

# The Banking Law Journal

Established 1889

An A.S. Pratt™ PUBLICATION

March 2025

**Editor's Note: The World of Banking**  
Victoria Prussen Spears

**Achieving Financial Stability and Resilience: How China Could Learn from the United States and the United Kingdom in Building a Financial Safety Net – Part I**  
Lerong Lu and Ci Ren

**Bankers Worldwide: You May Not Be Interested in Export Controls, But They Are Interested in You**  
Cari Stinebower, Carl Fornaris, Richard Weber, Juan Azel, Dainia Jabaji and Tony Busch

**Africa's Potential for Sustainable Sovereign Finance**  
Barthélemy Faye, Christophe Wauters and Pap Diouf

**Consumer Financial Protection Bureau Finalizes New Federal Supervision of Certain Providers of Digital Wallets, Payment Apps**  
Eamonn K. Moran, Christopher M. Phillips, Cynthia G. Burnside and Jennifer A. Connors

**Burdensome Proposed Federal Deposit Insurance Corporation For-The-Benefit-Of Account Rule Looms Large for Banks and FinTechs**  
Juan Azel, Carl Fornaris, Monica Lopez-Rodriguez and Julia Lagnese

**I've Read the U.C.C. Amendments So You Do Not Have To – Part I**  
Mercedes Kelley Tunstall

# THE BANKING LAW JOURNAL

---

VOLUME 142

NUMBER 3

March 2025

---

<b>Editor's Note: The World of Banking</b> Victoria Prussen Spears	111
<b>Achieving Financial Stability and Resilience: How China Could Learn from the United States and the United Kingdom in Building a Financial Safety Net – Part I</b> Lerong Lu and Ci Ren	114
<b>Bankers Worldwide: You May Not Be Interested in Export Controls, But They Are Interested in You</b> Cari Stinebower, Carl Fornaris, Richard Weber, Juan Azel, Dainia Jabaji and Tony Busch	123
<b>Africa's Potential for Sustainable Sovereign Finance</b> Barthélemy Faye, Christophe Wauters and Pap Diouf	130
<b>Consumer Financial Protection Bureau Finalizes New Federal Supervision of Certain Providers of Digital Wallets, Payment Apps</b> Eamonn K. Moran, Christopher M. Phillips, Cynthia G. Burnside and Jennifer A. Connors	134
<b>Burdensome Proposed Federal Deposit Insurance Corporation For-The-Benefit-Of Account Rule Looms Large for Banks and FinTechs</b> Juan Azel, Carl Fornaris, Monica Lopez-Rodriguez and Julia Lagnese	140
<b>I've Read the U.C.C. Amendments So You Do Not Have To – Part I</b> Mercedes Kelley Tunstall	145

**QUESTIONS ABOUT THIS PUBLICATION?**

---

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Matthew T. Burke at ..... (800) 252-9257  
Email: ..... matthew.t.burke@lexisnexis.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call or email:

Customer Services Department at ..... (800) 833-9844  
Outside the United States and Canada, please call ..... (518) 487-3385  
Fax Number ..... (800) 828-8341  
Customer Service Website ..... <http://www.lexisnexis.com/custserv/>

For information on other Matthew Bender publications, please call

Your account manager or ..... (800) 223-1940  
Outside the United States and Canada, please call ..... (937) 247-0293

---

ISBN: 978-0-7698-7878-2 (print)

ISSN: 0005-5506 (Print)

Cite this publication as:

The Banking Law Journal (LexisNexis A.S. Pratt)

Because the section you are citing may be revised in a later release, you may wish to photocopy or print out the section for convenient future reference.

---

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office  
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862  
[www.lexisnexis.com](http://www.lexisnexis.com)

MATTHEW  BENDER

# *Editor-in-Chief, Editor & Board of Editors*

---

**EDITOR-IN-CHIEF**

**STEVEN A. MEYEROWITZ**

*President, Meyerowitz Communications Inc.*

**EDITOR**

**VICTORIA PRUSSEN SPEARS**

*Senior Vice President, Meyerowitz Communications Inc.*

**BOARD OF EDITORS**

**CARLETON GOSS**

*Partner, Hunton Andrews Kurth LLP*

**DOUGLAS LANDY**

*White & Case LLP*

**PAUL L. LEE**

*Of Counsel, Debevoise & Plimpton LLP*

**MICHAEL D. LEWIS**

*Partner, Sidley Austin LLP*

**TIMOTHY D. NAEGELE**

*Partner, Timothy D. Naegele & Associates*

**STEPHEN J. NEWMAN**

*Partner, Steptoe & Johnson LLP*

**ANDREW OLMEM**

*Partner, Mayer Brown LLP*

THE BANKING LAW JOURNAL (ISBN 978-0-76987-878-2) (USPS 003-160) is published ten times a year by Matthew Bender & Company, Inc. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices. Copyright 2025 Reed Elsevier Properties SA., used under license by Matthew Bender & Company, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204 or e-mail [Customer.Support@lexisnexis.com](mailto:Customer.Support@lexisnexis.com). Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, [smeyerowitz@meyerowitzcommunications.com](mailto:smeyerowitz@meyerowitzcommunications.com), 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, LexisNexis Matthew Bender, 230 Park Ave, 7th Floor, New York, NY 10169.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, A.S. Pratt & Sons, 805 Fifteenth Street, NW, Third Floor, Washington, DC 20005-2207.

# Consumer Financial Protection Bureau Finalizes New Federal Supervision of Certain Providers of Digital Wallets, Payment Apps

*By Eamonn K. Moran, Christopher M. Phillips, Cynthia G. Burnside and  
Jennifer A. Connors\**

*In this article, the authors review a new rule issued by the Consumer Financial Protection Bureau to supervise larger nonbank companies that offer “general-use digital consumer payment applications” such as digital wallets, payment apps and peer-to-peer payment apps.*

The Consumer Financial Protection Bureau (CFPB) on Nov. 21, 2024, issued a final rule<sup>1</sup> to supervise larger nonbank companies that offer “general-use digital consumer payment applications” such as digital wallets, payment apps and peer-to-peer payment apps. Pursuant to the rule, larger participants in this market will be subject to direct federal oversight through the CFPB’s supervisory authority under the Consumer Financial Protection Act (CFPA).

This rule is the sixth in a series of CFPB rulemakings to define larger participants in markets for consumer financial products and services for purposes of the CFPB’s supervisory authority over “larger participant[s] of a market for other consumer financial products or services, as defined by rule[s]” issued by the CFPB.<sup>2</sup>

The rule finalizes the proposed rule that was issued in November 2023 largely as proposed, but with several significant changes. These key changes include (1) an increase in the transaction threshold to determine whether a nonbank covered person is a larger participant of a market for general-use digital consumer payment applications, and (2) exclusion from coverage for transfers of digital assets, including cryptocurrencies such as Bitcoin and stablecoins.

## **COVERAGE**

The rule defines larger participants of a market for general-use digital consumer payment applications, a market that encompasses specific activities.

---

\* The authors, attorneys with Holland & Knight LLP, may be contacted at eamonn.moran@hkclaw.com, chris.phillips@hkclaw.com, cynthia.burnside@hkclaw.com and jennifer.connors@hkclaw.com, respectively.

<sup>1</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_final-rule\\_general-use-digital-consumer-payment-applications\\_2024-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_final-rule_general-use-digital-consumer-payment-applications_2024-11.pdf).

<sup>2</sup> See 12 U.S.C. 5514(a)(1)(B).

The market definition generally includes nonbank covered persons that provide funds transfer or payment wallet functionalities through a digital payment application for consumers' general use in making consumer payments transactions, which are defined to include payments to other persons for personal, household or family purposes, excluding certain transactions. This set of activities covered by the market definition – all of which digitally facilitate consumer payment transactions to multiple unaffiliated persons, regardless of the payment method, source or account used to fund the payment – marks the CFPB's conclusion of what “reasonably describes a market” for purposes of this aspect of the CFPB's statutory supervisory authority.

The rule adopts the proposed definition of “covered payment functionality” with certain minor clarifying changes.

First, the rule changes “wallet functionality” to “payment wallet functionality” in order to address concerns about whether the rule will apply to digital wallets (or the part of their functionalities) that store and transmit data unrelated to consumer payments. The definition of “payment wallet functionality” also is revised to clarify that account or payment credentials must be stored “for a consumer” to satisfy the first prong of that definition.

Second, the definition of “funds transfer functionality” is revised to clarify that the funds received or instructions accepted must be “from a consumer” to qualify as market activity.

The rule also identifies a limited set of digital payment applications that do not fall within the market definition because they do not have general use. Although a general-use digital consumer payment application also could help individuals to make payments that are not for personal, family or household purposes, such as purely commercial (or B2B payments), those payments are not within scope.

The rule sets forth a two-pronged test to determine whether a nonbank covered person is a larger participant of the general-use digital consumer payment applications market.

- First, the nonbank covered person (together with its affiliated companies) must provide general-use digital consumer payment applications with an annual volume of at least 50 million consumer payment transactions denominated in U.S. dollars. This marks a substantial shift from the proposal, which would have covered nonbank covered persons (together with their affiliated companies) that provide general-use digital consumer payment applications with an annual volume of at least 5 million consumer payment transactions.
- Second, the nonbank covered person must not be a small business

concern based on the applicable U.S. Small Business Administration (SBA) size standard. Any nonbank covered person that qualifies as a larger participant will remain a larger participant until two years from the first day of the tax year in which the person last met the larger-participant test.

Rather than adopt the proposal to base coverage of consumer payment transactions on whether the consumer is physically located in a state at the time of the transaction, the rule defines “consumer payment transactions” based on whether the consumer is a U.S. resident. This change reflects feedback received by the CFPB during the rulemaking process indicating that “most market participants may be more familiar with assessing where a consumer resides than where the consumer is located at the time of any given consumer payment transaction (which can change from transaction to transaction, especially when consumers make payments using mobile devices).”<sup>3</sup>

The rule excludes merchants and marketplaces conducting payment transactions for sales through their own platforms as distinct from the market defined in the rule. This marketplace exception was expanded from the proposed rule, which excluded marketplaces only to the extent they operated “prominently” in its name or the name of the affiliated company. Should marketplace operators expand into general-use consumer payment applications, however, they will qualify as larger participants under this rule and be subject to the CFPB’s supervisory authority.

Despite comments from industry groups, the CFPB declined to exclude e-commerce checkout processes from coverage under the rule. Though merchants that embed or integrate a “payment button” or other payment application on their checkout page are not subject to the rule, the associated payment applications are within the scope of the rule. The rule also excludes payment platforms provided solely to facilitate donations to fundraisers.

In what is one of the most significant shifts from the proposed rule, the CFPB has decided to exclude certain digital asset transactions from coverage under the rule by not including them in the definition of “consumer payment transaction.” This by itself is noteworthy because it would have marked the first time the CFPB has taken a formal step toward regulation of certain digital asset products or services – including crypto-assets, sometimes referred to as “virtual currency” – by asserting jurisdiction over at least some of them. The CFPB

---

<sup>3</sup> Consumer Financial Protection Bureau, “Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications,” at p. 108 (Nov. 21, 2024), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_final-rule\\_general-use-digital-consumer-payment-applications\\_2024-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_final-rule_general-use-digital-consumer-payment-applications_2024-11.pdf).



states that it “intends to continue to gather data and information regarding the nature of such transactions and the impact of digital assets transactions on consumers, and to take further action as appropriate.” This may have broader implications beyond this larger participant rulemaking should the CFPB adopt similar interpretations with respect to other consumer financial services statutes and regulations, especially in the wake of the upcoming change in presidential administration.

The CFPB estimates that seven nonbanks have annual consumer payment transaction volumes that exceed the 50 million transaction threshold and that these seven nonbank firms facilitated approximately 13.3 billion consumer payment transactions, which accounts for approximately 98 percent of the more than 13.5 billion consumer payment transactions market participants provide.<sup>4</sup>

### **SCOPE OF CFPB SUPERVISION**

The rule will subject larger nonbank digital consumer payment companies to the CFPB’s authority under the Dodd-Frank Act to conduct regular and proactive examinations, which will allow the CFPB to supervise larger participants for compliance with applicable federal consumer financial protection laws. These include applicable protections against unfair, deceptive and abusive acts and practices (UDAAP), rights of consumers transferring money (including errors and fraud), privacy rights and debanking (when consumers lose access to their apps without notice or when their ability to make or receive payments is disrupted).

The CFPB conducts examinations of various scopes of supervised entities. The CFPB’s authority to supervise nonbank covered persons also allows the agency to obtain information about such persons’ activities and compliance systems or procedures, and, as appropriate, request information from supervised entities prior to or without conducting examinations. The CFPB also may require submission of certain records, documents and other information for purposes of assessing whether a person is a larger participant of a covered market. Though the specifics of how an examination takes place vary by market and entity, the rule outlines the steps in the CFPB’s general examination process. Additionally, the CFPB may conduct other supervisory activities, such as periodic monitoring.

The CFPB prioritizes supervisory activity among nonbank covered persons on the basis of risk, taking into account, among other factors, the size of each entity, volume of its transactions involving consumer financial products or

---

<sup>4</sup> Unsurprisingly, none of these seven nonbank firms constitutes small business concerns under the SBA.

services, size and risk presented by the market in which it is a participant, extent of relevant federal and state oversight, and any field and market information that the CFPB has on the entity.

Specifically, and as highlighted in the CFPB Supervision and Examination Manual, the CFPB evaluates risks to consumers at marketwide and institution product-line levels, which allows the CFPB to focus on areas where consumers have the greatest potential to be harmed (specifically, on relatively higher-risk institution product lines within relatively higher-risk markets).

Pursuant to the CFPB's existing larger participant regulation, a person will be able to dispute whether it qualifies as a larger participant in the general-use digital payment applications market. The CFPB will notify an entity when the CFPB intends to undertake supervisory activity; if the entity claims not to be a larger participant, it will then have an opportunity to submit documentary evidence and written arguments in support of its claim.

Importantly, the rule does not impose new substantive consumer protection requirements, and some nonbank covered persons that will be subject to the CFPB's supervisory authority under the rule also may be subject to other CFPB supervisory authorities, including as a larger participant in another market defined by a previous CFPB larger participant rule. In addition, regardless of whether they are subject to the CFPB's supervisory authority, nonbank covered persons generally are subject to the CFPB's regulatory and enforcement authority and to applicable federal consumer financial law.

## **CONTINUED SCRUTINY OF TECHNOLOGY AND CONSUMER FINANCE**

This rulemaking initiative marks the latest addition to the CFPB's efforts to increase its monitoring and scrutiny of the impact of technology on consumer financial services and products. The payments sector in general has been a core focus of CFPB Director Rohit Chopra throughout his tenure at the agency. In 2022, the CFPB warned Big Tech firms about their obligations under consumer protection laws when using behavioral targeting for financial products. Additionally, the CFPB issued a report about how funds held in some popular apps are not protected by federal deposit insurance and advised consumers to regularly move their funds to a federally insured account. CFPB Supervision has also created a supervision technology program that assesses, among other things, technology and technology controls and their impact on compliance with federal consumer financial law.

The CFPB also has been invoking what had been a largely unused legal authority to examine nonbank financial companies (many today operate nationally and brand themselves as "FinTechs") whose activities the CFPB has

reasonable cause to determine pose risks to consumers.<sup>5</sup> This authority is not specific to any particular consumer financial product or service and allows the CFPB to supervise entities that may be fast-growing or in markets outside the existing nonbank supervision program.

### **IMPACT OF RECENT ELECTION**

This is an important step in terms of expanding the CFPB's reach, but it remains to be seen how the rule will be applied and enforced in a Trump administration and with a new CFPB director. Given the timing of its issuance, the rule is subject to the Congressional Review Act and may be considered by the 119th Congress.

This rule also may impact state-level jurisdiction. Given the new administration, one thought is that states will become more assertive, particularly California and New York, which have been particularly aggressive with all consumer protection-oriented regulation. However, if this rule has teeth to it and is enforced, state regulators may potentially be less emboldened to fill any gaps.

### **EFFECTIVE DATE**

In keeping with the proposed rule's anticipated effective date, the final rule will be effective 30 days after it is published in the Federal Register.

### **IN SUMMARY**

- The CFPB has issued a final rule to supervise larger nonbank companies that offer “general-use digital consumer payment applications” such as digital wallets, payment apps and peer-to-peer payment apps.
- According to the rule, larger participants in this market will be subject to direct federal oversight through the CFPB's supervisory authority under the CFPA.
- The rule is the sixth in a series of CFPB rulemakings to define larger participants operating in certain markets for consumer financial products and services.<sup>6</sup>

---

<sup>5</sup> Separate and apart from the larger participant rulemaking described above, “the CFPB has taken steps to place Google under formal federal supervision,” The Washington Post (Nov. 13, 2024), available at <https://www.washingtonpost.com/business/2024/11/14/cfpb-google-federal-supervision/>.

<sup>6</sup> Tech groups have sued to block the rule. See <https://www.reuters.com/legal/tech-groups-sue-us-cfpb-block-rule-payment-apps-digital-wallets-2025-01-16/>.