



May 19, 2022

*Via Electronic Mail*

Director Rohit Chopra  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Re: Consumer Financial Protection Bureau's Use of Dormant Authority and the Larger Participant Rule to Supervise Fintechs and Protect Consumers

Director Chopra:

**The Consumer Bankers Association<sup>1</sup> (CBA) applauds the decision by the Consumer Financial Protection Bureau (the Bureau) to utilize its dormant authority to examine nonbank financial companies (fintechs) that pose risks to consumers; however, CBA urges the Bureau to further protect consumers by adding markets in which unsupervised nonbanks hold a significant share – including the unsecured consumer lending market, the payment processing market, and the data aggregation market – to the larger participant rule.** Fintechs increasingly are providing financial products and services, but their activities are largely unsupervised by the Bureau or any federal regulator, leaving customers vulnerable. Supervision and examination of fintechs by the Bureau through its dormant authority and by adding the unsecured consumer lending market, the payment processing market, and the data aggregation market to the larger participant rule are integral to “stop[ping] harm before it spreads.”<sup>2</sup>

Fintechs are offering financial products and services to consumers in numbers that rival some of the country's largest supervised banks, yet operate outside of the supervisory framework that allows the Bureau to monitor their activities and prevent consumer harm. For example, Square and Venmo each have more active users than JPMorgan Chase has deposit accounts.<sup>3</sup> Chime

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<sup>1</sup> CBA is the only national trade association focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

<sup>2</sup> *CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers*, CONSUMER FINANCIAL PROTECTION BUREAU (Apr. 25, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/>.

<sup>3</sup> *ARK Newsletter #242: Digital Wallets Are Adding Users at an Exponential Rate, & More*, ARK INVEST, Oct. 5, 2020, available at <https://ark-invest.com/newsletters/issue-242/>.

provides mobile banking services to 12 million customers,<sup>4</sup> the same as BMO Harris, the eighth largest bank in the United States.<sup>5</sup> Fintechs now issue nearly half of all personal loans, up from just 22 percent in 2015.<sup>6</sup>

CBA applauds the decision by the Bureau to use its dormant authority under 12 U.S.C. § 5514(a)(1)(C) to protect consumers by levelling the playing field between banks and fintechs,<sup>7</sup> but this is not enough. The “dormant authority” only allows the Bureau to exercise supervisory authority over fintechs *after* consumers have filed complaints against the fintech. In other words, the “dormant authority” only allows the Bureau to supervise after the harm has already been done.

Section 1024 of the Dodd-Frank Act, 12 U.S.C. § 5514(a)(1)(B) allows the Bureau to extend its supervisory authority to the larger participants of markets for other consumer financial products or services if the Bureau first defines by rule what constitutes a larger participant in that specific market in consultation with the Federal Trade Commission.<sup>8</sup> The Bureau issued a rule defining larger participants in the consumer reporting market,<sup>9</sup> and amended the rule over time to include definitions for the consumer debt collection,<sup>10</sup> student loan servicing,<sup>11</sup> international money transfer,<sup>12</sup> and automobile financing markets<sup>13</sup> (the larger participant rule). However, there are numerous markets in which unsupervised fintechs dominate, which continues to put consumers at risk. The Bureau should identify and then add these markets to the larger participant rule so the Bureau can supervise these currently unsupervised entities and protect consumers before they are harmed. Relevant markets the Bureau may add to the larger participant rule include the unsecured consumer lending market, the payment processing market, and the data aggregation market.

A failure to examine fintechs does not just contribute to an uneven playing field between fintechs and supervised entities, but more importantly, results in a continuous and growing threat of consumer harm. The Bureau has acknowledged it is essential to “protect consumers and level the playing field between banks and nonbanks.”<sup>14</sup> Consumers are best protected when entities offering similar financial products and services are subject to the same oversight. **Due to the growing**

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<sup>4</sup> Shevlin, Ron, *Challenger Bank Chime Reaches The 12 Million Customer Mark*, Forbes, Feb. 1, 2021, available at <https://www.forbes.com/sites/ronshevlin/2021/02/01/challenger-bank-chime-hits-12-million-customer-mark/?sh=108cc0ac23f5>.

<sup>5</sup> *About BMO Harris*, BMO Harris, available at <https://www.bmoharris.com/main/about-us/>.

<sup>6</sup> Tatham, Matt, *Personal Loan Debt Continues Fast-Paced Growth*, EXPERIAN (Oct. 14, 2019), available at <https://www.experian.com/blogs/ask-experian/research/personal-loan-study/>; see also Taskforce on Federal Consumer Financial Law Report, p. 375 available at available at [https://files.consumerfinance.gov/f/documents/cfpb\\_taskforce-federal-consumer-financial-law\\_report-volume-1\\_2021-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-1_2021-01.pdf).

<sup>7</sup> See, e.g., Berr, Jonathan, *CFPB keys into ‘dormant authority’ in news exams for nonbanks*, Banking Dive (Apr. 26, 2022), available at <https://www.bankingdive.com/news/cfpb-keys-into-dormant-authority-in-new-exams-for-nonbanks/622711/>.

<sup>8</sup> 12 U.S.C. § 5514(a)(1)(B), (a)(2).

<sup>9</sup> 12 C.F.R. § 1090.104.

<sup>10</sup> 12 C.F.R. § 1090.105.

<sup>11</sup> 12 C.F.R. § 1090.106.

<sup>12</sup> 12 C.F.R. § 1090.107.

<sup>13</sup> 12 C.F.R. § 1090.108.

<sup>14</sup> *CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers*, CONSUMER FINANCIAL PROTECTION BUREAU (Apr. 25, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/>.

**popularity of financial products and services offered by fintechs, the Bureau must take the next step beyond use of its “dormant authority” and affirmatively expand its supervisory authority through adding markets in which fintechs hold a significant share to the larger participant rule.**

Sincerely,

A handwritten signature in cursive script that reads "Richard Hunt". The signature is written in black ink and is positioned above the printed name and title.

Richard Hunt  
President and CEO  
Consumer Bankers Association