



January 8, 2024

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

RE: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications
Docket No. CFPB-2023-0053, RIN 3170-AB17

Dear Honorable Director Chopra:

Consumer Reports thanks the Consumer Financial Protection Bureau (CFPB) for the opportunity to provide comments on the proposed rulemaking and for the CFPB's efforts to protect consumers through the supervision of consumer payment applications and digital wallets. Consumer payment applications are becoming ubiquitous in consumers' financial lives, with more than nine out of ten consumers reporting to have used some form of digital payment in the past year.¹ Consumer Reports strongly supports the CFPB's proposal to supervise larger participants in the digital payments market.

There is consumer demand for action by the CFPB and Congress to implement common sense rules for payment applications.² Consumer Reports has reviewed various payment applications and found they are associated with a variety of risks, such as losing money through fraud or mistakes or having personal data collected and shared. Over 25,000 consumers have signed our petition urging the CFPB to require peer-to-peer app companies to aggressively investigate reports of fraud and reimburse anyone who they determine was fraudulently induced into sending money to scammers. The petition additionally calls for limiting the collection and storage of consumer information in payment applications beyond what is needed to provide the payment service.

One potential issue that Consumer Reports would like to flag as the Bureau is implementing the rulemaking process is ensuring that the finalized rule does not preempt or undermine any existing state-level privacy and data standards that protect consumers' financial information. The rulemaking should not create any ambiguity that newly covered entities under this rule could use to claim exemptions from state laws.

¹ McKinsey & Company, "Consumer digital payments: Already mainstream, increasingly embedded, still evolving" (Oct. 20, 2023)

<https://www.mckinsey.com/industries/financial-services/our-insights/banking-matters/consumer-digital-payments-already-mainstream-increasingly-embedded-still-evolving>

² Consumer Reports, "Let's take the risk out of 'Venmo Me'" (Dec. 2023)

<https://action.consumerreports.org/20230308-paymentapps-em>

Consumer Reports recommends that the CFPB expressly clarify that meeting the qualifications to be considered a larger participant does not automatically confer Gramm-Leach-Bliley Act compliance exemptions that commonly exist in state data privacy laws. The rule should specify that continued compliance with existing state privacy laws is mandatory until separate rulemaking establishes equivalent data safeguards. Without clearly addressing this issue in the rule or the Bureau's consultation authority, the rule risks undoing critical state-level consumer privacy protections that regulate companies' use, collection, storage or sharing of different types of personal information by preempting entire state data security, consumer privacy, and breach notification statutes that may overlap with the CFPB's authority. Any rule the Bureau promulgates should be clear that it is establishing a regulatory floor, not a ceiling, as to allow states to enact and enforce more stringent protections.

The CFPB should coordinate with state regulators, such as state attorneys general that are enforcing state privacy laws, in order to ensure harmonization of federal and state regulatory landscapes to avoid gaps in coverage or the easing of established consumer protections. Consumer Reports also encourages the Bureau to seek public comment on how best to accomplish this. As more states introduce and consider comprehensive privacy proposals, the Bureau could also provide model language to best integrate the Bureau's supervisory authority within the language of those proposals. Finally, the CFPB could evaluate whether specified state laws are explicitly considered non-obstructing and therefore not subject to federal preemption, such as data disposal requirements, access rights, research protections, sensitive data restrictions, and algorithmic accountability statutes.

Thank you again for the opportunity to weigh in on this important issue. For any additional information, clarification, or questions, please contact Ryan Reynolds at ryan.reynolds@consumer.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan Reynolds', written in a cursive style.

Ryan Reynolds
Policy Analyst, Consumer Reports