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January 8, 2024

Via Electronic Mail

Comment Intake—LP Payment Apps Rulemaking
Consumer Protection Financial Bureau
c/o Legal Division Docket Manager
1700 G Street NW
Washington, DC 20552

RE: ICBA Comments in Response to Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications Notice of Proposed Rulemaking [Docket No. CFPB–2023– 0053] or RIN 3170–AB17

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ appreciates the opportunity to provide feedback in response to the Consumer Financial Protection Bureau’s (“CFPB”) Notice of Proposed Rulemaking that would define larger participants of a market for general-use digital consumer payment applications.² This regulation, as proposed by the CFPB, would allow the CFPB to supervise certain fintechs and other non-bank and non-federally regulated providers of money transfer applications and services to consumers.

ICBA supports the proposed rule, which provides regulatory oversight to major players in the general-use digital consumer payment applications market. This oversight is vital for preserving consumer trust, fostering competitive markets, and stimulating innovation while protecting consumer interests. Although we support this proposed rule, we caution the CFPB to ensure that this rulemaking does not increase regulatory burden on community banks in an indirect manner.

¹*The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation’s community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America’s community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers’ financial goals and dreams. For more information, visit ICBA’s website at icba.org.*

² 88 Fed. Reg. 80197 (Nov. 17, 2023).

ICBA member community banks have long expressed concern that fintechs and large tech firms are offering financial products and services traditionally provided by banks, but without the same level of regulatory oversight. These entities often operate outside the reach of federal regulators and exploit gaps and differences in regulations across jurisdictions. This “regulatory arbitrage” enables them to offer bank-like services without the same consumer protections and transparency requirements as banks. This creates an unfair advantage for these entities over community banks and may expose consumers to higher risks due to lower standards of safety and security for these unregulated entities.

ICBA Comments

Definition of Funds

We support the CFPB’s interpretation of the Consumer Financial Protection Act³ (CFPA) that allows for the inclusion of virtual currency or crypto assets in the definition of “funds”. We understand that this rule is not intended to regulate virtual currency per se, but we believe that entities that enable consumers to move virtual assets should be regulated in the same way as those that deal with fiat currency. With respect to cryptocurrency, we have long advocated for a regulatory approach grounded in the principle of "same activity, same risk, same regulation." To that end, we believe that entities that enable consumers to engage in consumer payment transactions with crypto assets should be regulated in the same way as traditional financial services companies that offer similar products.

The CFPA, which authorizes this rulemaking, does not define funds and Congress did not foresee the emergence of virtual currency when the legislation was enacted in 2010. However, we believe that virtual or crypto currency presents the same consumer protection risks as fiat currency for payments or transfers and should be subject to the same rules and regulations. In particular, we support the CFPB’s application of the term “consumer payment transaction” to transfers of these assets through the definition of “funds,” as they are made by or on behalf of consumers for personal, family, or household purposes. This would protect consumers from potential risks and harms associated with virtual currency transactions that mirror fiat currency transactions. Nevertheless, our ongoing advocacy calls for increased regulatory measures, especially from market regulators such as the Securities and Exchange Commission.

We acknowledge that the regulation of virtual currency is a complex and evolving issue that requires comprehensive and coordinated action from Congress and federal agencies. We welcome the CFPB’s recognition of the rise of fraud and scams throughout the crypto ecosystem and its efforts to take steps to provide consumers with greater protections. We commend the CFPB for its proactive approach in addressing the challenges and opportunities presented by virtual currency and encourage it to continue to monitor and respond to the developments in this fast-growing and dynamic industry.

³ Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1955 (2010).

Definition of Larger Participant

We support the CFPB's definition of "larger participant." However, the CFPB should consider additional criteria that, in certain circumstances, could include entities not covered by the five million transaction threshold. Bringing other significant entities under CFPB oversight despite their lower transaction volume would ensure large, well-resourced entities are similarly subjected to the proposed rule. Examples of these well-resourced entities include fast-growing players, entities posing significant consumer risk due to data access or regulatory evasion, or entities nearing the transaction threshold based on their size and payment service resources.

We believe this approach balances capturing potentially risky entities with protecting smaller players from unnecessary regulatory burdens. The expansion ensures the proposed rule does not unintentionally exclude large, well-resourced entities that pose significant consumer risks.

Examination Authority

We recommend that the CFPB develop its examination program of nonbanks to ensure that nonbanks comply with the same consumer protection standards as banks. The CFPB should pay attention to how nonbanks access, use, and share payment information, especially when it is not essential for transaction purposes. The CFPB should also have the ability to monitor how this information is used by nonbanks.

The CFPB should conduct regular examinations of nonbanks under this rule to verify their understanding of and compliance with consumer protection laws. The lack of clear regulatory oversight for these payment applications can erode consumer trust. This can have a ripple effect, impacting the reputation and stability of all financial institutions, including community banks.

Conclusion

ICBA and our member community banks support the CFPB's efforts to regulate nonbanks that provide banking services. We believe that consumers should have the same level of protection, no matter which entity offers a product or service. Consumers should not have to worry about the type of entity offering a product or service to understand the level of protection. Instead, they should focus on the features, reputation, and experience of the provider, while feeling comfortable that all third-party providers meet the same minimum standards. We believe that this proposed rule will protect consumers and foster competition, as nonbanks will not be able to evade regulations and oversight when offering payment applications.

We appreciate the opportunity to provide comments in response to this request. If you have any questions, please do not hesitate to contact me at Lance.Noggle@icba.org or (202) 659-8111.

Sincerely,

/s/

Lance Noggle
Senior Vice President of Operations, Senior Regulatory Counsel