

Regulatory Alert

Regulatory Insights

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Supervision of Nonbank Digital Wallet/Payment Providers: CFPB Final Rule

KPMG Insights:

- **Expanding Regulatory Perimeter:** CFPB finalizes its rule to supervise via ongoing examinations “general-use digital consumer payment applications”—many of which are “Big Tech”.
- **Crypto Excluded:** Does not apply to the transfer of digital assets, including crypto assets.
- **Rule Application:** Large participants with at least fifty (50) million digital consumer payment transactions annually.

The Consumer Financial Protection Bureau (CFPB) releases a [final rule](#) to define a market for “general-use digital consumer payment applications” and to establish the CFPB’s authority to supervise the larger nonbank participants of that market. The market covers nonbank 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.

Key changes from the previously issued proposed rule include:

- An increase to the annual transaction threshold, from 5 million to 50 million, used to identify companies for supervision.
- A narrowed scope for applicable transactions to be counted toward the threshold to include only those denominated in U.S. dollars, excluding transactions involving the transfer of digital assets, including crypto assets/virtual currencies.

Nonbanks meeting the definition of a larger participant in the “general use digital consumer payment applications” market will be subject to CFPB supervision (under the Consumer Financial Protection Act – CFPA) for compliance with federal consumer financial laws and regulations including UDAP. The CFPB highlights, in particular, laws and regulations related to:

- Data privacy and surveillance, including personal data protections, opt-in/out rights, and data sharing

- Errors and fraud, including consumer rights to dispute certain transactions and accountability for errors
- “Debanking”, including risks to consumers for loss of access to payment apps

Highlights of the final rule are outlined below.

Application and Scope. The final rule applies to nonbank covered providers (i.e., nonbanks that offer or provide consumer financial products or services) that are “larger participants” in the market for “general-use digital consumer payment applications”.

- **Market Definition:** The market for “general-use digital consumer payment applications” is defined to mean providing a “covered payment functionality” through a “digital application” for consumers’ “general use” in making “consumer payments transactions” as defined in the rule (see definitions below).
- **Larger Participants:** Under the final rule, a nonbank covered person would be a larger participant of the “general-use digital consumer payment applications” market if it satisfies two criteria:
 - The nonbank covered person (together with affiliates) provides general-use digital consumer payment applications with an annual volume of at least fifty (50) million consumer payment transactions denominated in U.S. dollars. *(Note: in a change from the proposed rule, the CFPB has excluded transactions in digital assets, including cryptocurrencies, from the volume threshold “to ensure the administrability of the threshold*

test” but states that it continues to monitor developments in the market for consumer payments involving digital assets.)

- The nonbank covered person is not a small business concern based on the applicable Small Business Administration (SBA) size standard.
 - **Duration.** Any nonbank covered person that qualifies as a larger participant will remain a larger participant until two years from the first day of the tax year in which the person last met the larger-participant test.
- **Scope:** CFPB estimates the final rule will apply to seven (7) nonbank entities and further that these seven nonbank entities i) account for approximately 8 percent of all known nonbank covered persons for which the CFPB has sufficient information to estimate larger participant status (and a smaller percentage of the 130 known market participants) and ii) facilitate approximately 98 percent of the 13.5 billion consumer payment transactions market participants provide.
- **Market-Related Definitions:** Terms used to define the market for “general-use digital consumer payment applications” include:
- “General use” means the absence of significant limitations on the purpose of consumer payment transactions facilitated by the digital consumer payment application. This definition excludes limited payment applications (e.g., those solely for

purchasing specific types of goods or services, or to pay specific debts or types of debt).

- “Covered payment functionality” includes a funds transfer functionality (i.e., receiving funds for the purpose of transmitting them and accepting and transmitting payment instructions) and a wallet functionality (for storing and transmitting account and payment credentials).
- “Digital payment application” means a software program accessible to a consumer through a personal computing device, including but not limited to a mobile phone, smart watch, tablet, laptop computer, or desktop computer. “
- “Consumer payments transactions” means transfer of funds by or on behalf of a consumer who resides in a State to another person (not the consumer) primarily for personal, family, or household purposes. This definition excludes international money transfers, foreign exchange transactions, certain online or store transactions conducted by merchants or online marketplace operators, and extensions of consumer credit made using a digital application provided by the person extending the credit.

Effective Date. The final rule will become effective thirty (30) days after publication in the Federal Register.

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