



January 8, 2024

Director Rohit Chopra
LP Payment Apps Rulemaking
Consumer Financial Protection Bureau
c/o Legal Division Docket Manager
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2023-0053, *Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications*

Dear Director Chopra:

This letter is submitted on behalf of the American Bankers Association and the Consumer Bankers Association. We appreciate the opportunity to provide comments on the proposed rulemaking *Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications* issued on November 17, 2023.

We are pleased that the Consumer Financial Protection Bureau (CFPB) is establishing supervisory authority over large nonbank providers of general-use digital payment applications. It is essential that the same consumer protections that are provided by banks to their customers be provided by nonbanks to their own customers when those nonbanks offer the same services. Therefore, supervision of consumer protections should be consistent across the industry regardless of whether the provider is a bank or nonbank. CFPB supervision in conjunction with examinations will help to improve consumer protection in what is now an underregulated area.

Recommendations

We support the test in the proposed rule that would identify covered nonbanks by the type of payment service provided and the annual transaction limit of 5 million per year, with the Small Business Administration (SBA) size standard exemption. The proposed rule indicates that this test would result in 17 covered entities.

We recommend that the CFPB reevaluate these test limits on an ongoing basis to ensure that they cover an appropriate number of nonbank payment providers. The CFPB should make these analyses publicly available when they are completed.

The proposed rule states, “The CFPB is proposing to establish supervisory authority over nonbank covered persons who are larger participants in this market because this market has large and increasing significance to the everyday financial lives of consumers.” The CFPB should make every effort to ensure that establishing supervisory authority over covered nonbanks is conducted in a manner consistent with the requirements that financial institutions must meet. This is essential to achieve the goal of this proposed rule to provide equal protections to consumers regardless of the type of entity providing the payment service.

We recommend that the CFPB outline its proposed examination process in greater detail to ensure that nonbanks providing these services are supervised in a manner consistent bank supervision.

The intent of this proposal is to ensure that nonbank payment providers be subject to supervision that is consistent with bank supervision. We support this increase in supervision of nonbank but have concerns that the rules may inadvertently increase the burden on banks that are already subject to the rules and are supervised and regulated, and that messaging may mislead consumers about the differences between banks and nonbanks.

We recommend that the CFPB evaluate its supervision to ensure that the requirements for nonbanks to meet their consumer protection obligations are examined and enforced consistently with the examination and enforcement practices applied to banks without changing the requirements of those banks.

The CFPB should be diligent in its review of nonbank activity regarding any possible regulatory arbitrage efforts to escape oversight. Entities may seek to avoid costly CFPB supervision. This could take the path of structuring transaction volumes to just under the 5 million limit. Or it could be related to an abuse of an allowable exclusion of a “consumer payment transaction.”

We recommend the CFPB remain vigilant to any attempts to avoid its rightful oversight.

We have serious concerns about how the proposed rule has expanded its definition of “funds” to include digital assets and virtual currencies such as bitcoin. This new “interpretation” would place bitcoin transactions made for household purposes under the definition of “consumer payment transaction” in the rule. This is a substantive action by the CFPB that is made with little underlying justification for the proposed change.

We recommend that the portion of this proposed rule that reinterprets the definition of funds to include digital assets be removed and reconsidered in a separate rulemaking by all the appropriate regulators. The topic of digital asset supervision is larger than consumer protections for payments and should be subject to its own comprehensive public comment and debate process instead of being shoehorned into this rulemaking. Before moving forward with any rule impacting digital currencies, the CFPB should coordinate with its sister agencies that also have jurisdiction and ensure the following questions are answered: How will the CFPB determine if it is a domestic transaction? How will the CFPB determine the transaction is for household purposes? Will this rule only govern hosted wallets facilitating virtual currency transactions? Will non-hosted wallets be covered?

We agree with the proposed rule’s statement as described in Footnote 7 that the Bureau’s supervisory authority over larger participants covered by this proposal would extend to any activities of covered participants “that involve other consumer financial products or services or are subject to Federal

consumer financial law.” While covered larger participants might have a variety of non-consumer or non-financial business lines, the Bureau has jurisdiction over any activity subject to federal consumer financial law and its supervisory authority should reach those activities. This position would help achieve consistency with banks: although the Bureau’s authority over depository institutions depends on the institution’s asset size, the Bureau can examine any activity in the institution that could be subject to Federal consumer financial law, even if the activity is unrelated to the institution’s assets.

Thank you for your consideration of these comments. We look forward to any opportunity to discuss our comments in more detail. Should you have any questions, please contact Stephen Kenneally at skenneally@aba.com.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephen Kenneally". The signature is written in a cursive, flowing style.

The American Bankers Association

The American Bankers Association is the voice of the nation’s \$23.4 trillion banking industry, which is composed of small, regional, and large banks that together employ approximately 2.1 million people, safeguard \$18.6 trillion in deposits and extend \$12.3 trillion in loans.

Consumer Bankers Association

The Consumer Bankers Association (CBA) is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.