating “an entity is not a furnisher when it: . . . [i]s a consumer to whom the furnished information pertains.”).

⁹ Nor is the payroll provider a furnisher because it is *the consumer* who initiates the relationship. The data source does not take any affirmative action to furnish information.

¹⁰ See 15 U.S.C. § 1681.

¹¹ See, e.g., *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (stating FCRA “was crafted to protect consumers from the transmission of inaccurate information about them” and “to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner” and “[the FCRA] was the product of congressional concern over abuses in the credit reporting industry... [its] legislative history...reveals that it was crafted to protect consumers from the transmission of inaccurate information about them...”).

¹² See 114 Cong. Rec. 24,902 (1968) at 24, 903-04.



Indeed, at the heart of the FCRA is the goal to ensure that consumers applying for credit, jobs, and housing are not left helpless in the face of irrelevant or inaccurate information about them, which are bought, warehoused, and sold by parties that the consumer has no relationship with or control over.¹³ In line with these accuracy and confidentiality objectives,¹⁴ consumer-permissioned services like Argyle help consumers to avoid errors and inaccuracies that can occur with manual transcription.¹⁵ Argyle only provides potential lenders with information from data sources selected by the consumer.¹⁶ Because the consumer selects the work accounts that it uses Argyle's software to retrieve their data from, and authorizes the software to access their selected accounts, the risk of a lender being provided with inaccurate or incomplete information from those accounts is lower than in the legacy model where a traditional furnisher self-selects reported information, potentially with bias. This is especially important to consumers who want to access credit but lack enough credit history to generate a credit score. By allowing a prospective creditor to assess a consumer's cash flow with various data sources, consumer-permissioned data access has the potential to meaningfully expand access to credit, improve the quality of financial services, and put consumers in the drivers' seat with respect to their data.¹⁷

II. THE PROPOSED RULES, IF ADOPTED, WOULD HURT CONSUMERS AND COMPETITION. (QUESTIONS 13-15)

Consumer-permissioned tools like Argyle are part of the larger open finance movement that seeks to empower consumers. Perhaps most importantly, they help consumers access and control their financial information by augmenting their ability to port and manage their information in a way they would not be able to on their own. Specifically, open payroll tools facilitate more choice and freedom to consumers by dramatically reducing the cost and friction of moving (and verifying) their income and employment data. On one side of the market, lenders, landlords, and creditors are able to quickly and securely verify information necessary to validate identity and income and avoid a costly and tedious manual verification process. On the other side, consumers are able to access credit and financial products and services faster and cheaper.

Furthermore, by enabling consumers to choose where they port their income and employment information to and from, open payroll tools break up information siloed across different institutions to give consumers an improved chance at accessing alternative financial options. For example, with

¹³ *See id.*

¹⁴ In addition, Argyle is already subject to the Gramm-Leach-Bliley Act's Privacy and Safeguards Rules, thus furthering the FCRA's confidentiality objectives.

¹⁵ Today, approximately 70% of payroll verifications are done manually (*i.e.*, with consumers printing out and manually delivering paystubs).

¹⁶ *See* Verify Your Employment and Income, ARGYLE, <https://argyle.com/verify/>.

¹⁷ *See, e.g.*, U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation, at p.138 (Released on July 31, 2018), available at https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf.



easier data access, more granular controls, and streamlined, consumer-directed data sharing, the marginal cost of a consumer seeking credit or applying for refinancing is reduced. And without the burden of tedious and expensive manual verification, lenders and third parties are able to dedicate more resources towards offering more innovative services and products.

In addition, consumer permissioned tools serve important clerical functions beyond enabling consumers to supply information necessary for verifying identities or income. They autofill applications for customers, who then verify the accuracy of the autofill, speeding up new customer applications and onboarding while reducing the paperwork barrier to applying for credit. Authorized access (and accompanying account verifications) also allow for more timely transactions by allowing for real time, secure authorizations. Overall, these small efficiencies and improved ease of use make a real difference for ordinary consumers – and can mean the difference between a new mortgage or car loan and an abandoned application.¹⁸

Covering consumer-permissioned financial management tools as CRAs could put these consumer benefits in jeopardy for several reasons. First, if consumer-permissioned data aggregators are considered CRAs, it would subject them to the FCRA's strict accuracy and dispute requirements, forcing data aggregators to invest time and resources to create dispute procedures that would be ineffectual for consumers, where errors would most likely lie with original employers or payroll processors. Rather than encouraging these firms to invest more resources towards innovation and quality, the proposal could result in resources being diverted to address the inevitable deluge of notices from consumer disputes. In addition, covered aggregators would need to create a mechanism to monitor, process, and investigate consumer disputes, a significant and costly investment that smaller fintech firms and startups may not be able to afford.

Second, many of Argyle's partners aim to provide innovative services for workers. For example, there are companies that provide specific services to gig workers, such as services to help them track their income or mileage or services that tell drivers where to go to pick up the most lucrative fares. If Argyle were a CRA, these types of services could be considered users of consumer reports who would need to comply with FCRA requirements. This could disincentivize innovation and discourage new competitors from entering the market.

¹⁸ In addition, other financial management products that help consumers include: tools that allow consumers to maintain certain balances in their accounts to avoid bank fees, tools that automatically update their financial information to avoid manual tracking, and tools that allow consumers to view information about the financial products they use at a single provider.

See e.g., Consumer Financial Protection Bureau, Project Catalyst Report: Promoting consumer friendly innovation (Oct. 2016), 22-23, available at <https://www.consumerfinance.gov/data-research/research-reports/project-catalyst-report-promoting-consumer-friendly-innovation/> (stating consumer-permissioned access to financial data forms the “basis for personal financial management tools and mechanisms [that can] reduce the time to verify consumer [accounts]” and provide other consumer benefits and stating the loss of access to consumer data by consumer-permissioned third parties “could cripple or even entirely curtail the further development of such products and services”).



Third, and more broadly, the ease, standardization, security, and consistency of consumer-permissioned data access encourages the proliferation of new and innovative tools and increases competition in the financial services sector, including more competitive interest rates and fee arrangements. Many of the consumer harms the FCRA seeks to address are mitigated and prevented by today’s market for competing data services.

Overall, more options, lower prices, more competitive rates, more innovative and useful tools means better outcomes for consumers.¹⁹ Treating all consumer-permissioned data service providers as CRAs would put these competitive forces into jeopardy by raising the cost of business and forcing small businesses and start ups to spend resources on administrative and technical compliance measures rather than developing new products and services for consumers. The increased cost of compliance would raise the cost of market entry and could disproportionately advantage large, established firms while hurting smaller, less-resourced organizations. Over the long-run, this could even raise the price of products and services for consumers. In sum, the marketplace is healthier and more accountable, and consumers are in a better place in no small part because of consumer-permissioned tools.

III. AGGREGATED OR ANONYMIZED DATA IS NOT A “CONSUMER REPORT” UNDER THE FCRA. (QUESTION 21-22)

The Outline considers the extent to which aggregated or anonymized data may qualify as “consumer reports.”²⁰ However, an interpretation that broadly sweeps in aggregated and anonymized data as “consumer reports” would squarely conflict with the FCRA’s statutory definition, which requires that the information “*bear[] on a consumer.*”²¹ Moreover, such an approach could be harmful to consumers. As noted above, Argyle works with companies that aim to provide innovative analytics products to gig workers and other independent contractors. Sweeping aggregate data into the ambit of the FCRA would disincentivize these types of worker-protective products.

¹⁹ See, e.g., Todd Baker & Snigdha Kumar, *The Power of the Salary Link: Assessing the Benefits of Employer-Sponsored Fintech Liquidity and Credit Solutions for Low-Wage Working Americans and their Employers* (Harvard Kennedy School Mossavar-Rahmani Center for Business and Government Associate Working Paper Series No. 88, 2018), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working.papers/88_final.pdf (analyzing paycheck linked liquidity offerings for low-income consumers, and concluding that employees with access to FinTech products would have better solutions for pressing day to day crises typical of low-wage employees, at much lower cost than market alternatives, and that this would enable credit-invisible consumers to gain access to traditional financial services products for the first time).

²⁰ See Outline, at 11.

²¹ 15 U.S.C. § 1681a(d)(1) (emphases added).



Thank you again for allowing us the opportunity to comment as the Bureau contemplates potential rules to promote consumer agency and freedom. We appreciate your consideration of our comments and look forward to further opportunities to participate in this process.

Respectfully Submitted,

/s/Nicholas Lawson
General Counsel, Argyle

/s/Maneesha Mithal
Wilson Sonsini Goodrich & Rosati
Outside Counsel to Argyle