

January 8, 2024

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

Comments of the Taxpayers Protection Alliance

RE: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications

Docket ID: CFPB-2023-0053

On behalf of millions of taxpayers and consumers, the Taxpayers Protection Alliance (TPA) is pleased to submit comments to the Consumer Financial Protection Bureau (CFPB) in regard to this proposed rule on digital payment applications. In this capacity, TPA asks that CFPB re-consider this rulemaking or – at the very least – extend the comment period to provide additional clarity that is lacking in the record.

According to the CFPB's website, the agency's mission is to "protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law" and to "arm people with the information, steps, and tools that they need to make smart financial decisions." These are worthy and laudable goals, neither of which TPA would oppose on principle.

However, it is altogether unclear how the proposed rule in question would advance the agency's mission in any way. The agency already has the ability to step in if nonbank digital payment applications act outside of the law. That is not the issue at hand. What would change under this proposed rule is the level of supervisory authority granted to CFPB to monitor the daily workings of these companies.

According to Evan Weinberger of *Bloomberg Law*, "Beyond just compliance with regulations, the rule would let the agency's examiners sit in corporate headquarters and have access to any information they want." Thankfully, the CFPB already has the tools at its disposal to address illegal, predatory behavior. This proposal, on the other hand, would bring the overbearing hand of government down on the companies that provide valuable financial and non-financial services.

Consumers utilize nonbank digital payment applications to streamline transactions and when they lack access to traditional banking resources for various reasons, including credit availability. No doubt, these applications have come across CFPB's radar precisely because of their immense popularity and accessibility. They make it easier for consumers to access and spend their hard-earned money in a very tangible way. An agency dedicated to consumer protection ought to applaud the rapid proliferation of such applications – as well as the fact that there now exist many such options.

These applications are a resounding response of market forces to consumer demands. All of this occurred without CFPB eyes constantly watching over them. The proposed heavy-handed approach may actually have the reverse effect of stifling consumer-friendly innovations in the future by

creating a disincentive to offer such services. The message will be clear: if you are successful in this space, the CFPB is going to treat you as if you are acting maliciously.

Lending to the idea that CFPB seeks to rapidly and grossly expand its purview is the fact that the rulemaking, per the agency, would cover the services of at least 17 firms that both do and do not compete with one another. The definition of “general-use” digital consumer payment applications is seemingly arbitrary and – at times – too broad. For example, in the agency’s published notice, CFPB states unequivocally that peer-to-peer (P2P) fund transfers would qualify as general use.

This inclusion glosses over the fact that such transactions – like those on apps such as Venmo – are part of a closed-loop system. The transfers are direct between two individuals. Both individuals must be registered to participate. The CFPB’s notice acknowledges this, acquiescing, “[A] P2P application could not be used as a payment method at checkout with merchants, retailers, or other sellers of goods or services.” Yet, the notice opts to include them under the definition of general use – alongside drastically different services like Apple Pay or Google Pay – without providing adequate justification.

Further, the CFPB’s notice sets an arbitrary threshold of five million *transactions* – not users – to qualify for this level of increased oversight. The CFPB’s stated justification seems to indicate that it wants to incorporate as many different firms as possible into its oversight:

“The CFPB believes that a threshold of five million is reasonable, in part, because it would enable the CFPB to cover in its nonbank supervision program both the very largest providers of general-use digital consumer payment applications as well as a range of other providers of general-use digital consumer payment applications that play an important role in the marketplace. Further, certain populations of consumers, including more vulnerable consumers, may not transact with the very largest providers and instead may transact with the range of other providers that exceed the five million transaction threshold.”

Ultimately, it appears that snooping on American businesses is the goal of the proposal, not consumer protection. In a press release regarding this proposal, the CFPB states, “Big Tech and other nonbank companies operating in the payments sphere do not receive the same regulatory scrutiny and oversight as banks and credit unions.” This is hardly the moral crusade on behalf of vulnerable consumers it purports to be, but rather mission creep by an agency outside of its core jurisdiction.

If this were an action aimed at advancing consumer protection, CFPB may have been able to allege actual evidence of wrongdoing in its notice. As mentioned earlier, the CFPB’s mission is to protect consumers from unlawful business practices. It is not a surveillance agency. Even so, this proposal would not stand up to scrutiny, as the agency has failed to provide any evidence of wrongdoing or consumer harm other than that these applications have developed beyond the current reach of CFPB’s heavy hand.

The broadness of this approach would likely cost taxpayers millions of dollars, if not more, while reducing access to financial tools and harming competition. This comes at a time when the funding structure and constitutionality of the agency is an open question before the Supreme Court. The Court is reviewing a Fifth Circuit decision that ruled the agency sourcing its funding from the

Federal Reserve is unconstitutional. This view was even affirmed by the previous CFPB Director, Kathleen Kraninger.

Given the open questions surrounding the agency, it is an unwise use of taxpayer resources to expand the agency's authority in this way. If the Supreme Court upholds the Fifth Circuit, it is likely to be unwound anyway, needlessly deterring investment in such services, and leaving taxpayers footing the bill for a proposal that was never wise to begin with.

TPA – on behalf of the millions of taxpayers and consumers it represents – urges the agency to abandon this approach. The market has worked to make consumers' lives easier when it comes to digital payments by providing myriad competing options in the space, negating the need for interventions typically reserved for markets in which consumer choice is exceedingly limited.

At the very least, CFPB needs to narrow and clarify its definitions in this rulemaking before proceeding in any meaningful way. It should also wait for the resolution of the pending Supreme Court decision on its constitutionality before taking any sweeping action of this nature.

Sincerely,

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