



United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

January 30, 2024

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

Dear Director Chopra,

We write in regard to the Consumer Financial Protection Bureau's (CFPB) November 2023 proposed rule to define a market for general-use digital consumer payment applications, and strongly urge the CFPB to reopen the comment period and reconsider finalizing the rule as proposed.¹

No Sufficient Justification is Made for the Proposed Rule

As written, the proposed rule does not adequately justify the need to substantially expand the Bureau's regulatory scope into the payments industry. Rather, the Bureau relies on its regulatory prerogative under the Dodd-Frank Wall Street Reform and Consumer Protection Act as the basis for implementing a burdensome and overreaching supervisory authority.² The proposed rule fails to analyze the costs, the impact on competition, and inevitably how the proposal hurts consumers.

Citing flawed Bureau precedent, the proposed rule reiterates that “[t]he Bureau need not conclude before issuing a [larger participant rule] that the market identified in the rule has a higher rate of non-compliance, poses a greater risk to consumers, or is in some other sense more important to supervise than other markets.”³ In fact, the proposed rule fails to provide any evidence of non-compliance with Federal consumer financial laws or explain how it would be addressed by this new regulation. Disregarding such considerations allows the Bureau to wield a concerning degree of power when issuing a larger participant rule.

¹ Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197 (proposed Nov. 17, 2023) (hereinafter, “Proposed Rule”).

² Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, § 1024, 12 U.S.C. § 5514 (2018) (hereinafter, “Dodd-Frank”).

³ Proposed Rule at 80200, footnote 24.

Further, the proposed rule explicitly allows the CFPB to supervise an entity’s activities offered *outside* of the entity’s general-use digital consumer payment application (as defined by the proposed rule). This is included despite the CFPB’s failure to justify the need to supervise such activities.⁴ The CFPB’s press release claims that “Big Tech” and other companies “blur the traditional lines that have separated banking and payments from commercial activities.”⁵ However, without any supported for this claim, the CFPB’s attempt to impose further supervision onto these companies’ operations is unwarranted and an inappropriate demonstration of unchecked authority.

Prior to finalizing any rule, we urge the CFPB to provide sufficient justification demonstrating the need for the proposed rule. The justification should include a more detailed analysis of the scope of the proposed rule and its impact. Absent such justification, the CFPB should forgo finalizing the rule.

Third Party Service Providers are Left in Regulatory Limbo

In addition to expanding its supervisory authority over covered entities, the CFPB creates more market uncertainty by overseeing third-party service providers.⁶ As written, it is unclear whether the proposed rule covers third party service providers and, if so, how it would extend to these providers. By failing to articulate the extent to which the Bureau intends to oversee services providers, the proposed rule creates more uncertainty.

Additionally, “service provider” is a broadly defined term under Dodd-Frank with limited exceptions.⁷ Relying on the statutory definition, without providing further clarification, leaves many unanswered questions with respect to how the CFPB intends to conduct oversight of third-party service providers to covered entities offering consumer payment applications. This approach also deviates from CFPB precedent. For example, the 2015 Automobile Financing Rule⁸ explicitly declined to include servicing activity as part of the final rule’s criterion,⁹ while the 2012 Consumer Debt Collection Rule gave a more nuanced colloquy that discussed under what circumstances attorneys would be covered as third-party service providers under the rule.¹⁰ Substantive conversations such as these provide the market with valuable insight as to how a proposed rule, if finalized, would impact the various stakeholders.

⁴ *Id.* at 80198, footnote 7.

⁵ Press Release, CFPB, *CFPB Proposes New Federal Oversight of Big Tech Companies and Other Providers of Digital Wallets and Payment Apps* (Nov. 7, 2023), <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/>.

⁶ Proposed Rule at 80215.

⁷ 12 U.S.C. § 5481(26). “Service providers” include any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that participates in designing, operating, or maintaining the consumer financial product or service, or processes transactions relating to the consumer financial product or service.

⁸ Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 Fed. Reg. 37496 (codified at 12 C.F.R. pt. 1001 (2015)).

⁹ *Id.* at 37514.

¹⁰ Defining Larger Participants of the Consumer Debt Collection Market, 77 Fed. Reg. 65775 (codified at 12 C.F.R. pt 1090 (2012)), at 65784 – 65785.

The Proposed Rule's Impact on Digital Assets Payments is Unclear

The proposed rule asserts that the Dodd-Frank's definition of "funds" includes "digital assets that have monetary value and are readily useable for financial purposes, including as a medium of exchange."¹¹ The Bureau's approach creates more regulatory uncertainty that could undermine the digital asset industry's functionality with respect to digital asset transactions.

As written, it is unclear when the rule would apply to specific entities within the digital asset ecosystem. On one hand, the proposed rule explicitly states that fiat-to-crypto and crypto-to-crypto transactions conducted on an exchange would not be covered. However, it remains unclear if this exclusion would exempt digital asset exchanges entirely, or only in instances where they offer services limited to the conversion of fiat-to-crypto and crypto-to-crypto transactions. If the latter is true, then digital asset exchanges may be dissuaded from expanding their services to allow for peer-to-peer transactions through wallets hosted on the platform.

Further, the proposed rule's language pertaining to digital asset wallet providers raises questions as to which entities would be swept into the CFPB's purview. "Wallet functionality" is defined as a product or service that: "(1) stores account or payment credentials, including in *encrypted or tokenized form*; and (2) transmits, routes, or otherwise processes such stored account or payment credentials to facilitate a consumer payment transaction" (emphasis added).¹² Considering that digital assets are included in the definition of "funds," taken in conjunction with the aforementioned definition, it appears that the CFPB is taking a broad brush to capture digital asset entities in the proposed rule.

Peer-to-peer transactions through "self-hosted wallets" is a core component for the digital asset ecosystem, as it eliminates third-party risk. Capturing certain digital asset wallet providers, who themselves do not maintain an ongoing relationship with consumers, would essentially introduce regulatory risk. This ventures far beyond Dodd-Frank's intended scope, and we urge the CFPB to refrain from pursuing such a broad definition.

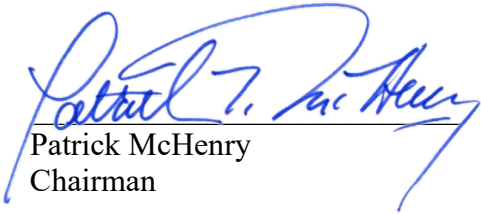
A Longer Comment Period is Warranted

Given the proposed rule's wide-sweeping implications and existing ambiguities, the comment period should be reopened for an additional 60 days. This would ensure that the Bureau receives substantive input from a wide array of stakeholders before moving forward with this rule. As it currently stands, this rule would introduce more regulatory uncertainty into the payment industry, particularly with respect to third-party service providers and digital asset companies. It's imperative that the Bureau avoids advancing the rule in its current form.


¹¹ Proposed Rule at 80202.

¹² *Id.* at 80205.

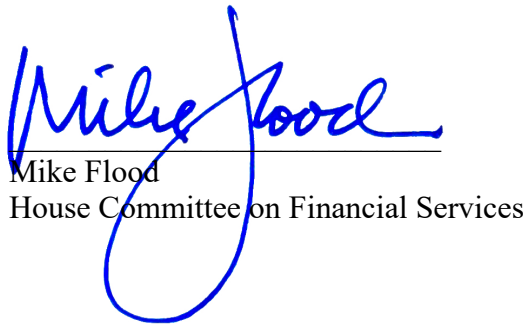
Sincerely,



Patrick McHenry
Chairman



French Hill
Chairman of the Subcommittee
On Digital Assets, Financial
Technology and Inclusion



Mike Flood
House Committee on Financial Services