# CFPB Reality Check: Video Game Cash Is Still Money

By **Moorari Shah, Jim Gatto and A.J. Dhaliwal** (May 10, 2024)

Moorari Shah

Jim Gatto

A.J. Dhaliwal

On April 4, the Consumer Financial Protection Bureau published a report examining the increased commercial activity within online video games and virtual worlds platforms, showing particular concerns about the risks related to the banking and payment ecosystems embedded within these platforms.[1]

The bureau's report sends a clear signal to video game companies that they are not outside the CFPB's supervisory jurisdiction. Game publishers and large technology companies are on notice that the bureau intends to monitor this nontraditional market more closely for compliance with federal consumer financial protection laws.

The report indicates that the introduction of financial services offered within the game marketplace are quickly evolving to the point where they are indistinguishable from traditional financial services subject to regulation. The CFPB anticipates that these financial services will continue to permeate game platforms and is concerned with how so-called game assets are being used, their resemblance to fiat currency, and the associated concerns about consumer protection, data privacy, and the potential financial risks affecting players.

Importantly, the report serves as required reading for operators of games and virtual worlds, largely unaccustomed to the CFPB's oversight, as it highlights the bureau's view of their products and services, including the risks related to a lack of consumer protections applicable to traditional banking and payment systems.

Provided below are some key takeaways and action items for online game companies as well as some important reminders for other financial institutions already accustomed to the CFPB's aggressive enforcement posture.

**Market Participants at the Center of the Report**

The operators of games and virtual worlds include companies that publish traditional video games and virtual world platforms and marketplaces. The bureau makes clear the focus of their attention is on companies that permit buying and selling of in-game assets, which include in-game currencies and virtual items, such as skins or cosmetic items, and crypto-assets, which can be transacted via in-game and external marketplaces.

The report references well-established and large technology companies that have either launched their own games, or acquired or invested in game companies that offer these products and services.

Note that the report also focuses on third-party systems, e.g., marketplaces and crypto exchanges, used by gamers to transfer game assets to another account or sell the assets for fiat currency.

It is anticipated that these connections between companies and third-party payment processors and crypto exchanges will increasingly become a ripe area for CFPB enforcement, similar to the CFPB's enforcement efforts against service providers for traditional financial institutions.

**Fraud and Privacy Risks Facing Gamers**

Games, game marketplaces and associated infrastructure increasingly resemble traditional financial products and services where game assets accrue significant monetary value as gamified financial markets.

Companies are leveraging players' game assets that can be bought or sold through peer-to-peer transfers or buying and selling in-game goods and services, by providing services in the form of payment processing, money transmission and even loans. Some games also allow consumers to convert game assets back to fiat currency.

As game assets store greater amounts of value and their use becomes increasingly similar to that of money, there have also been increased reports of users losing access to game assets through hacking attempts, account theft, scams and unauthorized transactions.

Yet, "operators of game and virtual worlds do not appear to provide the kinds of consumer protections and data security protections that apply to traditional banking and payment systems," the report states.

Game companies are collecting large amounts of data on players, tracking purchasing history, spending thresholds and location data. Game companies have also become adept at monetizing behavioral, personal and biometric data.

According to the CFPB, there is risk that "gamers may be harmed when their data is sold, bought, and traded between companies, including for purposes outside of game play." The report found that young people may be particularly susceptible to tactics used by game companies to "induce spending and monetize gaming."

The report notes that third-party systems collect a large amount of personally identifiable information including email addresses, game usernames and log data, such as IP addresses and browser information. Yet, these systems have had a number of data breaches and hacks.

**How Evolutions in the Business Models of Games Have Led to CFPB Scrutiny**

The business models of games have evolved significantly in recent times. Traditionally, game publishers operated a closed-loop economy. Gamers could spend fiat currency to purchase virtual currency that could be used to buy virtual items for in-game use only, and there was no way to cash out any of those items.

Under this model, game companies typically operate an inventory management system to manage the players' inventory of game assets and license those assets only for use in the game for entertainment value, not player profit. Most video games still do not permit any cash-out.

However, a number of unauthorized marketplaces have arisen, where players can buy, sell and trade virtual currencies, virtual items, and even entire game accounts. Additionally, traditional video game models have evolved to include so-called creator economies, where players can create and sell game assets. Some of these creator economies enable users to earn real money from these creations.

As the report suggests, from a financial regulatory perspective, these innovations minimally bring into play the potential application of money transmission and electronic funds transfer laws.

Separately, any perceived weaknesses in a platform's ability to address customer complaints fairly and timely inevitably raise the specter of regulatory claims alleging unfair, deceptive, and abusive acts and practices.

**What's Past Is Prologue: It's Game Time for the CFPB**

With its latest report, the CFPB continues to signal its commitment to monitoring nontraditional markets and go where financial products and services may be offered regardless of infrastructure to ensure compliance with federal consumer financial protection laws.

The bureau's next steps following this report remain to be seen, although we could expect the agency to issue market monitoring orders to certain market participants as they did previously to large technology companies,[2] so-called buy-now-pay-later providers,[3] and large auto lenders.[4]

In addition, through its so-called dormant authority under the Dodd-Frank Act, the bureau has been clear about using its risk-based supervision authority to examine nonbank institutions that offer products that may pose a "risk to consumers."[5] This report could be a step in that direction.

This increased scrutiny could then lead to investigations and enforcement actions against game companies that fail to provide adequate consumer protections or engage in unfair, deceptive, or abusive acts and practices.

Additionally, with the CFPB's ongoing Fair Credit Reporting Act rulemaking, which would subject data brokers to the FCRA,[6] game and virtual world operators may find themselves subject to the rule based on their collection and monetization of gamer data.

Finally, the embedded payment activities within games may be subject to state and federal regulatory oversight, and, in some cases, could trigger obligations under state and federal money transmission and virtual currency laws, as well as coverage under the federal Electronic Fund Transfer Act and its implementing Regulation E.

**What Game Companies Should Do Now**

While the CFPB has not set a timetable for its next move, game companies should carefully review this report, and analyze their current practices to identify any actions that they can take now to minimize risks that they run afoul of any issues on which the report focuses. This may include:

- Assessing any potentially harmful practices for gamers, including financial losses due to theft and scams as a result of buying, selling and trading of game assets;

- Determining whether privacy rules are being adhered to and whether consumers, especially young ones and their parents, are fully aware of how their data is being collected and used across the industry, especially when this data is harvested and monetized without the user's current awareness; and

- Assessing whether their products and services are subject to various consumer financial services laws such as the Electronic Fund Transfer Act, Bank Secrecy Act and anti-money laundering laws, lending laws, and state money transmission requirements.

---

*Moorari Shah is a partner at Sheppard Mullin Richter & Hampton LLP and leads the firm's consumer finance team.*

*Jim Gatto is a partner and co-leader of the artificial intelligence and the blockchain and fintech teams, and leader of the open source team, at the firm.*

*A.J. Dhaliwal is a partner at the firm.*



[1] "Banking in video games and virtual worlds" available at https://files.consumerfinance.gov/f/documents/cfpb_banking-in-video-games-and-virtual-worlds_2024-04.pdf.

[2] See https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/.

[3] See https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/.

[4] See https://www.consumerfinance.gov/about-us/blog/our-auto-finance-data-pilot/.

[5] See https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-federal-supervision-for-installment-lender-following-contested-designation/.

[6] See https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-inquiry-into-the-business-practices-of-data-brokers/.