

December 6, 2021

*Via Electronic Mail*

Comment Intake – Statement into Big Tech Payment Platforms  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552  
Re: Docket No. CFPB-2021-0017  
[BigTechPaymentsInquiry@cfpb.gov](mailto:BigTechPaymentsInquiry@cfpb.gov)

Re: Response to Docket No. CFPB-2021-0017 Regarding the CFPB's Inquiry Into Big Tech Payment Platforms

To Whom It May Concern:

The Consumer Bankers Association (CBA)<sup>1</sup> and the American Bankers Association (ABA)<sup>2</sup> appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (Bureau) in response to the Bureau's notice and request for comment regarding the Bureau's inquiry into big tech payment platforms.<sup>3</sup> CBA and ABA support the Bureau's focused efforts to prevent regulatory arbitrage and the exploitation of consumers and their information by the largest information technology companies (big techs).<sup>4</sup> To that end, the Bureau should ensure potential consumer protections are applied consistently to all companies offering payments products and financial services, including big techs. The Bureau should consider three core issues while reviewing big tech responses to the Bureau's orders: (i) consumer control over their data, (ii) protection of consumers from loss of value or fraud, and (iii) preservation of competition and consumer choice.

Big tech is increasingly making inroads into finance and financial services, including payments.<sup>5</sup> Companies like Google and Apple provide payments services<sup>6</sup> and steadily are comprising a larger

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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 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> The American Bankers Association is the voice of the nation's \$23.3 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.2 trillion in deposits and extend nearly \$11 trillion in loans.

<sup>3</sup> "Notice and Request for Comment Regarding the CFPB's Inquiry Into Big Tech Payment Platforms," 86 Fed. Reg. 61,182 (Nov. 5, 2021).

<sup>4</sup> We encourage the Bureau to continue to promote transparency in their market monitoring and information collection exercises, including by publishing an analysis of the application of procedural protections, such as the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501 et seq.), to these information collection exercises.

<sup>5</sup> See generally Juan Carlos Crisanto, Johannes Ehrentraud, and Marcos Fabian, "FSI Briefs No. 12 – Big techs in finance: regulatory approaches and policy options," BANK FOR INTERNATIONAL SETTLEMENTS (Mar. 2021), available at <https://www.bis.org/fsi/fsibriefs12.pdf>.

<sup>6</sup> See *id.* at 3.

segment of the market.<sup>7</sup> For example, as of December 2020 Cash App had 36 million monthly transacting active customers, and more than 80 million customers have used Cash App for a transaction.<sup>8</sup> However, despite the level of growth and engagement these companies have into the financial services market, they are not supervised and regulated like banks offering these same services. As the consolidation of large companies in the payments market continues, including consolidation of financial technology companies (fintechs),<sup>9</sup> these risks will only become more pronounced. New ideas and innovation are vital to a healthy and robust marketplace, but should not subvert safeguards that protect consumers.

CBA and ABA urge the Bureau to focus on what big tech responses to the Bureau's orders reveal regarding consumers' ability to control and limit the use of their data, and to consider whether other limitations related to using data within the confines of consumer expectations are necessary. Consumers often agree to share their bank account sign in and password with technology platforms that enable payments without fully understanding for what purposes and for how long their data can be used. Terms of service often allow big techs and other third-parties to use, exploit, and monetize consumer data in ways consumers may not have envisioned and for periods longer than the consumer may find reasonable. Consumers can make better informed choices if they more fully understand a big tech's ability to collect and use a consumer's financial transaction data, or directly and regularly access their bank account using their sign in and password. To the extent a big tech uses financial data collected from consumers to offer, market, or underwrite new products, consumers should not lose the protections otherwise available to them when dealing with a regulated bank.

During this inquiry, the Bureau should also review how consumers are protected from loss of value or fraud. In addition to storing payment credentials and transaction data, big techs will often provide consumers and small merchants with accounts to store value, or other increasingly sophisticated financial service offerings and credit functionalities that rely on the entire customer interaction happening within their system. These big techs are not subject to prudential standards for capital, liquidity, and resolution planning, which could introduce risks that consumers do not fully understand, including the loss of stored value, payment interruptions, and limited protection from fraud compared to the protections available from regulated banks.

Consumers also may not fully understand how these accounts with big techs differ from traditional bank accounts. For example, big techs generally will provide only limited interoperability outside of their ecosystem, a fact many consumers may not realize and which limits consumers' choices.

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<sup>7</sup> Fintechs and big techs offering banking services are generally not subject to prudential regulation and the majority of significant consumer protection laws. *See, e.g.,* Fernando Roy, "Occasional Paper No. 17 – Fintech regulation: how to achieve a level playing field," BANK FOR INTERNATIONAL SETTLEMENTS 3 (Feb. 2021) ("Following the emergence of fintechs, no generalised adjustments have been made to the perimeters of financial regulations in order to accommodate their activities as providers of financial services."), *available at* <https://www.bis.org/fsi/fsipapers17.pdf>. A shift from banks to unregulated entities can have significant consequences for consumers due to lessened oversight and supervision by regulatory agencies.

<sup>8</sup> Square, Inc. (Feb. 23, 2021), *Form 8-K*, Exhibit 99.1 (Shareholder Letter, dated Feb. 23, 2021), *available at* <https://sec.report/Document/0001193125-21-052320/>.

<sup>9</sup> *See* Sophia Furber & Fatima Aitizaz, "Fintech M&A 2021 deal tracker: Full steam ahead for payments consolidation," S&P GLOBAL (Jun. 21, 2021), *available at* <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/fintech-m-a-2021-deal-tracker-full-steam-ahead-for-payments-consolidation-65059934>.

Additionally, consumers unaware of the difference between accounts with big techs and traditional bank accounts may expect both types of accounts to be held to identical standards regarding protection of funds held in deposit and privacy and security of their information. An awareness that the accounts are not subject to the same standards and protections could impact consumers' decisions. Further, consumers conceptually conflating big tech accounts with traditional bank accounts can potentially lead to erosion of consumer confidence in the financial system, as issues isolated to just accounts with big techs may be improperly imputed to traditional bank accounts.

Additionally, the Bureau should use the information from its inquiry to inform the Bureau's efforts to preserve competition in the marketplace, particularly to ensure that big techs do not limit consumer choice or stifle innovation by granting competitors access to big techs' platforms on less favorable terms or excluding competing choices from their platforms altogether. For example, many platform providers "self-preference" their own financial services products on users' devices by automatically defaulting to their own products or preventing interoperability. Big techs could also collect user browsing, device activities, or search terms that, when paired with payments data, could create entry barriers for new competition and hinder innovation, as competitors would lack access to these insights. Such actions may impede competition and limit the consumer choice necessary for a vibrant and innovative consumer financial services market, and so the Bureau should use the information from its inquiry to inform its efforts to counter these and other potentially anticompetitive behaviors.

Failure to examine big tech results in a continuous and growing threat of consumer harm. Consumers are best protected when entities offering similar financial products and services are subject to the same oversight. Innovation and competition are integral to the marketplace, but must be undertaken responsibly and subject to appropriate safeguards that protect consumers. CBA and ABA applaud the Bureau's issuance of orders to big techs as an important first step toward ensuring a competitive market and adequate consumer protections. If you have any questions or comments, please do not hesitate to contact Brian Fritzsche from CBA at (202) 552-6381 or [bfritzsche@consumerbankers.com](mailto:bfritzsche@consumerbankers.com) or Matthew Daigler from ABA at [mdaigler@aba.com](mailto:mdaigler@aba.com) or (202) 663-5387.

Sincerely,



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