



December 7, 2022

Comment Intake—Statement into Big Tech Payment Platforms
Bureau of Consumer Financial Protection
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)

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, appreciates the opportunity to submit comments in response to the Consumer Financial Protection Bureau's ("Bureau" or "CFPB") Notice and Request for Comment Regarding the CFPB's Inquiry Into Big Tech Payment Platforms ("Inquiry" or "RFI"). As the largest nonprofit, nonpartisan membership organization representing people aged 50 and older, AARP is encouraged by the Bureau's effort to examine the consumer protections of large technology companies operating payments systems in the United States. We welcome this opportunity to share our views on how the CFPB can best protect consumers in relation to the use and control of their data, including payments data.

As a preliminary matter, AARP supports the Bureau's ongoing effort to modernize rules around consumer-authorized access to financial data in order to ensure that authorized access to financial data is more secure, effective, and most importantly, consumer controlled.¹

In a similar vein, this letter addresses additional challenges identified by AARP with respect to the use of mobile or peer-to-peer ("P2P") payment networks by older Americans and other consumers. AARP recognizes that faster, friction-less, and cheaper payment systems have the potential to provide significant benefits to consumers, including older Americans.² However, despite often being marketed as fast and secure,³ most P2P platforms afford far fewer protections

¹ Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides, among other things, that subject to rules prescribed by the Bureau of Consumer Financial Protection (Bureau), a consumer financial services provider must make available to a consumer information in the control or possession of the provider concerning the consumer financial product or service that the consumer obtained from the provider. In November, 2020, the Bureau is issued an Advance Notice of Proposed Rulemaking (ANPR) to solicit comments and information to assist the Bureau in developing regulations to implement section 1033.

<https://www.federalregister.gov/documents/2020/11/06/2020-23723/consumer-access-to-financial-records>

² See e.g., "Supplementary Materials" accompanying CFPB Advance Notice of Proposed Rulemaking, November 6, 2020. (<https://www.federalregister.gov/documents/2020/11/06/2020-23723/consumer-access-to-financial-records>)

³ For example, Wells Fargo tells customers that payment platform Zelle "is fast, safe, and convenient." Early Warning Services, Zelle's parent company, brands itself as "innovative," "collaborative," and "trustworthy."

to their users than is afforded to users of traditional credit and debit cards.⁴ We urge the Bureau to prioritize and actively address the regulatory gap in the consumer financial protection framework surrounding emergent technologies.

I. The regulatory framework for consumer financial payments should be modernized to account for the role of P2P and mobile payment platforms. Given its statutory mandate and authority, the Bureau should be at the forefront of that regulatory effort.

a The CFPB is the federal agency directly tasked with and best equipped to protect consumers in transactions executed via P2P payment networks.

The CFPB is the agency tasked by Congress with ensuring that markets for consumer financial products and services are fair, transparent, and competitive,⁵ which includes companies that operate payment platforms. Such platforms should not only be subject to effective consumer protection rules and regulations, but such protections should be enforceable and, to the greatest possible extent possible, built into the platform operators' internal processes and controls.⁶

AARP urges the CFPB to use its full authority to clarify the obligations of payment services and financial institutions for protecting consumers from fraud committed on their platforms.

Despite its staggering size, and the involvement of large international banks, regulation of consumer mobile and P2P payment systems remains dispersed across multiple state and federal regulators, with state banking regulators primarily responsible for both the payment and transfer functions.⁷ While AARP encourages the CFPB to coordinate closely with state regulators on the front line of consumer financial protection, the scope of the problem with respect to fraud in P2P and mobile payment platforms is of a scale that requires federal attention.

(<https://www.warren.senate.gov/oversight/reports/new-report-by-senator-warren-zelle-facilitating-fraud-based-on-internal-data-from-big-banks>). October 3, 2022.

⁴ For example, unlike deposits held by banks or credit unions, funds deposited with P2P payment service providers are generally not insured against loss. In addition, due in part to reasons explained in this letter, key consumer protections afforded by Electronic Funds Transfer Act are frequently not available to P2P users.

⁵ October 21, 2022 Statement of CFPB Director Rohit Chopra.
<https://www.federalregister.gov/documents/2021/11/05/2021-24176/notice-and-request-for-comment-regarding-the-cfpbs-inquiry-into-big-tech-payment-platforms>

⁶ For example, the CFPB should carefully scrutinize how large payment platform manage complaints, disputes, errors, and fraud. The CFPB could also examine mobile payment platforms to ensure they are taking appropriate steps to address consumer protection and provide responsive customer service when things go wrong.

⁷ CRS Report to Congress. Big Tech in Financial Services. Updated July 29, 2022. Accessible at <https://crsreports.congress.gov/product/pdf/R/R47104>

Title X of the Dodd-Frank Act makes clear that the CFPB’s jurisdiction includes regulatory authority over various financial services providers -- including banks and nonbanks alike.⁸ The law gives the Bureau specific statutory authority to supervise any company that engages “in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.”⁹ Moreover, in April 2022, the Bureau publicly warned that it might invoke this “dormant” authority over nonbanks that may pose financial risks to consumers.¹⁰

The CFPB should take the lead in pushing to update the consumer financial protection framework to account for the proliferation of P2P payment platforms affecting consumers at all levels.

b The rapid adoption by consumers and merchants of mobile and P2P payment platforms necessitates that regulators adopt a proactive posture toward consumer protection in this area.

Overall, the global mobile wallet market has grown dramatically, reaching a value of \$120 billion in 2021,¹¹ with well over 100 million consumers having used mobile payment apps or payment platforms linked to bank accounts that can be downloaded onto mobile devices that allow individuals to send payments to each other or to merchants.¹² That figure increases if one includes P2P-adjacent products, such as lines of credit, value storage, and stablecoin wallets.¹³

While continuing its work to sound the alarm about the risk of P2P mobile payment platforms, it is imperative that the Bureau also redouble its efforts to clarify and strengthen Regulation E. In particular, AARP supports efforts by the Bureau to utilize guidance as a means to clarify the definition of “unauthorized transactions” under the Electronic Funds Transfer Act (EFTA), and thereby to shift some of the burden of losses away from consumers to banks and P2P platforms.

c Fraud is a metastasizing problem in mobile P2P payment platforms. Any CFPB rulemaking that stands to accelerate the adoption of P2P mobile payments must also

⁸ See CRS In Focus IF10031, Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB), by Cheryl R. Cooper and David H. Carpenter. Accessible at <https://sgp.fas.org/crs/misc/IF10031.pdf>

⁹ P.L. 111-203, §1024 (a)(1)(C).

¹⁰ CFPB, “CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers,” press release, April 25, 2022, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/>

¹¹ See memo following April 28, 2022, Hearing entitled, “What’s in Your Digital Wallet? A Review of Recent Trends in Mobile Banking and Payments” https://financialservices.house.gov/uploadedfiles/hhrg-117-ba00-20220428-sd002_1.pdf.

¹² Notable examples of mobile payment apps include Venmo (owned by PayPal), Zelle (owned by a consortium of large U.S. banks), and Cash App (owned by Square).

¹³ In 2021, Venmo estimated 70 million users, and Cash App’s userbase was estimated at 44 million users. (See Venmo Revenue and Usage Statistics (2022) <https://www.businessofapps.com/data/venmo-statistics/> and Cash App Revenue and Usage Statistics (2022) <https://www.businessofapps.com/data/cash-app-statistics/>).

enable regulators to effectively combat the use of P2P payments for fraud and scams.

In recent years, despite an overall lack of transparency on the part of some P2P platforms, a clear picture has emerged of the role mobile and P2P payment platforms play as vectors for financial criminals, including those targeting older Americans.

In fact, this has been the subject of much Congressional inquiry over the past few years. For example, in September 2022, Senator Elizabeth Warren (D-MA) released data provided by a subset of the banks that own “P2P” payment platform, Zelle, showing in excess of 50,000 “fraud and scam claims from customers,” and projections of “fraud claims in excess of \$255 million in 2022.”¹⁴ A separate Senate Banking Committee inquiry determined that nearly 18 million Americans “were defrauded through scams involving Zelle and other instant payment applications” in 2020.¹⁵ In addition, late last year, the Senate Special Committee on Aging convened a hearing in which it received testimony about the rise of P2P apps as vehicles for fraud against older adults.¹⁶

According to recent Federal Trade Commission (FTC) data, older adults are increasingly using payment apps or services.¹⁷ The FTC’s findings are broadly consistent with data compiled by the AARP Fraud Watch Network Helpline, which reports “daily calls about P2P app scams.”¹⁸ This trend is further supported by a relative explosion of digital wallet consumer complaints in the CFPB’s Consumer Complaint Database over the past 24 months.¹⁹

¹⁴ “Facilitating Fraud: How Consumers Defrauded on Zelle are Left High and Dry by the Banks that Created It.” <https://www.warren.senate.gov/imo/media/doc/ZELLE%20REPORT%20OCTOBER%202022.pdf>

¹⁵ See July 11, 2022 press releases: <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-colleagues-press-big-banks-on-widespread-zelle-fraud>; see also: New York Times “Fraud is Flourishing” report, available here: <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>

¹⁶ Witnesses testified that there are “too few common-sense consumer protections available to older adults using P2P apps and that scams involving these platforms appear to disproportionately affect communities of color.” (https://www.aging.senate.gov/imo/media/doc/letter_to_cfpb_director_chopra_re_p2p_apps.pdf)

¹⁷ According to testimony the FTC provided to the Senate Aging Committee, “the number of P2P-related complaints the FTC received tripled from 2019 to 2020.” The FTC further testified that older adults reported \$10 million in losses associated with complaints related to “payment apps and services” in 2020 alone. The upward trend continued in 2021, with the FTC receiving 41,900 consumer complaints regarding payment apps and services through the first nine months of the year, 12 percent of which were reported by adults ages 60 and older. (Testimony of Lois Greisman, Associate Director, Bureau of Consumer Protection, Federal Trade Commission). Available at https://www.aging.senate.gov/imo/media/doc/SCA_09.23.21.pdf.

¹⁸ “Cash-Transfer Apps Ripe for Scams.” By Amy Nofziger and Mark Fetterhoff, AARP. October 7, 2022. Accessible at <https://www.aarp.org/money/scams-fraud/info-2022/cash-transfer-apps.html>

¹⁹ U.S. PIRG Educ. Fund, Virtual Wallets, Real Complaints, June 2021, at 9, available at https://uspirg.org/sites/pirg/files/reports/VirtualWallets/Virtualwallets_USP_V3.pdf

Finally, reported fraud to the FTC through the third quarter of this year shows fraud losses involving P2P apps were \$124.8 million, although the total cost is likely much higher, given the significant under-reporting of fraud.²⁰

II. The CFPB should work with Congress, as necessary, to clarify protections for transactions resulting from fraudulently induced mobile and P2P payments or fund transfers.

In addition to urging the CFPB to fully enforce existing protections, we also urge the Bureau to work with Congress to modernize the EFTA to better protect older Americans by explicitly extending that law's protections to victims of scams involving mobile and P2P payment platforms.

The EFTA—federal law that establishes the rights, liabilities, and responsibilities of consumers and banks with regard to electronic fund transfers—requires financial institutions to adopt certain practices respecting such matters as transaction accounting and error resolution. It also requires financial institutions and others to have certain procedures for preauthorized transfers and sets liability limits for losses caused by unauthorized transfers.²¹

Unfortunately, as currently implemented through CFPB Regulation E, the 44-year-old EFTA's loopholes and ambiguities make it poorly suited to protect consumers from fraud perpetrated via mobile and P2P apps. For example, unfortunately, the EFTA simply does not contemplate many of the key questions now posed by P2P and mobile payment systems, such as what constitutes customer authorization, requirements for one-time payments, fraudulently induced payments, and mistakes by consumers in utilizing new payment systems.²² Thus, today, if a consumer initiates a transfer or is viewed as having furnished the access device to the scam criminal, many financial institutions and P2P apps take the position that the consumer authorized the activity and is thus not eligible for restitution.

The EFTA provides a framework that is already known and understood by financial services providers, and which has until recently held up over time and served consumers reasonably well. In the long term, therefore, AARP believes that bipartisan legislation to modernize the EFTA in a common-sense manner that reflects the modern reality of P2P and mobile payment platforms

²⁰ Senator Elizabeth Warren, "Facilitating Fraud: How Consumers Defrauded on Zelle are Left High and Dry by the Banks that Created It," October 2022. Accessible at <https://www.warren.senate.gov/imo/media/doc/ZELLE%20REPORT.pdf>. See also: <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts>

²¹ The Electronic Fund Transfer Act of 1978 (15 U.S.C. § 1693) protects individual consumers engaging in electronic fund transfers (EFTs) and remittance transfers, including: Transfers through automated teller machines (ATMs); Point-of-sale (POS) terminals; Automated clearinghouse (ACH) systems; Telephone bill-payment plans where periodic or recurring transfers are contemplated; Remote banking programs; and Remittance transfers.

²² Written Testimony of Odette Williamson, National Consumer Law Center, at a hearing on "Frauds, Scams and COVID-19: How Con Artists Have Targeted Older Americans During the Pandemic." U.S. Senate Special Committee on Aging. September 23, 2021. (P. 11.) (https://www.aging.senate.gov/imo/media/doc/Testimony_Williamson%2009.23.21.pdf)

may be the best way to address payment fraud, including the need to shift some of the present burden of losses from such fraud away from consumers and toward banks and P2P platforms.

Again, AARP appreciates the opportunity to share its perspective on challenges arising from the use of mobile or P2P payment networks by older Americans and other consumers. If you have any questions, please feel free to contact Sarah Mysiewicz of our Government Affairs office at SMysiewicz@aarp.org or 202-893-4462.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a stylized flourish extending to the right.

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs