

CFPB Sets Its Sights on Tech Companies

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In one of his first actions since being sworn in as director of the Consumer Financial Protection Bureau (CFPB), Rohit Chopra has made clear that the CFPB will be looking over the shoulder of large technology companies to protect consumers.

Director Chopra comes to the CFPB directly from his stint as a commissioner at the Federal Trade Commission (FTC), an agency with more sweeping authority over large tech companies. The jurisdiction of the CFPB intersects with the payments functionality and other financial services or products offered or facilitated by non-bank technology firms. To date, the CFPB has taken enforcement actions against smaller fintech firms, but it has yet to directly confront the potential consumer protection issues raised by the operations of the largest technology companies.

In today's action, the CFPB issued lengthy information requests to some of the largest tech companies in the world. The information request and accompanying statement by Director Chopra can be found at [CFPB Orders Tech Giants to Turn Over Information on their Payment System Plans | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#). The requests seek detailed information about the companies' products, plans and use of consumer information related to payments. In an accompanying statement, Director Chopra makes clear some of the questions on the minds of CFPB regulators, such as:

- Will the operators engage in invasive financial surveillance and combine the data they collect on consumers with their geolocation and browsing data? Will they in turn use this data to deepen behavioral advertising, engage in price discrimination, or sell to third parties?
- 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?

- 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?

Overall, the CFPB is concerned about whether the tech firms operate their payment platforms “in a manner that interferes with the fair, transparent and competitive markets.” While the CFPB has clear jurisdiction over consumer financial products and services, some of the queries above seem targeted at larger issues of competition that are typically within the ambit of the FTC of the Department of Justice.

It’s worth noting the method chosen by the CFPB to gather this information. Today’s order was issued not as part of an enforcement investigation, but rather pursuant to the CFPB’s authority under Sec. 1022(c)(4) of the Dodd Frank Act, which allows the agency to monitor risks to consumers. It could have issued a more general Request for Information inviting all industry participants to comment but requiring none to do so. Instead, the CFPB issued mandatory requests to a select few large tech players. The CFPB notes that the information gathered will help inform the future work of the CFPB, as well as other regulators. In other words, for now the CFPB is asserting its authority to gather this information, but it hasn’t addressed more broadly what regulatory actions it may take with respect to these tech companies.

The CFPB’s information requests can be seen in the context of its overall approach to fintech, an issue expected to rise up the CFPB’s priority list under Director Chopra. Increased scrutiny in this sector is not surprising given how quickly financial marketplaces have evolved, with tech companies and other non-bank firms increasingly performing functions traditionally left to banks. The CFPB has already commenced important rulemaking regarding consumers’ access to their financial data (an effort cited in the information requests) that could significantly impact how companies interact and share consumer financial information. Consumer access to financial data has been a topic of growing interest (and even some bipartisan agreement) on Capitol Hill, as well as within the Biden administration.

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