Electronic Payments and the Consumer-Protection Landscape

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Consumers’ Use of Electronic Payment Instruments Is Increasing

Distribution of Noncash Consumer Payments

2000* 2006*

EBT, 1%

Debit, 11%

ACH, 9%

Credit Card, 22%

Check, 57%

Source: Federal Reserve Payments Studies 2001 & 2007 (number of transactions)

Today’s Consumer Payment Options

Pay Now (Debit)

Deposit account at a bank or credit union

Pay Before (Prepaid)

Purchase of a self-funded prepaid card, code, or device

Pay Later (Credit)

Account with credit card bank or retailer

Consumer Payment Volumes by Payment Instrument

Purchasing Volume (Billions, 2009)

Credit Card

Debit Card

Prepaid Card

Source: Nilson Report, Mercator Advisory Group

Mobile Banking & Payments

• Julia S. Cheney, "An Examination of Mobile Banking and Mobile Payments," FRBP PCC Discussion Paper (June 2008)

• Mobile banking ⇒ consumers check balances, monitor transactions, obtain account information, transfer funds, locate branches or ATMs, pay bills
  – SMS text messaging, browser-based programs, downloadable mobile-banking apps

• Mobile payments ⇒ payment transactions initiated or confirmed using a person’s cell phone or PDA
  – "proximity payments" (e.g., NFC)
  – "remote payments" (e.g., network based)

Mobile Banking & Payments

1. Short message service (SMS) text messaging

2. Wireless Internet access
   – Online banking and ACH transfers
   – Check-image transmittal
   – Bar codes and other data

3. Near Field Communication (NFC)
Mobile Banking & Payments

“The theories of experience goods and learning by doing serve as a framework for building understanding of the trends associated with consumer adoption of mobile financial services – mobile banking and mobile payments – both in the United States and in other world markets. This view of the market highlights how consumer experiences with mobile devices and associated nonvoice communication technologies, online banking, and contactless payments, particularly in nonfinancial contexts, are contributing to the various evolutionary paths taken by mobile financial services around the world.”

Mobile Banking & Payments

• Continuing technological advances (e.g., NFC SIM)
• But fundamental questions remain:
  – Existing electronic payments infrastructure
  – Network-building issues (two-sided market)
  – Consumer experience
  – Value propositions
  – A product or a channel

Consumer Protections

• Protection from fraud, error, and disputes with merchants; required disclosure of key information, receipts and statements, and more....
• Sources of protection for consumers who use credit cards, debit cards, prepaid cards, and ACH E-checks
  – Federal legislation and regulation
  – State legislation and regulation
  – Payment network rules
  – Standard industry practices

Consumer Protections

• Federal laws and regulations
  – Truth in Lending Act
    • Regulation Z
      – (e.g., $50 unauthorized-use liability cap, protections from billing errors)
  – Fair Credit Billing Act
  – Electronic Fund Transfer Act
    • Regulation E
      – (e.g., unauthorized-use liability cap [tiered - $50 or more], protection from incorrect transfers)

Consumer Protections

• State laws
  – Statutes (e.g., Kansas law provides two additional days to notify banks of loss or theft of a debit card)
    • Preemption?
  – UDAP laws
  – TORT laws

Consumer Protections

• Payment network rules
  – Zero Liability
    • Faster provisional re-crediting
    • Consumers can benefit from banks’ chargeback rights (e.g., billing error deadline has passed)
  • ACH network rules
    – Immediate credit for unauthorized transfers
    – Stop payments
Consumer Protections
• Standard industry practices
  – A majority of issuers extend zero liability more than 90 days after transaction
  – Scope of zero liability expanded (e.g., PIN)
  – Faster than promised provisional re-crediting

Consumer Protections
• What about mobile payments?
  – What underlying funds source is accessed when a payment is made using a mobile phone or PDA?
  – What transaction processing and/or settlement network is used?

Consumer Protections
• Free PCC papers:
  – Available at: www.philadelphiafed.org/payment-cards-center/publications/

Consumer Protections
• BCFP Overview
  – BCFP is the new federal consumer protection agency for financial services and products
  – BCFP will have rulemaking authority for most federal consumer financial laws and will conduct examinations of large banks and certain nonbank providers of financial services and products
  – BCFP is scheduled to begin operating on July 21, 2011 (but Treasury Secretary can request extension for up to 6 months)

The Future of Consumer Financial Protection: Title X of Dodd-Frank

BCFP Rulemaking Responsibility
BCFP has authority to issue implementing rules for most federal consumer protection laws, including:
• Consumer Leasing Act
• Electronic Fund Transfer Act
• Equal Credit Opportunity Act
• Fair Credit Billing Act
• Fair Credit Reporting Act
• Fair and Accurate Credit Transactions Act of 2003
• Home Owners Protection Act
• Fair Debt Collection Practices Act
• Gramm-Leach-Bliley Act (Privacy)
• Home Mortgage Disclosure Act
• Home Ownership & Equity Protection Act of 1994
• Omnibus Appropriations Act of 2009 ($626 for unfair/deceptive loan modification and foreclosure rescue services)
• Real Estate Settlement Procedures Act
• Secure and Fair Enforcement for Mortgage Licensing Act of 2008
• Truth in Lending Act
• Truth in Savings Act
BCFP Rulemaking

- BCFP must conduct cost/benefit analysis for its rules as well as consider impact on DIs under $10 billion and consumers in rural areas.
- BCFP must conduct consumer testing for all model form disclosures.
- BCFP must study mandatory arbitration clauses and can issue regulations based on its findings.
- Financial Stability Oversight Council can stay or overrule regulations if they pose a danger to the financial system.

The Fed and Money Remittances

- Under section 1073 of Dodd-Frank, the Board of Governors must prescribe rules to govern money remittance transfers and certain acts of remittance transfer providers:
  - Notices and disclosures; error resolution; liability for agents and delegates; ACH expansion.

BCFP Examination Function

- All depository institutions (DIs) ≥$10 billion (approximately 103) and their service providers.
- BCFP will also examine certain non-DIs (§1024):
  1. Mortgage originators/brokers, servicers and providers of loan modification/foreclosure relief services.
  2. "Larger participant" in a market for other consumer financial products and services (rulemaking will define).
  3. Private education loan providers.
  4. Payday lenders.
  5. "Covered persons" whose conduct poses risk to consumers (BCFP determines based on complaints or surveillance).

Thank you

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