



**America's  
Credit Unions**

January 8, 2024

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

**RE: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications (RIN: 3170-AB17)**

Dear Director Chopra:

On behalf of America's Credit Unions, we are writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule to designate certain providers of general-use digital consumer payment applications as "larger participants" subject to the CFPB's supervisory authority. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide. America's Credit Unions supports the CFPB's proposal to define a market for general-use digital consumer payment applications for the purpose of supervising large, nonbank payment companies not currently subject to regular CFPB oversight. To meaningfully promote fair competition and a level playing field for all financial sector participants, including credit unions, the CFPB must be able to examine large nonbanks who offer digital consumer payment services.

Credit unions are concerned that under-regulated, unsupervised companies are engaged in financial activities by offering products and services that are traditionally offered by credit unions and banks. Consumers benefit from innovation that offers new delivery channels and products as well as innovations to traditional products and credit unions want to ensure that financial products and services available from nonbanks offer the same protections as those offered by regulated entities. Our members do not want to discourage innovation, they merely want to ensure that innovation does not allow new entrants to make an end run around regulation. As the preamble to the proposed rule acknowledges, nonbanks have engaged in regulatory arbitrage and purposely constructed their product and service offerings to use partnerships to skirt crucial consumer protection laws—creating different levels of consumer protection based on the type of entity offering a product or service.

As the CFPB acknowledges, nonbank payment platforms are used by millions of consumers and the market for digital consumer payments continues to grow.<sup>1</sup> Furthermore, nonbanks that offer

---

<sup>1</sup> See CFPB, Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications (RIN: 3170-AB17), 88 Fed. Reg. 80197, 80200-80209 (Nov. 17, 2023),

consumer payment services have error resolution responsibilities under Regulation E which the CFPB cannot effectively monitor without exercising supervisory authority.

Credit unions are regularly supervised by the National Credit Union Administration (NCUA) and state credit union regulators. The CFPB also has authority to examine larger credit unions within its supervisory jurisdiction. The NCUA has used its examination authority to assess payment fraud risks within the credit union system.<sup>2</sup> Some state supervisory authorities have also addressed digital payment risks to consumers posed by nonbanks.<sup>3</sup>

The proposed rule would address regulatory gaps that currently exist within the market for consumer payments which have permitted certain nonbanks offering “general-use digital consumer payment applications” to avoid regular, federal supervision.<sup>4</sup> These gaps are not only harmful to consumers, who may find it difficult to obtain prompt resolution of errors in connection with their use of nonbank payment services, but also to credit unions who will often step in to help members even when an error involves a nonbank platform. For example, the balance of P2P-related error resolution of responsibilities can place a disproportionate burden on credit unions in the context of pass-through transactions involving non-partner payment platforms, particularly in instances where a member prefers contacting their credit unions instead of the P2P provider. Nonbanks that underinvest in appropriate customer service may increase the likelihood that consumers will not be able to resolve their problems efficiently or with the appropriate party; these are risks the CFPB has cited as a basis for this rulemaking.<sup>5</sup>

While the proposal does not establish any specific examination procedures for the proposed category of larger participants offering covered consumer payment applications, the preamble notes the proposal “would further the CFPB’s statutory objective of ensuring that Federal consumer financial law is enforced consistently between nonbanks and depository institutions to promote fair competition.”<sup>6</sup> America’s Credit Unions regards this objective as the most important guiding principle in a future rule. Nonbank covered persons should be subject to examination procedures appropriately scaled to operational risks, consumer complaint patterns, and the nature of the products and services offered—the same factors considered when scoping examinations for currently supervised financial institutions. While we wholeheartedly endorse the supervision and examination of nonbank entities, this new oversight should serve to hold

---

<https://www.federalregister.gov/documents/2023/11/17/2023-24978/defining-larger-participants-of-a-market-for-general-use-digital-consumer-payment-applications>

<sup>2</sup> See NCUA, 2022 Supervisory Priorities (January 2022), available at <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncuas-2022-supervisory-priorities>.

<sup>3</sup> See *e.g.*, CA Fin Code § 90010.

<sup>4</sup> See 88 Fed. Reg. 80201

<sup>5</sup> See CFPB, Statement Regarding the CFPB’s Inquiry into Big Tech Payment Platforms (October 21, 2021) (“Finally, how will these payment platforms ensure that key consumer protections are adhered to? How effectively do they manage complaints, disputes and errors? Are they sufficiently staffed to ensure adequate steps are taken to address consumer protection and provide responsive customer service when things go wrong.”)

<sup>6</sup> 88 Fed. Reg. 80201

nonbanks to the same standard as credit unions but should not increase the burden on credit unions that may have relationships with these entities.

The CFPB should also consider the potential merits of examination and supervision of nonbank covered persons, regardless of size, to determine whether the proposed thresholds for determining larger participant status are sufficient to address broader consumer protection concerns. A nonbank covered person is a larger participant in the market for general-use digital consumer payment applications if it satisfies two criteria. First, it must facilitate an “annual covered consumer payment transaction volume” of at least five million transactions (with volume aggregated across affiliated companies). Second, the entity must not be a small business concern based on SBA size standards. According to the CFPB’s analysis, the proposed larger participant definition would capture a group of 17 nonbanks responsible for at least 88 percent of known transactions in the nonbank market for general-use digital consumer payment applications.<sup>7</sup> However, the proposed definition would also exclude approximately 91 percent of all known nonbank covered persons in the same market, primarily due to the carve out for small entities.<sup>8</sup> While America’s Credit Unions is not recommending an alternative larger participant definition at this time, we have serious concerns about nonbank entities intentionally structuring their payments in such a way to remain under the five million transaction threshold or taking advantage of proposed exemptions in the rule to continue avoiding regulatory oversight. Additionally, we recommend the CFPB conduct periodic reviews to determine whether the definitional criteria continue to be appropriately tailored.

America’s Credit Unions appreciates the opportunity to comment on the proposed rule regarding larger participants in the market for general-use digital consumer payment applications. Should you have any questions or require any additional information, please contact Andrew Morris, Senior Counsel for Research and Policy at [amorris@americascreditunions.org](mailto:amorris@americascreditunions.org) or 703-842-2266.

Sincerely,



Andrew Morris  
Senior Counsel for Research and Policy

---

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*