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CFPB Warns of Dangers Related to Nonbanks Managing Payments and Issuing Stablecoins Outside of the Banking System

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On October 6, 2023, Rohit Chopra, the Director of the Consumer Financial Protection Bureau ("CFPB"), gave a speech at the Brookings Institute's "Payments in a Digital Century" event. In his prepared remarks, Chopra frankly addressed concerns regarding technology companies and other nonbanks getting involved in the creation and issuance of stablecoins and blurring "the lines between payments and commerce [in such a way that it] creates the incentives for excessive surveillance [of consumers and their spending habits] and even financial censorship." He ended his speech by announcing that the CFPB will issue a proposed rule later this October regarding personal financial data rights.

As he addressed concerns regarding the participation by nonbanks in the payments sector, Chopra explained that today "we give banks special legal treatment to issue deposits and influence the supply of money in the economy. We afford them access to the public safety net to ensure this money is safe and reliable. In return, banks are subject to regulation and supervision and are supposed to meet the needs of the community. To prevent conflicts of interest, anticompetitive behavior, and undue risk-taking, banks are also limited to certain financial activities, rather than allowing them to engage in commercial enterprise or be merely an arm of a larger conglomerate."

With the development of person-to-person payment networks, digital currencies and digital wallets, Chopra expressed concern that some of these payments activities are managed by very large and diversified technology companies that do not have to play by the same restrictive rules that banks play by. In particular, he describes three "clear takeaways" identified by the CFPB while they examined these nonbank companies:

1. These companies collect "a significant amount of data about the consumers using their payment products" and use the data to support the development

of new products and services;
2. These companies retain the data for extended period of time after requiring that consumers agree to share their data or else they cannot use the payment technology; and
3. These companies tend to shift how they say they will use this data because "their regulations do not appear to commit to meaningful limitations on future efforts to monetize the data."

Chopra also discussed the creation of so-called "private money" (aka stablecoins) by nonbanks and the risks posed by the introduction of stablecoins for consumer transactions. He referenced the Department of the Treasury's report on stablecoins from 2021, describing it as "interesting" and prescribing five steps the CFPB will take to "ensure that private digital dollars and payments systems in the household and retail context do not harm consumers":

1. In an effort to better understand the data collected by the big technology companies, the CFPB will issue orders so that the CFPB can acquire and examine that data;
2. The CFPB will explore providing guidance regarding the applicability of the Electronic Funds Transfer Act and Regulation E to stablecoins and virtual currency transactions;
3. The CFPB will expand its supervisory scope to examine large nonbank payment platforms;
4. The CFPB encourages the Financial Stability and Oversight Council (FSOC) to designate stablecoins and virtual currency as systemically important payment activity; and
5. The CFPB will issue a proposed rule later this month regarding "personal data financial rights."
