

December 14, 2022

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Dear Director Chopra:

We write to express our concern with recent actions taken by the Consumer Financial Protection Bureau (CFPB). In particular, the CFPB's recent actions with respect to nonbank entities exceed its statutory authority and harm the very consumers the CFPB was established to protect. The result of CFPB's actions will be fewer financial products and services available in the marketplace – an outcome in direct conflict with fostering increased competition and innovation. We call on you to rescind these actions immediately.

Nonbank Supervision

Eight months ago, the CFPB announced that it would exercise its authority under the Dodd-Frank Act to supervise “nonbanks whose activities the CFPB has reasonable cause to determine pose risks to consumers.”¹ In conjunction with that announcement, the CFPB explained that it would amend its procedural rules to create a process for the Director to authorize the release of information regarding such nonbanks. Despite serious concerns raised about disclosure of sensitive confidential supervisory information, the CFPB finalized the procedural rule last month. The CFPB claims it will protect specific categories of sensitive information; however, given your penchant for public shaming of individual entities, we are concerned this will be abused as just another tool to shame market participants without due process.

In addition, despite requests from numerous commenters, the CFPB declined to clarify or further define “risks to consumers” for purposes of employing its nonbank supervision responsibility under the Dodd-Frank Act. While the CFPB claims the final rule is intended to level the playing field to hold nonbank entities accountable, it appears that this is yet another effort to entrench the status quo by attacking companies that provide innovative products and services.

Buy Now, Pay Later

Last year, the CFPB published a blog post on Buy Now, Pay Later (BNPL). The post emphasized the importance of individuals understanding the potential benefits and risks that come with BNPL products before making a purchase. In December 2021, the CFPB requested

¹ CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers (Apr. 25, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/>.

information to gain additional insight into the practices of several BNPL firms, including Affirm, Afterpay, Klarna, PayPal and Zip. In January, the CFPB requested comments from the public on their experiences with BNPL firms. The CFPB recently released a report showing that consumers are increasingly using BNPL products and new firms continue to enter the market, offering different types of BNPL products. While the actual content of the report underscored the benefits of BNPL to consumers, the accompanying CFPB press release and public statements failed to comport with the report findings, instead casting BNPL in a skeptical light.

This approach is similar to the CFPB's tactics used with respect to overdraft fee programs: the CFPB decides it does not like a particular industry and seeks to destroy it. This effort is no different, and its threats to the BNPL market raise significant concerns. Neither the CFPB nor any government entity should be dictating how consumers spend their money. New products should not be punished and unjustly stereotyped for failing to fit into a certain regulatory bucket. BNPL products provide consumers with financial flexibility and the ability to budget accordingly. Allowing room for innovation helps consumers have choice and accountability over their own financial decisions.

Office of Competition and Innovation

In May, the CFPB made structural changes and announced the replacement of its Office of Innovation with the new Office of Competition and Innovation. At the same time, the importance of this new Office was downgraded to the CFPB's Division of Research, Markets and Regulation. This marks a significant shift away from previous Directors who used the Office to encourage companies to innovate in a safe and sound manner without fear of public retribution. This move will not remove barriers to entry nor enhance competition in the marketplace. Rather it has the very real and likely potential to harm consumers and communities. Finally, replacing the fintech sandbox program that processed applications for no-action letters is a step in the wrong direction and will reduce the CFPB staff's ability to engage and understand innovative products and services.

Peer-to-Peer (P2P) payments

In October 2021, the CFPB ordered six large technology and peer-to-peer (P2P) platforms, including Amazon, Apple, Facebook, Google, PayPal and Square, to provide information about their business practices. This October, the CFPB reopened the public comment period. As you noted, the CFPB is looking at the framework of the Electronic Fund Transfer Act (EFTA) to combat fraudulent activity in P2P payment systems. Let us be clear, Congress writes the laws. To that end, Congress was clear with respect to its intent and its goals of deterring and punishing fraudsters and bad actors. The CFPB should not reinterpret Congress' meaning and upend P2P payment systems and their benefits to consumers, small businesses, and our payment systems.

To that end, we request that you help us understand the motivation for these actions. Please provide written responses to the following questions.

1. Please explain why the CFPB did not address comments that asked the CFPB to define the “risks to consumers” standard prior to finalizing the nonbank supervision procedural rule.
2. Please provide the legal analysis used to justify circumventing notice and comment under the Administrative Procedure Act when amending your rule for releasing decisions and orders for nonbank supervision.
3. As emphasized in the CFPB’s blog post from last year regarding BNPL, individuals should “make sure [they] have a good sense of [their] finances and whether the payments will fit within [their] budget.”² In your view, are there additional tools that BNPL products can provide consumers to help them manage their personal cash flow?
4. BNPL products have become a fast-growing payments option. Please explain how the CFPB is considering the impact of potentially forcing these products into a regulatory regime that does not fit their product type or business model and how that may negatively impact consumers.
5. The CFPB has indicated it “will identify potential interpretive guidance or rules to issue with the goal of ensuring that [BNPL] lenders adhere to many of the baseline protections that Congress has already established for credit cards.” Please describe in detail what baseline protections to which the CFPB is referencing.
6. The CFPB has indicated it “will ensure [BNPL] lenders, just like credit card companies, are subjected to appropriate supervisory examinations”³ and that the Bureau is “inviting firms to self-identify . . . if they wish to be examined.”⁴ Please explain how you envision this self-identification process working and what protections you will put in place for firms.
7. Given that the CFPB’s stated goal of promoting competition and removing barriers for new entrants, please expand upon the rationale provided by the Bureau behind replacing the fintech sandbox program that issued “no-action” letters to startup companies.
8. Previously, the Office of Innovation reported directly to the Director. Now the Office will report through the Research, Markets and Regulations division. As part of this shift, the CFPB is encouraging start-ups and the public to file rulemaking petitions to ask for clarity. Please explain how this process provides consumers with more choices, fosters an environment where the best products will win, and ensures new firms can enter the market.

² CFPB Blog: Should you buy now and pay later? (Jul. 6, 2021), *available at*

<https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/>.

³ CFPB Study Details the Rapid Growth of “Buy Now, Pay Later” Lending (Sept. 15, 2022), *available at*

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/>.

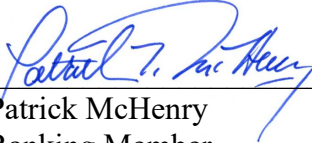
⁴ Director Chopra’s Prepared Remarks on the Release of the CFPB’s Buy Now, Pay Later Report (Sept. 15, 2022),

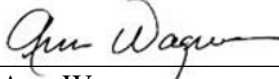
available at <https://www.consumerfinance.gov/about-us/newsroom/director-chopras-prepared-remarks-on-the-release-of-the-cfpbs-buy-now-pay-later-report/>.


9. You have indicated the CFPB is looking at the increased potential for fraud using P2P payment systems. Is the CFPB working on guidance to require banks to treat fraudulently induced transactions as unauthorized electronic fund transfers even when they are initiated by the consumer?
- a. If so, please provide the Bureau's analysis to date and the potential impact to consumers, small businesses, and financial institutions of all sizes.
10. How often as the Director have you met with fintech company representatives so that you can better understand exactly how this industry works?


Please provide your response as soon as possible, but no later than December 30, 2022. Thank you for your attention to this important matter.


Sincerely,

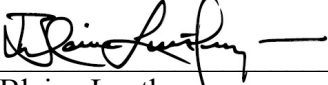

Patrick McHenry
Ranking Member



Ann Wagner
Vice Ranking Member

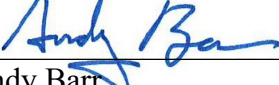

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Pete Sessions
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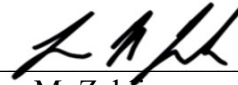

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Member of Congress


Roger Williams
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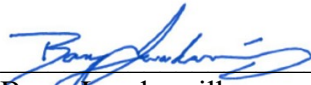

French Hill
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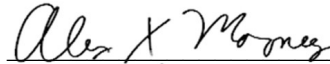
Tom Emmer
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Lee M. Zeldin
Member of Congress



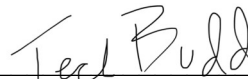
Barry Loudermilk
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Alexander X. Mooney
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Warren Davidson
Member of Congress



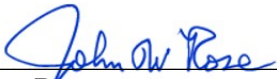
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Trey Hollingsworth
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Anthony Gonzalez
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