Law Reform Needed To Empower Consumers Who Use Mobile Financial Services

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Consumers Use Several Services

• Purchase goods & services
  – Text, browser or app
  – Contactless, Near Field Communications using credit card account
• Bill-paying
• Transfer between accounts
• Person-to-person
If Consumer Charges Purchase To Prepaid Deposit
  Example: PayPal
  No statutory rights

If Consumer Charges Purchase to Cell Phone Bill
  No statutory rights
If Consumer Charges Purchase to Credit Card

Reg Z protection

Cap on unauthorized charges---$50

Chargeback rights

Billing error rights
The EFTA & Reg. E Contain Vital Protections

• Cap on unauthorized transfers

• Required error resolution procedure

• Required recredit after 10 days

• Remedies
If Consumer Charges Purchase to Debit Card Linked to Bank Account

EFTA & Reg E apply

If Consumer Charges Purchase to Bank Account Without Using Debit Card or Other Previously Accepted Access Device

EFTA & Reg E Probably Apply
Do EFTA & Reg. E Apply To Non-Debit Card EFT?

Excluded from coverage is any transfer that:

1) Is initiated by a phone communication; and

2) Is not pursuant to a written plan contemplating periodic or recurring transfers
Is cell phone an access device under EFTA?

If a cell phone is an “access device,” different caps apply to unauthorized use than if a cell phone is not an access device.
EFTA Does Not Adequately Protect Consumers

- Required investigation is limited to 4 walls; should require others to investigate
- EFTA covers only financial institutions; transfers may bypass financial institution-billed by telecom
- No chargeback rights if goods not delivered as agreed
- No regulation of fees
- Does not extend payment deadlines – natural disaster or fault of service provider
Other Federal Law Does Not Protect Consumers

- FCC – no regulation of mobile financial services: including error resolution, investigation, recredit, right to sue
- No law ensures the security of communications
- No law ensures consumer privacy
- No law requires multifactor authentication
Where erroneous transfer or no transfer, what party caused error and what law applies?

If cell phone hardware error – UCC

- Disclaimer of implied warranties
- Limitation of remedies
- Proving amount of damages
If error caused by software

Not clear if software is subject to UCC.
  • Transactions in “goods” or a service

Even if subject to UCC, major provisions of UCC do not apply to licenses.

If error caused by telecom – service, contract law
Consumer makes a typing or other mistake

UETA applies

No relief if business provides “opportunity” to correct

No notice to consumers of ability to avoid error

No explicit right to sue for violation
How The Law Can Empower Consumers

• Subject all parties to strong law, including telecoms
• Cover all transactions whether credit, eft or prepaid
• If not pursuant to credit card, apply EFTA protections
• Plug holes in EFTA & Reg E
• Provide alternatives to sue Chargeback

Require error resolution – investigation & recredit

• Delegate regulatory authority to one agency with power over all parties
Ensure meaningful judicial relief

• Prohibit mandatory pre-dispute arbitration

• Private right of action, statutory damages, class actions & attorney fees