

Viewpoint: Mobile Payments Call for Clear Consumer Protections

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Recent news stories describe plans by AT&T and Verizon to create a new service to enable consumers to pay for products and services with a wave of their smartphones at the point of sale. Similar mobile payment services have made headway in Japan, the U.K. and South Korea, and they seem to be coming to the U.S. in some form.

As this and other new payment services are designed, product providers and regulators must ensure that they are at least as safe for consumers as traditional credit card and debit card payments. It is crucial that every new form of payment, including mobile payments under the new venture, be covered by strong rules to protect consumers from losing money because of issuer failure, use by a thief, processor error or a dispute with a retailer.

Most people are aware that federal law protects them in the event that their credit card or prepaid debit card is lost, stolen or misused. But current protections are badly fragmented and don't apply to all new types of payments. Credit cards carry a \$50 limit on consumer responsibility for unauthorized use, but fraud on debit cards can expose cardholders to \$500 or more in liability, depending on how soon consumers report it.

Voluntary payment network "zero liability" policies contain significant loopholes. Credit cards provide protections in case of bank errors and disputes with merchants, but debit cards provide only protections for bank errors and unauthorized use, but not for disputes with the merchant. Prepaid cards where funds are pooled from many cardholders may lack even the protections that apply to traditional bank debit cards.

These varying protections are an unnecessary accident of history. Moreover, they make it confusing for customers to determine what protections apply to new payment services. If the transactions are processed and settled through an existing credit card network, and appear on the credit card bill, then consumers are entitled to all available protections. If the transaction amount is deducted from the consumer's deposit account with a financial institution, it should receive the same protections as any other electronic fund transfer. If the transaction is funded by a debit against a prepaid card, the protections for unauthorized use may be missing, and there will be no legal guarantee of a protection in the event of a dispute with a merchant.

However, if the payment service is provided directly by the mobile carrier and the charges appear on the customer's cell phone bill, the way it is done in Japan and South Korea, the product might escape consumer protections entirely. If the cell phone company asks the consumer to make a prepaid deposit to the phone company to cover future charges, protections also may be missing.

Consumers should not be expected to figure out what protections apply to each competing new payments venture.

Regardless of the technology or business organization involved, the same high level of consumer protections should be guaranteed by law and contract for any payment service. The launching of this new venture provides an opportunity to harmonize and extend consumer protections for payment services.

Two things should occur immediately. First, the sponsors of the recently announced mobile payments joint venture should publicly commit to include in their contracts the full consumer rights provided under existing federal law for both debit and credit cards, and to provide true voluntary "zero liability" assurance for consumers without loopholes. Second, regulators need to do what they can under existing statutory authority to ensure that existing consumer protections are applied to new payment methods. For example, the Federal Reserve Board should apply full debit card protections to payments backed via a prepaid card through a simple interpretation of Regulation E.

The recently passed financial reform legislation provides authority to the new Consumer Financial Protection Bureau to oversee the major statutes that govern the terms and conditions under which financial services companies can provide payment services to consumers. The new law also provides authority to the bureau to cover payment services provided through mobile telecommunications networks, a provision which could enable the extension of payment protections to new technologies. The bureau also has broad rulemaking powers relative to unfairness, deception and abuse. This authority could be used to address consumer payment services protection issues that are not specifically addressed in other statutes.

The new CFPB will have the statutory authority to ensure vigorous implementation of existing consumer protections, and to prevent unfair practices, which might include selling payments products which lack the basic protections that consumers reasonably expect. Among its many other important priorities, the CFPB should use its authority to harmonize them and to clarify their application to competing payments products. These harmonized protections should include redress protections including error resolution, refunds, disputed transactions and prompt re-credit of funds after a consumer reports unauthorized use or resolves a dispute with a merchant. If any of these steps cannot be accomplished by regulation, then Congress should update the payments statutes to provide strong and harmonized federal consumer payment protections.

Clarifying the rules before the infrastructure for new services is fully created should reduce the cost of complying, since the protections can be built into the new products instead of being added later. Assuring consumers through regulation that they are protected if something goes wrong will allow their choice of payment service to be guided by underlying considerations of price, service and convenience, regardless of whether they choose an existing provider or a new entrant. Clarity and certainty will be good for consumers and for competitors. Permitting variations below baseline consumer protections will just confuse customers and hurt the entire market.

The cellular telecommunications trade association has established a set of best practices that mobile payment providers should follow. But voluntary efforts are not enough. The market needs regulatory certainty and consumers need assured protections. The Federal Reserve Board, the new Consumer Financial Protection Bureau and, if necessary, Congress should harmonize and extend consumer protections so that they cover all forms of payment methods offered to consumers.

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