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December 14, 2023

Comment Intake—LP Payment Apps Rulemaking
Consumer Financial Protection Bureau
c/o Legal Division Docket Manager
1700 G Street, N.W.
Washington, D.C. 20552

Comment Deadline Extension Request for the CFPB’s Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications Proposal

The Financial Technology Association, American Fintech Council, Chamber of Progress, Computer & Communications Industry Association, Electronic Transactions Association, Information Technology Industry Council, NetChoice, and TechNet are writing to respectfully request that the Consumer Financial Protection Bureau extend the comment deadline by 30 days for the notice of proposed rulemaking entitled “Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications” (the Proposal), which was released by the Bureau on November 7, 2023.¹

The Proposal seeks to supervise certain nonbank payment companies by “defin[ing] a market for general-use digital consumer payment applications that would cover specific activities”² through a complex four-part test outlined in the proposed rule. The Bureau also states that the application of this test is not limited to fiat currency, but instead extends to digital currency where the activity meets the proposed test.³ Finally, the Proposal notably seeks to cover digital wallets, a concept that is vaguely defined in the notice and, given its nascency, generally lacks established legal precedents. Taken together, these elements individually and collectively introduce numerous complex issues that nonbank financial institutions are continuing to review and analyze to provide the Bureau with thoughtful, substantive comments on the Proposal.

¹ We note that the proposal was published in the *Federal Register* on November 17, 2023. See 88 Fed. Reg. 80197.

² 88 Fed. Reg. 80199.

³ 88 Fed. Reg. 80202.

This complexity is further amplified by exclusions that require greater clarity. For example, the definition of “general use” is exceedingly broad and ambiguous. The section-by-section analysis states that peer-to-peer payment applications are included within the “general use” definition, even though these systems are closed-loop and a consumer must register to receive payment. The proposed rule, cites as an example, that payment applications used exclusively by people who are incarcerated are still “general use” if the inmate can use the application to buy various goods and services (which often includes food). Conversely, the proposed rule lists exemptions for the purchase or lease of certain goods, services, or other property, including a mobile payment application that may be used to buy food. The inclusion of certain closed-loop payment applications within the definition of “general use,” while simultaneously excluding similar or the same payment applications is confusing and requires clarification. As a result, the Proposal fails to make clear which product markets it includes and excludes, leaving substantial confusion about the identity of the 17 companies the rule says are covered, nor does it provide a sufficient cost-benefit analysis of the potential impacts of such a rule on these distinct product markets.

In light of the numerous complexities identified above, the undersigned organizations recognize the importance of ensuring the public, including industry participants, have adequate time to provide material comments under the Administrative Procedure Act. A notice and comment period that is disproportionate to the complexity and ultimate effect of the rulemaking on a given industry harms the efficacy of the rulemaking process to the detriment of the agency, regulated entities, and consumers.

With this in mind, we respectfully request that the CFPB extend the comment deadline by 30 days to allow members of the public, including industry participants, to better ascertain the potential impacts of the Proposal and provide meaningful comments. For a proposed regulation of this complexity that would substantially impact a large portion of the payments market, a 41 business-day comment period—which is interrupted by the Thanksgiving, December, and New Year holidays—is insufficient.⁴

A rulemaking of this complexity and importance should not be rushed and commenters should have a full and fair opportunity to assess the Proposal and provide informed feedback. By extending the comment deadline by 30 additional days, nonbank financial institutions would be better able to provide the Bureau with meaningful comments on the Proposal’s key provisions and definitions, as well as its potential impacts.

⁴ While the Bureau appears to be granting the public 60 days to comment on the proposal, the time horizon over which the comment period takes place includes four federal holidays and numerous religious holidays. It also overlaps with other significant CFPB proposals that impact the industry.

We appreciate your consideration of our request and would be happy to discuss it with you further.

Respectfully submitted,

Financial Technology Association

American Fintech Council

Chamber of Progress

Computer & Communications Industry Association

Electronic Transactions Association

Information Technology Industry Council

NetChoice

TechNet