

November 2, 2022

The Honorable Lina Khan
Chair

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington DC 20580

Request for an Investigation into Equifax, Experian, and Other Payroll Data Brokers

Dear Chair Khan,

I write on behalf of Argyle Systems Inc. (“Argyle”) to join Certree’s September 27, 2022, letter calling on the Federal Trade Commission (“FTC”) to investigate the anticompetitive and anti-consumer practices of the nation’s largest providers of income and employment verification services, such as Equifax and Experian.¹ The income and employment verification industry is fundamentally broken. The nation’s largest credit reporting agencies have used their historically dominant positions to collect payroll records on millions of Americans without their consent, which they then sell to lenders, landlords, debt collectors, and other customers as part of their workforce verification services. As a result, consumers’ data is constantly bought, moved, stored, and re-sold without their knowledge or any meaningful consent, and the dominant players in a concentrated market give workers little to no choice in what happens to their personal data.

Argyle is built on the premise that workers should have control over their employment and payroll data. We have built a fully user-permissioned, secure, and automated employment data portability solution that expands financial access for all types of workers while preserving worker privacy. We believe that the ubiquitous buying and selling of employment and payroll data harms both consumers and competition. We respectfully ask the FTC to investigate the payroll data broker industry, whether through enforcement actions, Section 6(b) studies, public workshops or listening sessions, or a combination, for all the reasons outlined in Certree’s letter. We write today to highlight a few additional issues that the FTC should pursue in an investigation of the employment verification industry, including how dominant companies exploit consumer data without obtaining consent and prohibit data portability in ways that harm consumers and competition. We expand on the reasons for our request below.

¹ Letter from Pavan Kohcar, CEO, Certree to Chair Lina Khan, Federal Trade Commission (Sept. 27, 2022), https://www.certree.com/assets/petition_to_ftc.pdf.

I. Dominant platforms exploit payroll and employment data without consumer consent and deny workers the right to port their data using platforms that compete on privacy and security.

Currently, large data brokers control and process virtually all employment and payroll data in the U.S., with Equifax claiming to collect over half of the nation's workforce data.² Notably, Equifax and Experian have spent billions of dollars acquiring competing verification services to prevent competition. As described in Certree's letter, the immense scale of the largest brokers allows them to obtain partnerships and exclusive contracts with employers. In many cases, workers are not aware that their employers are sharing their payroll data and are not given the opportunity to choose a broker or prevent the sharing of their information. Moreover, workers generally cannot opt-out of data collection from their employers and have virtually no control over their data both during and after they leave a job, making it harder for them to catch and fix mistakes that could lead to hardships in their ability to secure loans, rent or buy a home, or apply for better jobs. Workers must typically consent to income or employment verification during the application process for a loan or mortgage, but few of them understand how their data will be used by companies like Experian and Equifax—including whether their data will be repurposed or resold, used by other business segments, or aggregated and combined with other data sets for new products and services. In addition, the cost of these verifications are typically passed onto the worker; workers are, essentially, paying for the sale of their own data, often at exorbitant price points. All of these aspects of the broker-centric payroll data economy facilitate exploitation of consumer data by the largest players.

The FTC could help limit this exploitation by ensuring that workers can gain access to their payroll data from intermediaries like payroll processors, human resources providers, and gig economy platforms and share it with providers of their own choosing. This is the fundamental concept behind “open banking,” which Director Rohit Chopra has laudably sought to prioritize at the Consumer Financial Protection Bureau (“CFPB”) in line with President Biden's Executive Order on Promoting Competition in the American Economy.³ Director Chopra has advocated for new rules under Section 1033 of the Dodd-Frank Act, which requires consumer financial services providers to make available to consumers information in the control or possession of the provider concerning consumer financial products or services that the consumer obtained from the provider.⁴ And just last week, Director Chopra announced that the CFPB is formally beginning a rulemaking process to move us in the direction of “a more open ecosystem that is broadly inclusive of both consumers and businesses...”—providers of data, recipients who ingest the data, as well as intermediaries who provide data portability solutions will all, sensibly, be part of the conversations leading to the ultimate CFPB-proposed rule.⁵

² Chmura, C., Your Pay Stub is Probably in the Cloud; Silicon Valley Startup Recommends a 'Vault' Instead, NBC Bay Area (May 6, 2022), <https://www.nbcbayarea.com/investigations/consumer/your-pay-stub-is-probably-in-the-cloud-silicon-valley-startup-recommends-a-vault-instead/2883933/>.

³ CFPB to Seek Feedback on Open Banking Rulemaking in November, PYMNTS (July 22, 2022), <https://www.pymnts.com/news/regulation/2022/cfpb-to-seek-feedback-on-open-banking-rulemaking-in-november/>; Exec. Order No. 14036 on Promoting Competition in the American Economy, 86 Fed. Reg. 36,987 (July 9, 2021).

⁴ 12 U.S.C. § 5533(a).

⁵ News, Director Chopra's Prepared Remarks at Money 20/20, CFPB (Oct. 25, 2022), <https://www.consumerfinance.gov/about-us/newsroom/director-chopra-prepared-remarks-at-money-20-20#:~:text=Around%20the%20world%20and%20here,companies%20compete%20in%20the%20sphere.>

These proposed rules would give consumers more power to share their financial data with multiple providers. It is not clear, however, whether Section 1033 extends beyond traditional financial institutions to other custodians of sensitive consumer financial data that is essential to consumers' lives and for robust competition, such as payroll processors, HR providers, and other intermediaries of payroll data, like gig economy platforms.⁶ "Open banking" without "open payroll" is overlooking a critical component of the ecosystem. Beyond requiring access and portability for banking transaction-level data, a truly open financial system would require the custodians of other information on which the financial system depends to make that data readily available and portable in standardized formats on a consumer-permissioned basis.

An example of this type of "other information" that is inherently part of any fulsome conversation regarding payroll connectivity as it relates to income and employment data generally can already be seen in the gig economy, which has been of recent interest to the FTC. Rather than empower gig workers to leverage the insights their work and payroll data can provide, some gig companies attempt to moat their workers' data to inhibit competition contractually or by restricting gig workers' use of data portability tools. These data portability tools could facilitate gig workers' comparison of the profitability of their work for different platforms (e.g., income per mile driven for a ride-sharing platform) and without which gig workers' freedom to make informed decisions about the platforms they work for is limited.⁷ The FTC is taking important steps to ensure that gig workers are protected under our consumer protection and competition laws, including issuing a formal policy statement announcing its focus on gig work and its ramifications for workers and consumers.⁸ The importance of treating gig workers as consumers entitled to protection under the laws the FTC enforces extends to all circumstances. "Open payroll"—including user permissioned and directed data portability—is critical to combatting an area of potential harm to workers in the gig economy, i.e., diminished bargaining power.⁹ Payroll connectivity and data portability software providers like Argyle recognize the importance of empowering gig workers with the tools they need to evaluate gig platform-related costs and benefits—another area the FTC has flagged as an important enforcement priority.¹⁰ We do so by providing gig workers tools to port their data on a user-permissioned basis to companies providing services to them, including those offering insights into particular worker earnings across platforms, and thereby facilitate informed choice about with what platforms to continue and under what conditions.

Consumer consent and data portability are core to Argyle's product and mission in the payroll connectivity and data portability software space. For example, Argyle's Open Network business helps employers and payroll processors standardize employment and payroll data to make consumers' data interoperable and portable into the financial services ecosystem on a consumer-permissioned basis at no charge to the consumer. We ask that the FTC continue its efforts in this space and consider enforcing controls on the companies' ability to exploit payroll data in a manner that harms gig worker consumers.

⁶ CFPB, Small Business Advisory Review Panel for Required Rulemaking on Personal Financial Data Rights, Outline of Proposals and Alternatives under Consideration 66 (Oct. 27, 2022), https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf (defining "covered data provider").

⁷ While this type of data is not strictly income/employment data in the traditional sense, it contains private information that belongs to the workers. Gig platforms are controlling the access and use of this data, harming both consumers and competition by inhibiting consumers from making data-driven decisions regarding what gig platforms they want to work for.

⁸ Fed. Trade Comm'n, FTC Policy Statement on Enforcement Related to Gig Work (Sept. 15, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Matter%20No.%20P227600%20Gig%20Policy%20Statement.pdf.

⁹ Id. at 5.

¹⁰ Id. at 7-8.


II. Large data brokers use their dominant positions to inhibit innovation and competition and harm consumers.

As mentioned, large data payroll brokers use their dominant positions to collect millions of payroll records, often through partnerships, acquisitions, and exclusivity agreements that include employer incentives aimed at edging out competitors. In a highly concentrated market where Equifax and Experian engage in rampant anticompetitive practices, it is difficult for innovative companies and other new entrants to effectively compete. FTC intervention could level the playing field and foster the development of emerging payroll connectivity and data portability software technologies that provide significant benefits to consumers and stop the unbounded exploitation of worker data by monopolist data brokers.

Argyle has a unique interest in ensuring that payroll data sharing is consumer-permissioned and portable. Our mission is to provide consumers with the tools they need to take back control of their employment and payroll data. Our platform allows consumers to choose who receives their employment data and revoke that access when they see fit. This ensures data accuracy as consumers will be able to consistently track their data and correct any mistakes, such as unjustified loan or credit denials, without engaging in cumbersome and often ineffective dispute procedures. Argyle believes that empowering consumers to control their own data will protect consumer interests better than the current broker-centric system, which depends upon information asymmetries to drive profits while abusing consumer data. We urge the FTC to investigate the unfair, deceptive, and anticompetitive practices of the payroll data broker industry.

Additionally, the FTC could shine a light on these practices through workshops or listening sessions, much as the CFPB did with respect to open banking and the implementation of Dodd-Frank Section 1033. We would be pleased to contribute to such a process in any way that may be helpful, or otherwise to answer any questions the FTC may have.

Thank you for your attention to these important issues.

Respectfully, 
Shmulik Fishman
CEO & Founder of Argyle Systems Inc.

CC: Commissioner Rebecca Slaughter
Commissioner Christine Wilson
Commissioner Alvaro Bedoya

Secretary April Tabor
Samuel Levine, Director, Bureau of Consumer Protection
Holly Vedova, Director, Bureau of Competition