



Nonbank-Payment Provider Regulation

Cite

CFPB, Final Rule, Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications

Recommended Distribution

Payment, Corporate Planning, Policy, Legal, Government Relations

Website

https://files.consumerfinance.gov/f/documents/cfpb_final-rule_general-use-digital-consumer-payment-applications_2024-11.pdf

Impact Assessment

- Approximately seven large nonbanks will come under new CFPB supervision intended to significantly redefine business practices at most covered firms.
- Payment privacy, customer surveillance, and dispute resolution procedures may now be better aligned for covered nonbanks with those for banks, reducing competitive advantages achieved via regulatory arbitrage.
- The extent and rigor of future CFPB examinations and enforcement will determine if these expected results in fact occur.

Overview

Continuing its efforts to advance controversial actions before the end of the Biden Administration, the CFPB has finalized proposed supervisory standards for large nonbank providers of general-use digital-payment-platform services.¹ The new standard brings these companies under CFPB supervision as well as regulation and enforcement actions, better aligning their governance with rules applicable to bank payment providers and addressing the Bureau's deep concerns about digital marketing.² However, this new framework depends on voluntary compliance in anticipation of or as the result of rigorous CFPB supervision. The extent to which this will in fact occur under a new CFPB director remains to be seen. Regardless, banks are subject not only to CFPB supervision, but also to federal and state banking agencies likely to continue their focus on customer privacy and data monetization in addition to consumer protection if the CFPB steps back.

¹ See **PAYMENT27**, *Financial Services Management*, November 15, 2023.

² See **CONSUMER56**, *Financial Services Management*, March 5, 2024.

Impact

The Bureau is at pains in this final rule to emphasize that it imposes no new requirements because covered payment providers were already subject to federal law and CFPB enforcement. However, at the same time, the CFPB argues that the rule aligns nonbank-payment company obligations with those imposed on depository institutions, advancing the agency's goal of regulatory symmetry and heightened barriers between banking and commerce. It is hard to see how this is accomplished solely by force of CFPB supervision alone, with the final rule in fact also laying out new, clear expectations that many firms may not have inferred exist in current federal law or prior CFPB regulation.

Although the rule expressly applies to nonbank payment providers based on the consumer payment services they provide, the Bureau states that its supervisory authority extends not just to the products expressly covered by this new rule, but also to other consumer-finance activities of the covered provider. This is consistent with the manner in which the Bureau supervises large banks, although this interpretation was strongly contested by nonbank commenters.

Defending it, the final rule includes examples of other rules governing nonbanks in a manner akin to banks. Here, the Bureau names its new open-banking rule.³ While that rule implied that “market participants” include nonbank payment providers, this rule makes this explicit, creating a significant obstacle to data surveillance if a covered nonbank payment provider works with third parties or uses data to facilitate third-party sales. The Bureau rejected nonbank comments seeking to exempt nonbank payment apps that are pass-throughs or otherwise work with banks (e.g., via screen-scraping) on the grounds that this would create significant consumer-protection loopholes.

The rule also does not, however, apply to digital payments in cryptoassets, including stablecoins. As a result, significant consumer-protection gaps remain for nonbanks that are currently addressed by federal banking agencies to at least some extent when it comes to depository institutions and their regulated holding companies.

While asserting broad consumer-protection law authority over nonbanks, the final rule uses examples largely to show how other rules and its overall authority apply to nonbanks, not to specify how it reads current law and rule with regard to covered larger nonbank providers of general-use digital payment services. The final rule mentions enhanced compliance with state law as well as federal standards governing dispute resolution and consumer liability, fraud prevention, privacy, digital marketing,⁴ and its sweeping UDAAP standards,⁵ but not how these apply to nonbanks. One likely source of continuing dispute and, perhaps, litigation is the assertion that, especially with regard to dispute resolution and restitution and privacy, covered nonbank providers are not “financial institutions” as defined in applicable law (the Electronic Funds Transfer and Gramm-Leach-Bliley Acts).

³ See **DATA5**, *Financial Services Management*, October 30, 2024.

⁴ See **FINTECH30**, *Financial Services Management*, August 15, 2022.

⁵ See **UDAP8**, *Financial Services Management*, April 6, 2023.

The law and rules to which most nonbank-payment providers are expressly subject come under state licensing standards for entities such as money transmitters. State standards generally address matters such as payment finality and cost, not privacy, consumer protection, and data monetization. The Bureau's final rule, like the proposal, acknowledges state standards but deems them insufficient, warranting a federal standard. Commenters also countered that the new standards could preempt state law in areas such as privacy, but the Bureau continues to state that the new rule only clarifies how current standards apply to covered nonbank-payment providers. In fact, federal expectations will preempt those in states where these may exist, but only if CFPB supervision results in active enforcement of federal standards with disputed applicability to covered nonbanks.

This broad assertion of CFPB power leads the Bureau to conclude that even the threat of supervision will have substantial consumer-protection benefits that reduce consumer costs. It rejects assertions that preparation or supervision and/or actual compliance will be unduly costly for covered firms, noting huge payment volumes and very low per-transaction costs without quantifying the costs it expects nor those of likely benefits.

What's Next

The Bureau issued this rule on November 21; it is effective thirty days after publication in the *Federal Register*. This is likely to take time, ensuring that the rule is vulnerable next year to Congressional Review Act efforts to overturn it. However, aspects of the Bureau's approach have strong bipartisan support due to fears of bigtech market power and "financial censorship." Thus, unlike many other recent Bureau actions, CRA repeal for this rule is uncertain.

Analysis

A. Scope

1. Covered Entities

These are nonbank payment entities and their affiliates that facilitate dollar-denominated digital consumer-payment volumes greater than fifty million annual transactions (up from five million in the NPR). The proposed threshold would have covered seventeen firms, with the new approach governing only seven that nonetheless have 98 percent of this nonbank market.

Even if a firm has 50 million or more transactions a year, it is not covered if it is also a small business.

The preamble to the final rule notes that, while this test determines larger nonbanks payment providers subject to CFPB supervision, all nonbanks in

this arena are subject to Bureau enforcement related to consumer-protection compliance.

2. **Payments**

Those covered by this rule are those for fund transfer and payment wallet functionalities (including tokenized or encrypted money) through digital applications for consumers' general use via personal computing devices in making payments for personal, family, or household purposes through multiple, unaffiliated persons other than payments for debt obligations, charitable donations, or extensions of credit.

Payment apps, fund-transfer apps, business-to-business apps, pass-through apps with consumer interfaces, and similar products are also covered, but payments for a provider's own goods or services are excluded unless these are related to third-party providers.

B. Requirements

As noted above, the final rule does not directly implement the Bureau's expectation that supervision will have significant privacy, fair-competition, and consumer-protection benefits. Instead, it relies on the effect of CFPB supervision or perhaps its threat to ensure that larger nonbank digital general-use payment providers better comply with the law and rule to which the Bureau says they and, indeed, all nonbank payment providers are subject.

The final rule restates that the Bureau might not ever supervise a covered nonbank, but goes on to note that it could also do so on a "periodic" or "occasional" basis, essentially placing nonbanks into an uncertain supervisory construct that differs from the more formal, periodic bank-supervision approach.

Any covered larger nonbank payment provider that has not yet complied with the CFPB's nonbank registration rule will also now need to ensure this has been done.⁶

⁶ See **CONSUMER47**, *Financial Services Management*, December 21, 2022.