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**National Association of Federally-Insured Credit Unions**

December 13, 2021

Comment Intake—Statement into Big Tech Payment Platforms  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

**RE: Notice and Request for Comment Regarding the CFPB's Inquiry Into Big Tech Payment Platforms; (Docket No. CFPB-2021-0017)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU) I am writing in response to the notice and statement (Notice) issued by the Consumer Financial Protection Bureau (CFPB or Bureau) regarding the Bureau's efforts to assess consumer risks posed by large technology companies operating domestic payment systems. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products. The Notice and its accompanying investigative orders (Orders) call attention to several issues which are concerning to NAFCU and its member credit unions; in particular, the extent to which nonbank payment service providers are responsive to consumer inquiries regarding payment errors.

NAFCU supports the CFPB's use of its market monitoring authority to better understand the consumer compliance and business practices of technology companies offering payment services. The rules and expectations that apply to traditional financial institutions must apply to all participants in the financial sector and the CFPB should utilize its investigative powers to ensure that a level playing field exists for credit unions and fintech companies alike.

**General Comments**

Director Chopra's statement accompanying the Notice poses several important questions regarding how large technology companies are meeting Regulation E obligations for timely and effective resolution of payment disputes and errors.<sup>1</sup> Whether large technology companies are sufficiently staffed to handle consumer complaints is a question relevant to both consumers and credit unions, particularly given the volume of consumer complaints catalogued by the Bureau which involve companies named in the Orders.<sup>2</sup> Inadequate call center staffing or customer service policies that make it difficult or impossible to reliably connect with an individual representative not only increase the risk of consumer harm but creates additional burden for credit unions who may have shared Regulation E responsibilities.

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<sup>1</sup> See CFPB, Statement Regarding the CFPB's Inquiry into Big Tech Payment Platforms (October 21, 2021).

<sup>2</sup> Among the recipients of the CFPB's Orders, two companies have generated nearly 10,000 complaints related to money transfers, virtual currency, or money services. See CFPB, Consumer Complaint Database.

Director Chopra has also drawn attention to the troubling prospect of large technology companies possibly leveraging access to social media and transactional data to engage in “invasive financial surveillance.”<sup>3</sup> This potential misuse of consumer financial data should prompt the Bureau to seriously consider exercising its larger participants authority to ensure that large technology companies are adequately supervised, have adopted appropriate compliance systems, and are managing privacy and data security risks commensurate with the high expectations that apply to credit unions and other regulated financial institutions.

### **Companies with poor compliant resolution processes unfairly burden credit unions**

Credit unions have reported that when members assert payment errors (as defined in 12 CFR § 1005.11) that involve platforms operated by nonbank payment service providers, a payment provider’s lack of customer support staffing will often drive the consumer to contact their credit union instead. Underinvestment in complaint management systems by nonbank payment providers has led users of these services to rely on their credit union or primary financial institution to resolve transaction disputes and errors. For most users of nonbank payment services, the delineation of error resolution responsibilities is not a consideration (and hardly clear), so the choice to contact their financial institution instead of the payment service provider is often driven by an expectation that the former will be more responsive.

Credit unions put their members first as community-focused organizations and strive to provide a high level of personalized service; however, this commitment cannot reasonably encompass resolution of payment disputes that do not involve the credit union. Sometimes consumers will contact their credit union regarding billing errors that do not implicate the credit union at all. This behavior is reinforced when large technology companies steer their users towards chat-based systems to resolve complaints or questions and the affected user simply desires to speak to a human representative.<sup>4</sup>

Payment service providers that operate marginal customer service operations relative to the total transaction volume on their platforms place an unfair burden on credit unions that have responsibly invested in call centers and compliance management systems. Credit unions must divert valuable staff and investigative resources when their members seek resolution of transaction errors that involve third party payment platforms. As the consumer gets the benefit of the doubt when making an unauthorized transaction claim, credit unions often look to gather information from the payment service provider as part of their investigation into whether the transaction was authorized. When this occurs, the burden and responsibility of investigating the error shifts away from the party best equipped to research the transaction and potentially frustrates the goal of efficient error resolution.

For consumers, such inefficiency could mean that certain “mistaken” transfers will more likely result in loss of funds because they failed to immediately contact the payment service provider who may be in a better position to investigate the error and provide favorable resolution. For credit

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<sup>3</sup> Statement Regarding the CFPB’s Inquiry into Big Tech Payment Platforms

<sup>4</sup> One company that received an order from the CFPB lists a customer support number on the “Contact Us” portion of its website; however, there is no option to wait to speak to a human representative if all lines are busy. The call instead terminates with a message that the user should use the company’s “in-app” customer support option.

unions, a burden exists insofar as staff resources are used to address the customer service shortcomings of payment service providers.

For credit unions, the resolution of transaction errors or disputes involving platforms operated by large technology companies can be complex and time consuming. As a preliminary matter, the credit union may need to ascertain whether the transaction in fact triggers Regulation E's error resolution requirements, such as by determining whether an "in-wallet" transaction occurred entirely on a third party payment service or whether funds were contemporaneously debited from a member's credit union account. The comingling of wallet funds (such as those received from a peer transacting exclusively through the payment platform versus those deposited through a linked debit card) and drawn into a single transaction can complicate this analysis. Factors that may be relevant to determining whether friendly fraud has occurred (e.g., geolocation data, IP address information, log in patterns) are also difficult to collect from technology operating payment services and can frustrate a credit union's ability to efficiently complete its investigation.

NAFCU has heard from its members that certain payment service providers do little to facilitate investigations even when they do share Regulation E responsibilities. In an August 2021 survey of NAFCU's members, a significant share of respondents indicated that when investigating certain unauthorized transactions, access to information possessed by a third party would have been beneficial. However, respondents also indicated that the availability of such information was not always guaranteed. Among respondents that requested information from a third party to support their Regulation E error resolution obligations, a majority reported that the third party was "rarely responsive."

To rectify the lopsided allocation of Regulation E compliance obligations between credit unions and payment service providers, the CFPB should devote particular attention to the complaint data and metrics it collects through the Orders and determine whether resolution of electronic fund transfer errors or billing errors by large technology companies matches the expectations for supervised and examined financial institutions. The CFPB should also consider exercising its larger participants authority to ensure that nonbank technology companies offering payment services are appropriately supervised given their size and influence in markets for consumer payments.

### **The CFPB should exercise its "larger participant" authority**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) grants the CFPB the authority to regulate a covered person who "is a larger participant of a market for other consumer financial products or services, as defined by [a] rule" issued in consultation with the Federal Trade Commission. The use of such authority to supervise big tech payment platforms would not only be appropriate to better assess consumer payment risks on a more regular basis, it would also provide the CFPB with valuable information related to nonbank compliance practices as it considers implementation of section 1033 of the Dodd-Frank Act. Understanding the relative maturity of consumer compliance programs among large fintech companies would help inform the scope of a future rulemaking related to data aggregation practices—particularly when section 1033 has the potential to amplify the influence and systemic importance of payment service providers named in the Bureau's Orders.

In addition to assessing the extent to which large technology companies are responsive to consumer complaints and appropriately managing Regulation E responsibilities, the CFPB should also consider how these companies are utilizing payments data across business units and among affiliated entities. The extent to which nonbank technology companies are gathering and exchanging potentially sensitive transaction information raises unique privacy concerns which the Bureau should address through direct supervision before proceeding with any effort to implement section 1033. As NAFCU has shared in separate comments related to section 1033, the Bureau must ensure that access to consumer financial records is predicated upon a fair distribution of costs, data security and data privacy responsibilities, particularly in an environment where credit unions already face competitive pressure and reduced bargaining power when interacting with larger technology companies.<sup>5</sup>

### **Conclusion**

NAFCU supports the CFPB's efforts to better understand the consumer compliance practices of large technology companies operating payments platforms and urges the Bureau to exercise its larger participants authority to place these entities under closer supervision given their importance in the market for consumer payments. NAFCU appreciates the opportunity to provide comments on this notice. If we can answer any questions or provide you with additional information, please do not hesitate to contact me at 703-842-2266 or [amorris@nafcu.org](mailto:amorris@nafcu.org).

Sincerely,



Andrew Morris  
Senior Counsel for Research and Policy

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<sup>5</sup> See NAFCU, Letter to CFPB re: Consumer Access to Financial Records; RIN: 3170-AA78 (February 4, 2021), available at <https://www.nafcu.org/comment-letter-cfpb-consumer-access-financial-records-File>.