

November 6, 2023

Via electronic submission to: CFPB\_consumerreporting\_rulemaking@cfpb.gov

Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

**Re: Small Business Advisory Review Panel for Consumer Reporting Rulemaking:  
Outline of Proposals and Alternatives Under Consideration**

Pinwheel thanks the Consumer Financial Protection Bureau (CFPB) for convening the Small Business Advisory Review Panel for its Consumer Reporting Rulemaking, inviting Pinwheel to participate as a Small Entity Representative (SER), and providing an opportunity for Pinwheel to submit written comments.

**I. Introduction**

Pinwheel was founded in 2018 with the mission to create a fairer financial system by unlocking consumers' access to their payroll information. Pinwheel helps empower consumers to take control of their data and to use it to gain access to financial services, credit, and for other purposes a consumer may request. As both a consumer reporting agency and a furnisher, Pinwheel also provides a means of recourse for consumers who believe their data is incorrect.

The CFPB's stated objective of this rulemaking is to regulate many data broker activities as covered under the Fair Credit Reporting Act (FCRA), which would prohibit the sale of covered data for purposes other than those authorized under the FCRA. Most notably, this would limit the sale of certain data broker data for advertising or marketing, for the most part constraining the sale of data to only those companies or persons to whom the consumer applied for credit, insurance, employment, housing, or some other service, or to whom the consumer otherwise authorized access. This would also subject certain data brokers to FCRA obligations, ensuring, for example, that consumers have a right to obtain data about themselves held by data brokers and to dispute inaccuracies in that data.<sup>1</sup>

The proposals identify the need for clear rules defining what entities are considered a "data broker," when a data broker is a consumer reporting agency, and what constitutes a "consumer report." Pinwheel supports the CFPB's goal to clarify these definitions.

Further, the FCRA proposals align with the CFPB's proposed rule to implement section 1033 of the Dodd-Frank Act by aiming to increase consumer control of financial information and transparency as to how and why entities access and use consumers' information. The Consumer Reporting Rulemaking and the proposal to implement Section 1033 could also allow consumers to make use of their financial and payroll data to enable access to financial services, and provide "credit invisibles" and thin-file consumers more opportunities to participate in credit markets.

Pinwheel is generally supportive of the proposals set forth in the outline intended to help consumers assert control of and protect their personal information and financial data. While there

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<sup>1</sup> CFPB, Small Business Advisory Review Panel for Consumer Reporting Rulemaking, Outline of Proposals Under Consideration, p. 3, (Sep. 15, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-rule-sbrefa\\_outline-of-proposals.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf).

are some substantive issues to clarify and fine-tune in the proposals, the overall approach will provide more clarity to help businesses comply with the FCRA and better protect consumers. A clearer regulatory framework for companies that handle consumer information should ensure that important concepts such as data minimization and data privacy are not sacrificed.

## **II. Data Security and Data Breaches**

Q29. What data security improvements, and associated costs, would consumer reporting agencies incur if they were liable under the FCRA for all data breaches & Q7. What factors disproportionately affecting small entities should the CFPB be aware of when evaluating the proposal under consideration? Would the proposal under consideration provide unique benefits to small entities?

*In the Consumer Reporting proposal, the CFPB is considering placing strict liability for data breaches on consumer reporting agencies and furnishers. However, even if new rules determine where liability resides, the consumer is still harmed by the very occurrence of a data breach. Pinwheel believes that strict liability would not lead to improved compliance practices by consumer reporting agencies and furnishers, but instead will likely put many small entities out of business. Specifically, expanding a small business consumer reporting agency's liability for "data breach" to unauthorized access of a consumer report by a user would likely put an undue and unfair burden on small consumer reporting agencies. Consumer reporting agencies are obligated under the FCRA to implement reasonable procedures which should include due diligence of users and contractual requirements of users to have permissible purpose and maintain information security safeguards and standards. If users are bad actors and it's not reasonable for the consumer reporting agency to have known this, then it shifts an undue burden to consumer reporting agencies.*

*Additionally, insurance may be unavailable to small entities which could negatively impact consumers. Class action litigation could also increase, leading to enormous settlements and verdicts, which would benefit plaintiffs' attorneys and harm consumers. Moreover, the consumer will still be harmed by identity theft's downstream consequences including financial loss, inconvenience, emotional trauma, the stress of data monitoring, and uncertainty about when and where such data may be used against the consumer by a bad actor. Importantly, the proposals to impose strict liability on consumer reporting agencies that may have done nothing wrong fail to address the consumer harm caused by the actual bad actors.*

Q5. Other than compliance costs, what costs, burdens, or unintended consequences should the CFPB consider with respect to the proposal under consideration? Please quantify if possible. What alternatives, if any, would mitigate such costs, burdens, or unintended consequences?

*Consumers have the right to request disclosures of and to dispute information on their consumer reports, and consumer reporting agencies and furnishers must retain consumer information for extended periods to be able to comply with those requirements. Two factors that increase the risks of data and privacy breaches are the amount of data retained and how long data is retained. An unintended consequence of the FCRA's application to a broad spectrum of data brokers is the greater potential and opportunity for data breaches due to the longer data retention requirements, beyond which is required for*

*the intended use of the data.<sup>2</sup> The General Data Protection Regulation (GDPR), the Gramm-Leach-Bliley Act (GLBA), the California Consumer Privacy Act (CCPA), and other privacy laws are based on privacy by design and data minimization, and allow consumers to require deletion of their data. These privacy laws work in conjunction with the FCRA to avoid overlap and the unintended consequences of too much data being held for too long.<sup>3</sup>*

*Pinwheel supports an information security safeguards standard with which consumer reporting agencies would need to comply under the FCRA. One approach would be to extend the GLBA Safeguards Rule to consumer reporting agencies. The Safeguards Rule, promulgated under GLBA, requires financial institutions to implement and maintain certain controls to protect the security, integrity, and confidentiality of consumer data. Specifically, the Rule imposes standards prohibiting the unauthorized disclosure of customer information, requiring service providers to implement and maintain those same controls, and requiring the secure disposal of customer information.*

### **III. Definitions of “Consumer Report” and “Consumer Reporting Agency”**

Q8. If the CFPB proposes the approaches described above, what types of entities would fall within the definition of “consumer reporting agency”? Are there certain types of entities that should not fall within the definition of “consumer reporting agency”?

*Depending on specific consumer permissions, Pinwheel may fall within the definition of “consumer reporting agency.” Consumers engage directly with Pinwheel after initially seeking out a specific financial service through a financial institution. The consumer provides written instructions and consent to Pinwheel to access the consumer’s payroll provider account to pull income and employment data to be used for a product or service of the financial institution selected by the consumer. Then, at the direction of the consumer, Pinwheel compiles that data and sends it to companies selected by the consumer that will make a lending or other decision for that consumer.*

*Under the proposals under consideration, it appears that most entities that handle or transmit consumer data would fall under the definition of “consumer reporting agency.” If the definition of “consumer reporting agency” is broadened to include entities that previously may not have been subject to FCRA, these entities would need clarity as to their obligations as a consumer reporting agency and to understand which exceptions, if any, may apply and under what circumstances.*

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<sup>2</sup> Currently, data brokers are not required to retain data (even though they may chose to retain data).

<sup>3</sup> Federal Trade Commission, Data Brokers A Call for Transparency and Accountability, FN 88, (May 2014), <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf> (Commissioner Wright believes that in enacting statutes such as the Fair Credit Reporting Act, Congress undertook efforts to balance the benefits of information collection and sharing (fair and accurate credit reporting is beneficial to both businesses and consumers) against the costs of such information collection and sharing (potential risks to confidentiality, accuracy, relevancy, and appropriate use). In doing so, Congress carefully articulated the types of information to be protected, limited the use and access to such information, and provided certain consumer protections relating to the accuracy of and the ability to dispute and correct such information. In the instant case, Commissioner Wright is wary of extending FCRA-like coverage to other uses and categories of information without first performing a more robust balancing of the benefits and costs associated with imposing these requirements.).

Q10. If the CFPB proposes the approach described above with respect to data brokers that sell certain types of data, would it be sufficient to provide a standard for (or guidelines about) what types of data are “typically” used for an FCRA-covered purpose or should the CFPB provide a list of such data types? What standards, guidelines, or data types should the CFPB consider for each FCRA-covered purpose?

*A standard for or guidelines about what types of data are typically used for a FCRA-covered purpose would provide clarity to entities that handle that type of data. Entities should always obtain consumer permission to access the data.*

*An example is payroll data held by a payroll provider or employer. Pinwheel believes it would be beneficial to consumers for this data to be covered under the CFPB’s final rule to implement Section 1033 and the FCRA. This data can enable consumers to access credit and can be used for employment eligibility determinations because it bears on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. However, if income information is used for a non-FCRA purpose, such as determining if a consumer reaches an income threshold to be eligible for a vacation package, FCRA governance may not be appropriate. A chart that matches data type to data use, would be a useful tool to provide clarity.*

Q11. Are there other ways in which the CFPB should be thinking about how and when data broker data should be considered a consumer report furnished by a consumer reporting agency?

*To determine when data broker data should be considered a consumer report, it is important to understand how the data is collected and for what purpose. Specifically, the CFPB should consider whether a data broker receives data from a “furnisher” as defined by FCRA, whether the consumer provides consent for the data to be used for certain purposes, whether the data broker purchases the data from a third party that has collected the data, and consumer expectations.*

*Compiling data to create a consumer report should trigger FCRA and require the compiler of such data to be considered a “consumer reporting agency” (even before there is “reporting”), and then sharing the consumer report with third parties would trigger FCRA obligations for “users.” Also, the definitions of “consumer report” and “consumer reporting agency” should not be circular or interdependent.*

Q12. If any of the proposals under consideration that would make a data broker subject to the FCRA as a consumer reporting agency were finalized, do you anticipate that your firm or your customers will seek to obtain consumer consent before providing consumer reports to third parties? If so, what challenges do you foresee with obtaining consumer consent?

*Pinwheel obtains consumer consent before accessing any consumer information that is used in Pinwheel’s services. Pinwheel also requires its customers to obtain all consents required as part of the services Pinwheel’s customers offer to consumers. Pinwheel believes that data brokers should obtain consumer consent if data brokers provide consumer reports to third parties. This may be a challenge to “third-party data brokers” that do not interact directly with consumers.*

Q14. What are the types of intermediaries, vendors, and other entities that transmit consumer data electronically between data sources and users? For any such company, describe the types of information the company obtains, from which data sources, who determines the sources of

information to use, and how the information is transmitted, used, interpreted, or modified by the company.

*Pinwheel is an “intermediary” that a consumer has authorized to transmit the consumer’s payroll data from a payroll provider to a user that the consumer has requested to receive such information. In the “intermediary” role, Pinwheel obtains information from a consumer’s payroll account maintained by a payroll provider or an employer to enable consumers to receive valuable financial services from the user of the information, such as enabling a consumer to switch banks, income verification, personal financial management, or access to credit.*

Q15. Are there any circumstances under which the activities of an intermediary, vendor, or other entity that transmits consumer data electronically does not create a risk of harm to a consumer?

*Data transmission always creates some risk of harm as the possibility exists that the data could be accessed by outsider hackers or other bad actors or could be used in an unauthorized manner. When a consumer consents to transmission of data, presumably such consumer is doing so because there is an articulated and desired benefit to the consumer which balances against the risk of harm. In sum, it should be transparent to the consumer that the risk of harm always exists but may be mitigated by a benefit to the consumer.*

Q16. What types of information do firms typically consider to be credit header data? What types of credit header data are typically sold or purchased and for what purpose(s)? How is data collected for those purposes and how is it stored?

*Credit header data typically describes the “above the line” identifying information in a consumer report database including name, address, SSN, telephone numbers, DOB, and other personally identifiable information (PII). This type of information is valuable in fraud prevention and identity services. Pinwheel collects this data with the consumer’s permission and stores such data as necessary for the particular Pinwheel service that a customer purchases and to help with fraud prevention. Storage of PII at Pinwheel is subject to Pinwheel’s internal policies and external compliance review.*

*Uses for Identity Verification and Authentication: In an increasingly mobile society, consumer data applications are integral to authenticating the right person, location, and device. Identity verification and authentication solutions demonstrate to users indicia of fraud or other improper activity. These products are not used solely to deny applications, so these uses are not eligibility uses. They rely on data like credit header data that are governed by laws other than the FCRA, namely the Gramm-Leach-Bliley Act (GLBA). For example, online authentication plays a key role in customer convenience in online transactions, where consumers can use their trusted online identities to complete transactions on their timelines through the use of third-party data. At the airport, trusted identity programs driven by consumer data speed travelers through security while enhancing public safety. Identity verification and authentication solutions reduce friction in person and online to make transactions more seamless.*

*Consumer Fraud Prevention: Consumer data and analytics solutions enhance protection against identity theft while meeting consumers’ convenience expectations outside of identity verification and authentication applications. The FTC recognized the benefit that*

*data has in fraud prevention in its report on Big Data.<sup>4</sup> Fraud prevention and detection services provide information on known fraudsters and fraud strategies and identify potential fraud risks based on comparing applicant-supplied data with data available from third-party sources, historic transactions, and observed behaviors. Subscribers of these types of services use the information provided to mitigate fraud losses. The savings realized by the subscribers result in lower-cost products and services, ultimately benefiting consumers. Consumers are also able to access monitoring products directly to be alerted to identity or fraud issues that may impact them. For example, fraudulent tenant and mortgage applications, as well as fake landlord offers and mortgage swindles, are reduced by consumer data and analytics providers' fraud prevention and verification tools. Fast consumer lending fraud prevention relies on a consumer data network supported by a sophisticated system of consumer data aggregators, analysts, and application providers. Even fraud in consumer disputes from credit repair organizations—which the CFPB has rightly targeted—is reduced with anti-fraud verification from consumer data and analytics providers.<sup>5</sup>*

Q17. Under what circumstances do firms typically consider the sale or purchase of credit header data *not* to be a consumer report, and why? What costs would be incurred if such sales or purchases of credit header data were to be considered a consumer report?

*Pinwheel does not sell credit header data and currently does not plan to do so. Generally, firms do not consider credit header data to be a consumer report because the data is only identifying information and does not include any credit scores or attributes. Identifying information alone should have no bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. However, firms should take care to avoid using any identifying information that may reflect any of the foregoing. For example, an address may be reasonably reflective of mode of living, and date of birth (DOB) including the year may reflect personal characteristics.*

#### **IV. CFPB review of implementation processes and costs**

Q42. For the proposals under consideration that are relevant to their businesses, small entity representatives are encouraged to provide specific estimates, information, and data on the projected one-time and ongoing costs of compliance if the proposals were adopted. Information and data on current FCRA compliance costs (baseline costs) will be valuable as well.

*Pinwheel has invested significantly in an information security infrastructure that protects consumer data and complies with GLBA safeguards. Pinwheel employs a CISO (Chief Information Security Officer) who works to ensure Pinwheel adheres to ISO, NIST, and PCI compliance standards and has been certified by a third party to such adherence. In connection with Pinwheel's income and employment verification services, Pinwheel has invested resources to establish practices and policies required of a nationwide specialty consumer reporting agency and furnisher and currently complies with the FCRA*

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<sup>4</sup> FTC, Big Data: A Tool for Inclusion or Exclusion, at 5, (Jan. 2006), <https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusionunderstanding-issues/160106big-data-rpt.pdf> (“[M]ining large data sets to find useful, nonobvious patterns is a relatively new but growing practice in... fraud prevention.”).

<sup>5</sup> See CFPB, Don't Be Misled by Companies Offering Paid Credit Repair Services, (Sep.. 2016), [https://files.consumerfinance.gov/f/documents/092016\\_cfpb\\_ConsumerAdvisory.pdf](https://files.consumerfinance.gov/f/documents/092016_cfpb_ConsumerAdvisory.pdf).

*requirements. An increase in the number of disputes may result if FCRA is extended to other areas of Pinwheel's business which may require hiring additional staff to address. However, since all data Pinwheel assembles and evaluates for all of its service offerings is consumer permissioned, disputes and complaints have been minimal, so Pinwheel does not anticipate an immediate increase in staffing and support requirements.*

## **V. Consideration of the impacts on business operation and revenues**

Q43. For each of the proposals under consideration above, do you expect that your firm would restrict or eliminate any product or service offerings to comply with the rule? If so, how would the proposals impact those products or services?

*Pinwheel would not need to restrict or eliminate any of its current offerings and additional regulatory clarity will help Pinwheel develop new services in the future in compliance with the relevant laws and regulations.*

Q44. For each of the proposals under consideration above, please provide information, data, and/or estimates of impacts to your firm's business operations and revenue, including to both current operations and revenues and to future operations and revenues that could potentially be lost.

*As discussed above, Pinwheel is currently both a CRA and a furnisher. Pinwheel determined that it was in the best interest of consumers for Pinwheel to implement policies and procedures applicable to a consumer reporting agency as required by the FCRA for the purpose of Pinwheel providing income and employment verification information about consumers to financial institutions and lenders at the request of consumers. Pinwheel wanted to make sure it was protecting consumers by making privacy and security a priority, so it invested resources in setting up security and internal policies and procedures in compliance with the FCRA. Costs incurred at the time involved using outside legal and compliance experts to help develop the policies and set up operations. Pinwheel is currently staffed to continue to support ongoing compliance. If the rulemaking requires Pinwheel to comply with the FCRA in other aspects of its business outside of income and employment verification reports, then Pinwheel believes that current operations will support the new rules as proposed. Pinwheel does not anticipate that revenues associated with current non-FCRA services will be lost since Pinwheel's FCRA-compliant operations would be extended to those other areas of Pinwheel's business.*

## **VI. Conclusion**

In conclusion, Pinwheel appreciates the opportunity to submit this feedback to the CFPB in response to its Consumer Reporting Rulemaking. We look forward to continuing to work with the Bureau to promote innovation, consumer protection, and financial inclusion.

Sincerely,

*Mara Berman*

Mara Berman,  
Commercial Counsel, Pinwheel