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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2021-0017]

Notice and Request for Comment Regarding the CFPB's Inquiry Into Big Tech Payment Platforms

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice; request for comment.

SUMMARY: On October 21, 2021, the Consumer Financial Protection Bureau (Bureau or CFPB) ordered six large technology companies operating payments systems in the United States to provide information about certain of their business practices. Accompanying the orders, the Director of the Bureau issued a statement and invited interested parties to submit comments to inform the Bureau's inquiry. The statement and request for comment was published in the *Federal Register* on November 5, 2021, in a document titled, "Notice and Request for Comment Regarding the CFPB's Inquiry into Big Tech Payment Platforms." The Bureau has determined that it is appropriate to re-open the docket for 30 days from *Federal Register* publication and add two questions.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2021-0017, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* BigTechPaymentsInquiry@cfpb.gov. Include Docket No. CFPB-2021-0017 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Statement into Big Tech Payment Platforms, Consumer Financial Protection Bureau, c/o Legal Division Docket Manager, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The Bureau encourages the early submission of comments. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). All submissions should include document title and docket number. In general, all comments received will be posted without change to <https://www.regulations.gov>. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Amy Zirkle, Program Manager for Payments & Deposits, (202) 435-7505. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

On October 21, 2021, the CFPB ordered six large technology companies operating payments systems in the United States to provide information about certain of their business practices. Accompanying the orders, the Director of the Bureau issued a statement and invited

interested parties to submit comments to inform the inquiry. The statement and request for comment were published in the *Federal Register* on November 5, 2021,¹ in a document titled “Notice and Request for Comment Regarding the CFPB’s Inquiry into Big Tech Payment Platforms.”

The CFPB has determined that it is appropriate to re-open the comment period to further inform the inquiry described by the Director in his October 21, 2021 Statement:

Faster, friction-less, and cheaper payment systems offer significant potential benefits to consumers, workers, their families, and small businesses in the United States. For example, families can send money to friends without delay, or to relatives overseas at lower costs. Fast payment systems can also help small businesses succeed with quicker transactions, lower cost, and more revenue conversion. And faster settlement can reduce the need for families and businesses to borrow.

But payments businesses are network businesses and can gain tremendous scale and market power, potentially posing new risks and undermining fair competition. Furthermore, knowing what we spend our money on is a valuable source of data on consumer behavior. This data can be monetized by companies that seek to profit from behavioral targeting, particularly around advertising and e-commerce. That many Big Tech companies aspire to grow in this space only heightens these concerns.

In China, we can already see the long-term implications of these forces. Alipay and WeChat Pay are deeply imbedded into the lives of the Chinese public, combining messaging, e-commerce and payment functionality into super-apps. In such a market, consumers have little choice but to use these apps and little market power to shape how their data is used.

¹ 86 FR 61182 (Nov. 5, 2021).

Today the Consumer Financial Protection Bureau (CFPB) has ordered six technology platforms offering payment services to turn over information about their products, plans and practices when it comes to payments. The orders were issued to Google, Apple, Facebook, Amazon, Square, and PayPal. The CFPB will also study the practices of the Chinese tech giants that offer payments services, such as WeChat Pay and Alipay.

Congress has tasked the CFPB with ensuring that markets for consumer financial products and services are fair, transparent, and competitive. To that end, it has authorized the CFPB to require participants in the marketplace to provide information that help the Bureau monitor risks to consumers and to publish aggregated findings that are in the public interest.

Little is known publicly about how Big Tech companies will exploit their payments platforms. For example, will the operators engage in invasive financial surveillance and combine the data they collect on consumers with their geolocation and browsing data?² Will they in turn use this data to deepen behavioral advertising, engage in price discrimination, or sell to third parties?

Will these companies operate their payment platforms in a manner that interferes with fair, transparent, and competitive markets? Will the payment platforms be truly neutral, or will they use their scale to extract rents from market participants? Will small businesses feel coerced into participating in the payment platform out of fear of being suppressed or hidden in search or product listings? If these tech companies enter a market that competes with other providers on the platform, will these providers be removed or otherwise disadvantaged? What factors will these tech companies use when disqualifying or delisting an individual or business from participating on the platform?

² In 2019, I joined global privacy regulators to seek information about Facebook's Libra project. At the time, the company failed to substantively respond. See https://www.priv.gc.ca/en/opc-news/speeches/2019/s-d_190805/.

Finally, how will these payment platforms ensure that key consumer protections are adhered to? How effectively do they manage complaints, disputes and errors? Are they sufficiently staffed to ensure adequate steps are taken to address consumer protection and provide responsive customer service when things go wrong?³

The CFPB's inquiry will help to inform regulators and policymakers about the future of our payments system. Importantly, it will also yield insights that may help the CFPB to implement other statutory responsibilities, including any potential rulemaking under Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The CFPB's orders build on the efforts of the Federal Trade Commission's work to shed light on the business practices of the largest technology companies in the world.

The CFPB's inquiry is one of many efforts within the Federal Reserve System to plan for the future of real-time payments and to ensure a fair and competitive payments system in our country. The Bureau intends to open a Federal Register docket to invite public comment. I invite any interested parties to submit comments to inform the agency's inquiry.

In addition, the Bureau is inviting comment on the following questions related to the Bureau's inquiry:

1. What fees, fines, or other penalties do large technology companies assess on users of their payment platforms, including for:
 - a. Purported violations of the technology companies' acceptable use policies; or
 - b. Any other conduct?

³ The law currently provides for a number of safeguards in the payments sector, including but not limited to the Electronic Fund Transfer Act, the Gramm-Leach-Bliley Act, and the Consumer Financial Protection Act.

2. Do the acceptable use policies for technology companies' payment platforms include provisions that can restrict access to their platforms? If so, under what circumstances can the technology companies restrict access to their platforms?

Re-opening the comment period will provide additional opportunity for the public to prepare comments related to this inquiry and to comment on the additional questions. Therefore, the CFPB is re-opening the comment period for an additional 30 days.

/s/Rohit Chopra

Rohit Chopra,

Director, Consumer Financial Protection Bureau.