



Before the

CONSUMER FINANCIAL PROTECTION BUREAU

Washington, DC 20552

**In the Matter of the Request for Comment on Defining Larger Participants of a
Market for General-Use Digital Consumer Payment Applications
(rel. November 7, 2023)**

Comments of the American Consumer Institute

The role of the Consumer Financial Protection Bureau (CFPB) has been to “protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law.” Along with this is the arming of the American public with “information, steps, and tools that they need to make smart financial decisions.”¹ The proposed rulemaking on digital payment applications fails to address the CFPB’s primary role and abdicates its duty to arm the public with knowledge. Though “large participants” are the Bureau’s primary subject, third-party participants are not excluded from scrutiny in what amounts to a power grab with no discernable consumer harm.

Under the CFPB’s Competition and Innovation mission page, the Bureau outlines its criteria for intervention. Their mandate clearly states that all competition issues must benefit the consumer. The four subsequent areas of mandate fulfillment mention the consumer twice, informing regulators and preventing market structures from blocking new competitors from entering the market.² The NPRM press release focuses on consumer harm from prominent participants not subject to the Bureau’s rules, and competitive harm from regulatory arbitrage between various financial institutions.

Regulatory arbitrage concerns the agency since digital wallets may not be subject to the same rules as traditional banking and thus become more attractive to financial institutions. The unfair competition created by regulatory differences is a real issue, but the solution cannot be

¹ “The CFPB,” *Consumer Financial Protection Bureau*, <https://www.consumerfinance.gov/about-us/the-bureau/>.

² “Competition and Innovation at CFPB,” *Consumer Financial Protection Bureau*, <https://www.consumerfinance.gov/rules-policy/competition-innovation/>.

expanding regulation into areas without apparent necessity. The necessity must be outlined and relate to the consumer, as the agency clearly states in its mission.

Instead, under the proposed rulemaking,³ CFPB supervision of prominent participants may be extended over any general-use consumer financial product utilized by these “Big Tech” firms, excluding payments to the firms conducting the transaction. This means third-party payment processing services used by companies like Amazon could be subject to new scrutiny.

Under the NPRM, the term “consumer financial product” does not exclude transactions if an “online marketplace operator’s digital consumer application processes payments or other financial data associated with the consumer’s purchase of goods or services at unaffiliated online or physical stores or third-party goods or services on the operator’s online marketplace.” By not excluding these transactions, third-party service and goods providers risk increased oversight by the CFPB. The outcome is a blatant expansion of powers into digital financial services and will not be limited to just prominent participants.⁴

There are unique consumer harms posed by digital wallets, though these harms pertain to the new technology, not the regulatory arbitrage. Digital wallets present new methods for bad actors to take advantage of consumers, but the solution is not agency regulation. Two noteworthy examples of this are the ability of hackers to “intercept” transactions through wireless networks and phones becoming nodes for personal financial access.⁵

Security measures to address these concerns are already available for digital wallet users.⁶ While service providers are responsible for some of the implementation, other measures could be maximized through informing and educating the public. The agency has chosen a different route rather than taking an approach that aligns with its mission.

In a press release⁷ on the proposed rule, the Bureau mentions how the current “blurring” of banking and commercial activity through digital wallets can “put consumers at

³ “Defining Large Participants of a Market for General-Use Digital Consumer Payment Applications,” *Consumer Financial Protection Bureau*, November 7, 2023, <https://www.consumerfinance.gov/rules-policy/rules-under-development/defining-larger-participants-of-a-market-for-general-use-digital-consumer-payment-applications/>.

⁴ *Ibid.*, 23.

⁵ Erik J. Martin and Sarah Gage, “Is it safe to add a credit card to my digital wallet?” *Bankrate*, October 6, 2023, <https://www.bankrate.com/finance/credit-cards/are-digital-wallets-safe/>.

⁶ “What Americans Should Know About Digital Wallets,” *Clark County Credit Union*, <https://www.ccculv.org/Blog2019May-Digital-Wallets>.

⁷ “CFPB Proposes New Federal Oversight of Big Tech Companies and Other Providers of Digital Wallets and Payment Apps”, *Consumer Financial Protection Bureau*, November 7, 2023,

risk,” but the specifics of what those risks are remain largely unexamined. Neither the novel security risks posed by digital wallets, nor any other harm was mentioned. What could be an excellent opportunity for the CFPB to provide information to consumers on best practices when using digital wallets is instead a regulatory expansion without clear consumer-focused justifications.

Instead, the press release focuses on bringing digital wallets under the authority of the CFPB with the claim that this rule will “promote fair competition.”

The problem is that regulating competition is not the role of the CFPB. Protecting the consumer is. The primary risks to consumers posed by digital wallets are informational, not competitive. An anti-competitive regulator like the Federal Trade Commission or the Department of Justice should examine competition issues in the digital wallet space.

An apparent reason for extending the CFPB’s authority in the digital wallet space must be articulated, focusing on harm to the consumer. The primary issue cannot be the supposed unfair competition resulting from the Bureau itself not having apparent regulatory authority over another market. The justification and scope of the NPRM are not in line with the mission of the Bureau and should be amended to reflect consumer harm better and avoid definitions of the market exogenous to their powers and goals. This includes extending authority over more minor third-party actors after narrowing the marketplace to only “large participants.”

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-new-federal-oversight-of-big-tech-companies-and-other-providers-of-digital-wallets-and-payment-apps/>.