

Regulatory Alert

Regulatory Insights

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CFPB Proposal to Supervise Big Tech and Other Wallet/Payment Providers

Regulatory Insights:

- **Expanding Regulatory Perimeter:** CFPB proposes to expand its supervisory authority to “large nonbank digital payment providers” – many of which are Big Tech.
- **“General Use”:** Proposal targets “general-use digital consumer payment applications,” or those that do not have limitations on the types of transactions they facilitate.
- **Rule Application:** “Larger participants”, as proposed, would cover approximately 88% of all transactions in nonbank digital consumer payment applications.

The Consumer Financial Protection Bureau (CFPB) issues a new [proposed rule](#) to define a market for “general-use digital consumer payment applications”. The market would cover providers of funds transfer and wallet functionalities through digital applications for consumers’ general use in making payments to other persons for personal, family, or household purposes. Larger participants of this market would be subject to the CFPB’s supervisory authority.

The proposed rule is intended to ensure nonbank covered providers’ compliance with federal consumer financial laws (e.g., UDAAP, privacy provisions of GLBA, and EFTA), as well as to promote fair competition between nonbanks and depository institutions (which also provide general-use digital consumer payment applications) and monitor emerging risks in the digital payment sector.

The proposed rule is outlined in detail below.

Application and Scope. The proposed rule would apply to nonbank covered providers (i.e., nonbanks that offer or provide consumer financial products or services) that are “larger participants” in the market for “general-use

digital consumer payment applications” as defined in the rule.

- **Market Definition:** The proposed rule would define the market for “general-use digital consumer payment applications” to mean providing a “covered payment functionality” through a “digital application” for consumers’ “general use” in making “consumer payments transactions.”
- **Market-related Definitions:**
 - “General use” would mean the absence of significant limitations on the purpose of consumer payment transactions facilitated by the digital consumer payment application. This definition would exclude limited payment applications (e.g., those solely for purchasing specific types of goods or services, or to pay specific debts or types of debt).
 - “Covered payment functionality” would include a funds transfer functionality (receiving funds for the purpose of transmitting them and accepting and transmitting payment instructions) and a

wallet functionality (for storing and transmitting account and payment credentials).

- “*Digital application*” would mean a software program accessible to a consumer through a personal computing device, including but not limited to a mobile phone, smart watch, tablet, laptop computer, or desktop computer. “*Digital application*” would not cover the consumer’s presentment of a physical debit card, prepaid card, or a credit card in plastic, metallic, or similar form at the point of sale.
- “*Consumer payments transactions*” would mean transfer of funds by or on behalf of a consumer physically located in a State to another person (not the consumer) primarily for personal, family, or household purposes. This definition would exclude international money transfers, foreign exchange transactions, certain online or store transactions conducted by merchants or online marketplace operators, and extensions of consumer credit made using a digital application provided by the person extending the credit. For purposes of this definition, “funds” would include digital assets.

- **Larger Participants:** Under the proposed rule, a nonbank covered person would be a larger participant of the “general-use digital consumer payment applications” market if it satisfies two criteria:
 - The nonbank covered person (together with affiliates) provides general-use digital consumer

payment applications with an annual volume of at least five (5) million consumer payment transactions.

- The nonbank covered person is not a small business concern based on the applicable Small Business Administration (SBA) size standard.

Any nonbank covered person that qualifies as a larger participant would remain a larger participant until two years from the first day of the tax year in which the person last met the larger-participant test.

- **Scope:** CFPB estimates the proposed rule would apply to 17 entities. The CFPB further estimates that these entities represent approximately 9 percent of all known nonbank covered persons in the market for general-use digital consumer payment applications and are responsible for approximately 88 percent of known transactions in the nonbank market for general-use digital consumer payment applications.

Comment Period. CFPB is seeking public comments on the proposed rule, with a deadline for submission of January 8, 2024, or thirty (30) days after publication in the Federal Register, whichever is later.

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