

# United States Senate

WASHINGTON, DC 20510

January 31, 2024

Hon. Rohit Chopra, Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Application (Docket No. CFPB-2023-0052; RIN 3170-AB17).

Dear Director Chopra:

We write in support of the Consumer Financial Protection Bureau's (CFPB's) proposed rule to bring the Nation's largest consumer payment applications under Federal supervision (the Proposal). The Proposal will help regulators spot violations of law on payment apps, which will help ensure that consumers are reimbursed when they are victims of fraud and scams.

## **I. Fraud and scams are rampant on consumer payment applications.**

Consumers' use of payment apps is on the rise. According to the Federal Reserve Bank of Atlanta, two-thirds of American consumers reported that they had adopted a mobile payment app last year. The data shows an explosion of consumer interest during the depths of the pandemic, with elevated payment volumes persisting over the past two years. The rise in popularity of these apps has opened the door to fraud and scams on a tremendous scale.

We began oversight of payment app providers in April 2022, following widespread and credible reports of scams and fraud. Based on data we have received from payment app providers in response to our oversight requests, consumers reported over \$100 million in fraudulent (unauthorized) transactions on Cash App and \$57 million on Venmo in 2022. These figures have grown year-over-year as consumers have shifted to transferring money electronically. While the industry has refused to provide reliable data on scams (authorized) transactions in response to our oversight requests, we believe the figures are significantly higher. Based on the scant data we have received from Zelle, we estimate that consumers were scammed out of \$440 million on just this one app during 2021. We support the Proposal primarily to allow the government to step in to protect consumers from these alarming trends.

## **II. The Proposal would help cut down on fraud and scams by giving regulators the tools to supervise the largest payments companies for compliance with the law.**

The regulatory and supervisory structure for consumer payment apps has not keep pace with the explosion in consumers' use of these services. Payment apps are generally not subject to Federal

supervision by the CFPB. Rather, they may be subject to supervision only by the states in which they do business.<sup>1</sup>

Some states conduct examinations, while others do not. State regulators also may not have as much funding and personnel as their Federal counterparts, which may leave them a step behind consumer payment apps that do business in all fifty states and move billions of dollars for millions of Americans every year. In this patchwork system, violations of consumer protection laws can fall through the cracks leaving Americans' money exposed to loss.

The Proposal would remedy this problem by allowing the CFPB to conduct on-site examinations of the biggest consumer payment apps. That includes the power to inspect companies' books and records and to interview management. Examinations will permit evaluation of whether companies are complying with consumer protection laws or engaging in any unfair or deceptive practices.

The supervisory process is a critical tool to identify deficient practices across consumer payment apps to spot widespread violations and provide consumers with reimbursements that they are owed on a significant scale. If any consumer payment app fails to address issues raised during the examination process, the CFPB could then aggressively and publicly enforce the laws to protect consumers from harm. Overall, the supervisory system created by the Proposal would empower the government to detect and proactively address risks before they spiral out of control.

### **III. We further urge the CFPB to engage in notice-and-comment rulemaking regarding what counts as an authorized or an unauthorized transfer under Regulation E.**

The Proposal is an important step to ensure compliance with the laws and regulations that are currently on the books. However, consumer payment apps have exposed gaps in the existing rules, which have left consumers vulnerable to exploitation by scammers and thieves with no recourse or protection. Consumer payment apps have resisted calls to fully protect consumers. That's why we believe the CFPB should undertake a rulemaking to address gaps in the existing rules.

Specifically, institutions operating consumer payment apps take the position that they are under no obligation under current law to make their customers whole when fraudsters use the network to steal their hard-earned money. Instead, they appear to have forced their customers to foot the bill in the vast majority of these circumstances, often relying on ambiguity over whether a payment is classified as "authorized," "unauthorized," or an "error" to avoid reimbursing customers who have been victims of fraud.

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<sup>1</sup> We are aware that one consumer payment app is currently supervised by the Office of the Comptroller of the Currency (OCC) and another may be supervised by the Federal Deposit Insurance Corporation (FDIC). However, the scope and rigor of the OCC's and FDIC's supervisory approaches are not sufficient to protect the interest of consumers. The existence of OCC and FDIC supervision would not, in our view, obviate the need for CFPB supervision.

We believe a notice-and-comment rulemaking process to limit discretion of consumer payment app to classify disputed payments as “authorized,” when there is considerable evidence that a consumer has been the victim of deceit and fraud, would be a simple, appropriate, and transparent way to make sure consumers receive the full protections that Congress provided in the Electronic Fund Transfer Act.

When consumer payment apps evade responsibility for reimbursing their customers, those customers are left with no recourse while the scammer gets to keep their money. This rulemaking would provide powerful incentives for consumer payment apps to take more seriously their anti-money laundering obligations to know their customers, screen out stolen or synthetic identities, and monitor accounts for unlawful use.

#### **IV. Conclusion**

The authority to bring nonbanks into the regulatory perimeter is among the most important tools in the Dodd-Frank Act. We fully support the CFPB’s proposal to use this tool for consumer payment apps. Doing so will curb fraud and scams that are rampant on these apps and will ensure that these companies properly reimburse consumers when criminals abuse new forms of financial technology to separate them from their money. It is past time for the CFPB to use the authorities that Congress provided to keep pace with new and emerging risks coming from lightly regulated nonbanks.

Thank you for your consideration of these comments.

Sincerely,



Jack Reed  
United States Senator



Sherrod Brown  
Chairman  
Senate Committee on  
Banking, Housing, and Urban  
Affairs



Elizabeth Warren  
United States Senator