



CFPB PROPOSES OVERSIGHT OF DIGITAL WALLETS AND PAYMENT APPS

The Consumer Financial Protection Bureau (“CFPB”) released a proposed rule to define a market for general-use digital consumer payment applications under its authority to supervise “larger participants” of a market for consumer financial products or services as defined by rule. Under the Proposed Rule the proposed 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. Examples include services commonly described as “digital wallets,” “payment apps,” “funds transfer apps,” “person-to-person payments” and “P2P apps”. Larger participants of this market would be subject to the CFPB’s supervisory authority under the Consumer Financial Protection Act.

The Proposed Rule would set forth a test to determine whether a nonbank covered person is a larger participant of the “general-use digital consumer payment applications” market. A nonbank covered person would be a larger participant if it satisfies the following two criteria. First, the nonbank covered person (together with its affiliated companies) must provide general-use digital consumer payment applications with an annual volume of at least five million consumer payment transactions. Second, the nonbank covered person must not be a small business concern based on the applicable Small Business Administration size standard.

The Proposed Rule would define the term “consumer payment transactions” to mean the transfer of funds by or on behalf of a consumer physically located in a state to another person primarily for personal, family or household purposes. The proposed definition would clarify that, except for transactions excluded under the definition, the term applies to transfers of consumer funds and transfers made by extending consumer credit. The proposed definition would exclude the following four types of transactions:

- (1) An international money transfer;
- (2) A transfer of funds that is (i) linked to the consumer’s receipt of a different form of funds, such as a transaction for foreign exchange or (ii) that is excluded from the definition of “electronic fund transfer” under Regulation E;
- (3) A payment transaction conducted by a person for the sale or

lease of goods or services that a consumer selected from an online or physical store or marketplace operated prominently in the name of such person or its affiliated company; and

(4) An extension of consumer credit that is made using a digital application provided by the person who is extending the credit or that person’s affiliated company.

Comment on all aspects of the Proposed Rules and on the specific issues on which CFPB solicits comments can be submitted to the CFPB. Comments must be received on or before January 8, 2024 or 30 days after publication in the federal register, whichever is later.

If the Proposed Rule is adopted, the CFPB would be able to supervise larger participants as defined in the rule for compliance with applicable federal consumer financial protection laws, which includes applicable protections against unfair, deceptive and abusive acts and practices, rights of consumers transferring money and privacy rights.

We will monitor the CFPB’s rule making progress. Please contact us with any questions related to the Proposed Rule or other CFPB rules. □

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