



**America's
Credit Unions**

Jim Nussle
President & CEO
202-508-6745
jnussle@americascreditunions.org

99 M Street SE
Suite 300
Washington, DC 20003

March 13, 2024

The Honorable French Hill
Chairman
Committee on Financial Services
Subcommittee on Digital Assets,
Financial Technology and Inclusion
U.S. House of Representatives
Washington, DC 20515

The Honorable Stephen F. Lynch
Ranking Member
Committee on Financial Services
Subcommittee on Digital Assets,
Financial Technology and Inclusion
U.S. House of Representatives
Washington, DC 20515

Re: Today's Hearing: "Bureaucratic Overreach or Consumer Protection? Examining the CFPB's Latest Action to Restrict Competition in Payments"

Dear Chairman Hill and Ranking Member Lynch:

On behalf of America's Credit Unions, I am writing regarding the Committee's hearing entitled, "Bureaucratic Overreach or Consumer Protection? Examining the CFPB's Latest Action to Restrict Competition in Payments." America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

In November 2023, the Consumer Financial Protection Bureau (CFPB) issued its first "Larger Participant Rulemaking" proposal in eight years. In response, America's Credit Unions sent a letter to CFPB Director Rohit Chopra on January 8, 2024, to share our support for the proposed rule.

While there are several examples of CFPB overreach in the payments space that we remain concerned about, America's Credit Unions supports the CFPB's proposed rule to designate certain providers of general use digital consumer payment applications as "larger participants" subject to the CFPB's supervisory authority. In fact, in our comment letter, we urged the CFPB to go a step further and consider the potential benefits of examination and supervision of nonbank covered persons, regardless of size, to determine whether the rule's proposed thresholds for determining larger participant status are sufficient to address broader consumer protection concerns.

Our member credit unions are concerned that unregulated, unsupervised companies are engaging in financial activities by offering products and services that are traditionally offered by credit unions and banks. The ever-increasing tidal wave of regulations and restrictions on regulated financial institutions is making it harder to compete with those companies. Consumers benefit from innovation that offers new delivery channels and products as well as innovations to traditional products, and credit unions want to ensure that financial products and services available from nonbanks offer the same protections as those offered by regulated entities. Our

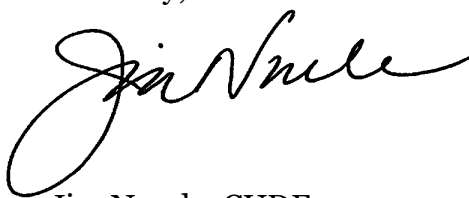
members do not want to discourage innovation but want to ensure that innovation does not allow new entrants to end run regulation. As the preamble to the proposed rule acknowledges, nonbanks have engaged in regulatory arbitrage and purposely constructed their product and service offerings to use partnerships to circumvent crucial consumer protection laws—creating different levels of consumer protection based on the type of entity offering a product or service.

As you know, credit unions are overseen by the National Credit Union Administration (NCUA) and state credit union regulators. The CFPB also has supervisory jurisdiction over some of the largest credit unions. Currently, there are regulatory and supervisory gaps within the market for consumer payments which have permitted certain nonbanks offering “general-use digital consumer payment applications” to avoid regular, federal supervision. These gaps are extremely harmful to consumers who may find it difficult to obtain prompt resolution of errors in connection with their use of nonbank payment services. Credit unions are likely to be harmed as well since they will often step in to help members even when an error involves a nonbank platform.

While the proposal does not establish any specific examination procedures for the proposed category of larger participants offering covered consumer payment applications, the preamble notes the proposal “would further the CFPB’s statutory objective of ensuring that Federal consumer financial law is enforced consistently between nonbanks and depository institutions to promote fair competition.” America’s Credit Unions regards this objective as the most important guiding principle in a future rule. Nonbank covered persons should be subject to examination procedures appropriately scaled to operational risks, consumer complaint patterns, and the nature of the products and services offered—the same factors considered when scoping examinations for currently supervised financial institutions. While we wholeheartedly endorse the supervision and examination of nonbank entities, this new oversight should serve to hold nonbanks to the same standard as credit unions, but not increase the burden on credit unions that may have relationships with these entities.

We appreciate the Subcommittee’s examination of this important topic. On behalf of America’s Credit Unions and the 140 million credit union members, thank you for holding this important hearing and considering our views on the subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle", written in a cursive style.

Jim Nussle, CUDE
President & CEO

cc: Members of the Subcommittee on Digital Assets, Financial Technology and Inclusion