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POLICY & ACTION FROM CONSUMER REPORTS

September 10, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Docket No. CFPB-2014-0012

Dear Ms. Jackson:

Consumers Union, the policy and advocacy arm of *Consumer Reports*®,[1] appreciates this opportunity to comment on the Bureau's Request for Information (RFI) Regarding the Use of Mobile Financial Services (MFS) by Consumers and Its Potential for Improving the Financial Lives of Economically Vulnerable Consumers.

Our comments below focus on three types of mobile financial services: mobile money management, mobile transaction accounts, and mobile payment tools and applications. We also include recommendations for the Bureau, as well as other regulators, lawmakers and service providers to ensure that the consumers using these new technologies are protected.

The world of mobile financial services remains complex; the potential benefits these services offer may in some cases be undercut by gaps in consumer protections. The uneven consumer protection landscape of mobile financial services may leave economically vulnerable consumers, in particular, at greater risk of fraud or loss. For these reasons we urge the Bureau to use its authority, as well as work with Congress and other relevant agencies, to ensure that consumers receive the following baseline protections when using mobile financial services:

- Mobile money management tools should be transparent, easy to understand and use, and any fees associated with their use fully disclosed;

[1] Consumers Union of United States, Inc., publisher of *Consumer Reports*, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

- All mobile-enabled transaction accounts, whether provided by banks or not, should have the same basic consumer protections, including deposit insurance and rights under the Electronic Fund Transfer Act;

- Mobile payments should have strong, consistent consumer protections. Whether consumers link their mobile payments to credit cards, debit cards, prepaid cards, or gift cards, or bill directly to their mobile phone accounts, consumers should have guaranteed protections against losing their money if their mobile device is lost or stolen, used to make unauthorized payments, or for other erroneous charges due to fraud or mistake;

- The rise of mobile financial services should not relegate non-mobile-enabled consumers to second class status. Consumers who cannot or choose not to use mobile channels for financial services should have access to high-quality financial products and ample customer support.

Providing these protections not only aids consumers, but also will bolster consumer confidence in mobile technologies. This confidence will drive consumer adoption and create more growth in the mobile financial services marketplace. A win for consumers is a win for industry.

GENERAL COMMENTS ON THE PROMISE AND PERIL OF INCREASED USE OF MOBILE FINANCIAL SERVICES

(Questions 1-9)

Mobile financial services promise to give consumers greater control over their financial lives through access to real-time financial information. Some mobile financial products may also increase access to the financial mainstream, as these products may be offered at lower cost or be more convenient to use than traditional banking or alternative financial services. These developments may ultimately mean greater inclusion and integration, especially of the underbanked, unbanked and unhappily banked. Consumer-focused mobile financial services fall into three broad categories, with some overlap: mobile money management tools, mobile transaction accounts and mobile payment products. The potential benefits and observed drawbacks of each are discussed below.

Mobile money management tools

Consumers can choose from any number of mobile financial management tools to help them stay on top of their finances. Mobile money management tools include applications ("apps") and text message or email alerts that provide consumers with important financial information. For example, users of the RushCard, a prepaid card, can enroll to receive text and email alerts with real-time account information, the status of a deposit, and whether the user is sticking to his or her budget.[2] These bursts of information potentially benefit consumers: consumers may find it convenient to know their account balance in order to manage daily spending and avoid fees. Moreover, real-

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[2] *See* RushCard, Manage Your Money, https://www.rushcard.com/manage-your-money.

time information about accounts may save calls to customer service, declined transaction fees, and trips to the ATM to check balances.

However, although mobile money management tools can be beneficial, *Consumer Reports®* research indicates that some providers of these services fail to provide required disclosures before these apps are downloaded or alerts are activated. For example, the T-Mobile prepaid card, Mobile Money, has an application that helps consumers locate in-network ATMs. The Mobile Money application, however, does not come with access to the disclosures for the app itself or for the Mobile Money card in the app store.[3] This is not an isolated problem. Consumers cannot sign up for Moven, a mobile transaction account, until they have downloaded the Moven app, which again does not make its disclosures available through the iPhone App Store prior to download. Consumers looking online for help understanding Moven will find that if they visit the Moven website, the terms and conditions are only available via a link from the very bottom of the site.[4] Consumers should not have to hunt for basic information, and such information should be provided well before they take the step of downloading an app to their mobile device.

Of concern as well is the fact that money management apps fail to clearly disclose whether a fee applies for a particular transaction. For example, the T-Mobile Mobile Money app shows consumers where in-network ATMs are located, an important feature noted above. In our examination of the app, we were unable to determine prior to downloading whether the app would charge usage fees. The app's website is scarcely more helpful. The site lists the "Benefits of the Mobile Money App," which includes the "*ATM Locator - Find one of the 42,000 ATMs to withdraw funds within our surcharge free network.***" After scrolling down to where the double asterisk is defined, the site states: "***For an in-network ATM listing, visit the Store & ATM Locator. ATM Balance Inquiry Fee applies. Balance Inquiry Fee applies. For out of network ATMs, additional fees may apply by ATM owner. See Cardholder Agreement for details.*"[5] Such confusing language makes it difficult for even the savvy consumer to determine whether the app can be used to locate an in-network ATM, and, if so, whether it will cost money to do so.

Finally, providers do not use a uniform terminology to describe mobile financial management tools such as text alerts. This may prevent consumers from easily comparing across various mobile financial management tool offerings. For example, Bank of America's Safe Balance account includes "alerts" as a separate category from "online and mobile banking,"[6] while the RushCard's "customized text alerts and emails" are included under the "Money Tools" tab on the RushCard website,[7] but Regions' bank

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[3] When we downloaded the app from the iPhone App Store, we found no disclosures, nor are there disclosures available about the app or the Mobile Money account on Google Play. The terms and conditions that apply to the Mobile Money account are available if you leave the app store or through the app once the app is downloaded. *See* Google Play, Mobile Money By T-Mobile, https://play.google.com/store/apps/details?id=com.blackhawknetwork.tmobile.mobilemoney&hl=en.

[4] See Moven, https://www.moven.com/ (scroll to bottom of page to see "HOW DO I GET MOVEN? Download the app. Sign up in the app. Super easy. No monthly fees." On the lower right hand corner is a link to the terms and conditions).

[5] *See* Google Play, Mobile Money by T-Mobile, https://play.google.com/store/apps/details?id=com.blackhawknetwork.tmobile.mobilemoney&hl=en.

[6] Bank of America, Safe Balance Banking Account, https://www.bankofamerica.com/deposits/safebalance-bank-account.go.

[7] RushCard, Manage Your Money, https://www.rushcard.com/manage-your-money#OnlineMoneyTools.

offers “Mobile Alerts” as a separate category from “Text Banking” and includes both under the larger heading “Mobile Banking.”[8]

The failure of providers to consistently provide disclosures, to alert consumers to fees, or to use clear and consistent language to describe features may undercut the advantages of some mobile money management tools. In order to ensure that the benefits of these features accrue to consumers, providers should ensure that features are secure, transparent, and easy to understand and use:

- Consumers should not be left in the dark about what companies are offering and should not have to give up their personal information to gain access to the terms and conditions governing the use of mobile services. Therefore, consumers should have access to complete disclosures before they enroll in a service, including before they download an app to their mobile devices;

- Consumers should be able to see a simple box display of any fees for using account services before being asked to provide personal information or download an application; and

- Consumers should be provided agreements in a form that they can download, print, and retain in a manner that shows the agreement when entered into.

Mobile transaction accounts

Fully mobile-enabled transaction accounts are available from both banks and non-banks. Examples include Bank of America’s Safe Balance[9] bank account and the American Express-Walmart prepaid product, Bluebird.[10] Both of these accounts have fully functional mobile apps that allow consumers to track spending, monitor transactions, pay bills, and transfer money. These accounts also come with a debit card that can be used to withdraw cash from ATMs and make purchases at the point of sale and online. Bluebird is so mobile-oriented, it is marketed more as an application than as a plastic payment card.[11] While consumers can get some measure of in-person help — Bluebird customers can load cash into your account at no fee at Walmart checkouts, for example — consumers are largely expected to manage the account (and their money) online or via mobile app.

Mobile deposit products may help consumers who might otherwise have to rely on expensive AFS access financial services at lower cost and with greater convenience. Consumers who have “bounced out” of the banking system may find mobile financial service providers more willing to take them as customers. For example, before offering consumers an account, many banks check a database called Chexsystems. Chexsystems tracks consumers that have struggled with overdrafts; if they appear on Chexsystems, consumers often find that banks are unwilling to offer them an account.

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[8] Regions, Mobile Banking, http://www.regions.com/personal_banking/mobile_banking.rf.
[9] Bank of America, Safe Balance Bank Account, https://www.bankofamerica.com/deposits/safebalance-bank-account.go.
[10] Bluebird, https://www.bluebird.com/.
[11] *See* SUSAN PANDY & ELISA TAVILLA, FED. RESERVE BANK OF BOSTON, MEETING THE NEEDS OF NON-TRADITIONAL CONSUMERS 5 (2014), *available at* http://www.bostonfed.org/bankinfo/payment-strategies/publications/2014/summary-of-mpiw-meeting-november-2013.pdf.

Many mobile financial service providers, including most of the better prepaid cards and GreenDot's Go Bank, do not use Chexsystems, something consumers have told us they appreciate. For example, Jim D says:

> "..[A bank] denied me also because I was on Chex. I'm not now but GoBank is a better option if only because of the free and instant cash deposits at any Walmart register…"

Without access to a deposit account, consumers like Jim may have to rely on check cashers and money orders. These can be expensive prospects. A person with a $20,000 annual income may spend up to $1,200 a year on fees for alternative financial services, such as check cashing and money orders.[12] A low or no-fee mobile deposit account that allows consumers to make deposits at no fee can return those funds to consumers' pockets.

Mobile financial services may be beneficial to some; however, the lack of consistent consumer protections is cause for concern. At the moment, consumers cannot reliably distinguish between a mobile financial product that offers strong protections under law, and one does not have those guaranteed legal protections. For example, consumers would be hard-pressed to tell the difference between Bluebird and Safe Balance. However, there is a very important difference. Safe Balance customers have guaranteed protections under the Electronic Fund Transfer Act (EFTA),[13] including caps on losses due to fraud or theft, and Bank of America is required to insure consumer deposits. Bluebird customers have no such protections, due to the different legal treatment of prepaid cards under current regulations.[14] While American Express voluntarily provides Bluebird customers EFTA-like protections and FDIC insurance for consumer funds, these can be withdrawn or changed anytime and are no substitute for strong federal protections.

There are some mobile transaction accounts that do not provide even the most basic protections. For example, the Boost Mobile Wallet by Wipit is a prepaid transaction account that does not provide deposit insurance to the individual consumer. While the debit card issued to wallet users is issued by Sutton Bank, which the website helpfully says is a "member, FDIC," the fine print below reveals, "*Funds in the Mobile Wallet Account are not FDIC insured.*"[15]

[12] Martha Perine Beard, *Reaching the Unbanked and Underbanked*, CENTRAL BANKER, Winter 2010, *available at* http://www.stlouisfed.org/publications/cb/articles/?id=2039.

[13] 15 U.S.C. §§ 1693-1693r (2012 & Supp. II).

[14] In 2004, the Federal Reserve Board (who then had jurisdiction over Regulation E) declined requests from consumer groups to extend protections to prepaid cards, stating that there would be little benefit to consumers to provide Regulation E protections for cards that "may be used for limited purposes or on a short-term basis, and which may hold minimal funds." Electronic Fund Transfers (Regulation E), 71 Fed. Reg. 51437, 51441 (Aug. 30, 2006). The Consumer Financial Protection Bureau (CFPB) has jurisdiction over the EFTA, and has the authority to amend Regulation E. The CFPB obtained authority over enumerated consumer financial protection laws on the new agency's transfer date, July 21, 2011, which includes Regulation E from the Federal Reserve Board. See Designated Transfer Date, 75 Fed. Reg. 57252, 57252 (Sept. 20, 2010)) Consumers and advocates alike eagerly await proposed prepaid card rules from the Bureau. Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 30923, 30923 (proposed May 24, 2012) (advanced notice of proposed rulemaking).

[15] *See* Boost Mobile, Mobile Wallet, https://boostmobile.wipit.me/ (scroll down to very bottom of page).

While the lack of consistent consumer protections across different types of deposit accounts is troubling, consumers also struggle with another aspect of mobile deposit accounts. Consumers have told us, and our research confirms that their primary challenge in using mobile transaction accounts is the liquidity of funds deposited via mobile remote deposit capture (mRDC). In July 2013, Nate told us that he had to wait two weeks before he could access the paycheck he had deposited to open his GoBank account:

> "Used the mobile deposit to start my account, and was informed after the fact that it would be 14 days before my funds were available, and that there was no way to back out of the deposit, despite contacting them only minutes after I received the email. My money is now stuck, and I have to sit without this paycheck for the next two weeks!"[16]

MRDC is a service by which checks are deposited via a picture taken with a mobile device, such as a smart phone.[17] This service has proven popular with consumers: in 2012, consumers deposited nearly 100 million checks via mRDC.[18] Consumers like mRDC because it allows them to load funds more conveniently than making a trip to an ATM or to a retail location, but as Nate found, it can take some time before funds are available. At present, it is unclear whether the laws that cover fund availability for paper check deposits also apply to deposits made via mRDC,[19] and some banks and non-banks, to mitigate fraud risk, may hold funds longer.[20] For example, in the spring of 2014, *Consumer Reports*® tested GoBank and found that it took ten days for a check deposited via mobile deposit to clear.[21] With GoBank, consumers can get direct deposit of funds or load cash at no fee and with immediate availability at retail locations, but having to do so in order gain immediate access to funds may undercut the draw of having and using a mobile account.[22]

Consumers using mobile transaction accounts need to know that their funds are protected, and should have the same access to those funds that brick-and-mortar bank customers have. To that end, the following reforms should be enacted:

- Clarify existing regulations to ensure that deposits made via mRDC are fully covered by the Expedited Funds Availability Act;

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[16] Consumers Union, DefendYourDollars, Go Bank and Simple: What Consumers Need to Know, http://defendyourdollars.org/posts/2542-go-bank-and-simple-what-consumers-should-know (see comments below post).
[17] MRDC, in addition to being available through some deposit account apps directly, is also available via third party applications, such as Ingo Money (formerly Chexar). *See* Ingo, http://ingomoney.com/.
[18] FED. RESERVE SYS., THE 2013 FEDERAL RESERVE PAYMENTS STUDY: RECENT AND LONG-TERM TRENDS IN THE UNITED STATES: 2000–2012 DETAILED REPORT AND UPDATED DATA RELEASE 79 (2014), *available at* http://www.frbservices.org/files/communications/pdf/general/2013_fed_res_paymt_study_detailed_rpt.pdf (hereinafter 2013 FEDERAL RESERVE PAYMENTS STUDY).
[19] Expedited Funds Availability Act, 12 U.S.C. §§ 4001-4010 (2012 & Supp. II).
[20] While Consumers Union believes that the EFAA applies given plain language of "check" definition and the Check 21 Amendments of 2004, the neither the Federal Reserve nor the Bureau has stated that these rules apply to mRDC, nor has Reg. CC been amended. *See* Fed. Deposit Ins. Corp., Supervisory Insights, Remote Deposit Capture: A Primer, https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum09/primer.html.
[21] Jeff Blyskal, *Head-to-head: GoBank vs. Chase Mobile*, CONSUMER REPORTS, June 2014, *available at* http://www.consumerreports.org/cro/news/2014/06/head-to-head-gobank-vs-chase-mobile-review/index.htm.
[22] *Id.*

- Clarify existing regulations to ensure that prepaid card users have full protection under the Electronic Fund Transfer Act, including limited liability for unauthorized transactions and the right of recredit for funds that go missing.[23] The Bureau should clarify[24] that protected "accounts" include all prepaid card products marketed or used as account substitutes, or which provide a repository for significant sources of income or assets for an individual or household. Clarifying that the definition of "account" in Regulation E includes prepaid cards would protect important household funds in the event of unauthorized use for the growing number of consumers using prepaid cards, and provide error resolution rights. This could be achieved by adding:

    C.F.R. § 1005.2 Definitions
    …
    (b)(1) Account means:

    …
    (b)(3) The term includes a "spending account," which is an account that is directly or indirectly established by the consumer and to which prepayments are to be made on behalf of the consumer by the consumer or by others, or to which recurring electronic fund transfers may be made at the discretion of the consumer. This definition includes an account operated or managed by a retailer, third-party processor, a depository institution or any other person, an account held in the name of the consumer or the name of another entity, and an account where the funds are pooled with the funds of others;

- To encourage uniformity among different payment cards and methods, all cards, devices, and other plastic payments should have loss caps of no more than $50. The Bureau should urge Congress to amend the EFTA to reduce the EFTA's dollar cap applicable to debit cards to the level of the credit card cap — no more than $50. This could be accomplished by deleting 15 U.S.C. § 1693g(a)(2) and the "or" at the end of § 1693g(a)(1); [25]

- The Bureau should also amend Regulation E to include a "chargeback" provision for both bank account debit cards and prepaid cards to provide to those payment methods the protections that consumers already have when paying with credit cards.[26] The chargeback is an important consumer protection that allows the cardholder to resolve a dispute with a merchant when goods or services are not

[23] Consumers Union has advocated for these protections for years. *See, e.g.*, Letter from Consumers Union et al. to Jennifer Johnson, Secretary, Bd. of Governors, Fed. Reserve Sys. (Oct. 28, 2004), *available at* http://consumersunion.org/wp-content/uploads/2013/04/payroll1004.pdf. The Federal Reserve Board previously held jurisdiction over the Electronic Fund Transfer Act and its regulations.

[24] Current regulations appear to exempt funds held and managed in pooled accounts, a common retail prepaid card arrangement. *See* Regulation E, Official Staff Interpretations, 12 C.F.R. § 1005, Supplement I (2014).

[25] *See* Gail Hillebrand, *Before the Grand Re-thinking: Five Things to Do Today With Payments Law and Ten Principles to Guide New Payments Products and New Payments Law*, 83 CHI.-KENT L. REV. 769, 790 (2008).

[26] The Bureau has authority under EFTA to define what constitutes an "error" subject to investigation and recredit. *See* 15 U.S.C. § 1693f(f)(7) (2012 & Supp. II).

accepted by the cardholder or not delivered as agreed.[27] Consumers should have the same chargeback rights to resolve errors when using debit cards or prepaid cards as when using credit cards; and

- The Bureau should require that prepaid-card-issuing banks set up these programs to qualify for FDIC insurance for each cardholder. This could be done by setting up individual card accounts or by complying with the FDIC General Council Opinion No. 8's "pass-through" requirements to provide deposit insurance to individual cardholders.[28] In addition, the Bureau should work with the FDIC to stop prepaid card product advertisements, including websites, from displaying the FDIC logo or phrase "FDIC insured" unless the prepaid card funds are in fact insured to the individual cardholder directly or on a pass-through basis.[29]

Mobile payments

Mobile payments allow consumers to pay bills, remit money overseas, transfer money peer to peer (P2P), or make purchases at the point of sale using a mobile device. This can be done via text message or by an application ("app") downloaded to a mobile phone, or through an app that a consumer already uses, such as Facebook. The ability to pay by mobile device is exciting due to its potential ease and convenience, and P2P payments and mobile remittances can significantly lower the cost to consumers of sending money.

Mobile payment technologies are often touted as a low-cost, convenient and easy way for consumers to use their mobile devices to pay bills, make purchases, or send money to another person overseas or across the table. These payment tools work in different ways, with some payments at the point of sale made by waving a phone in front of a reader, while others are arranged via an app, a mobile site, or by text or email message.

The U.S. mobile payments market is still developing, and U.S. consumers have thus far been slow to adopt mobile payments. Research and anecdotal evidence indicate that consumers have not found a compelling reason to switch to mobile pay, particularly since they have concerns about security of their financial information. In 2012, there were 250.6 million payments made using a mobile wallet and 205.3 million peer-to-peer payments, compared with 47 billion debit card transactions.[30] However small the market at present, many predict that mobile payments are on the verge of taking off in the U.S.

Mobile pay may appeal to young, tech-savvy consumers, as well as consumers who go outside the traditional banking system for financial services. For underserved consumers, mobile payments may provide increased access to financial services.

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[27] 12 C.F.R. § 226.12(b) (2014).
[28] Op. Gen. Counsel, Fed. Deposit Ins. Corp. 8 (2008), *available at* http://www.gpo.gov/fdsys/pkg/FR-2008-11-13/pdf/E8-26867.pdf.
[29] 12 C.F.R. §§ 328.2, 328.3 (2014).
[30] 2013 FEDERAL RESERVE PAYMENTS STUDY, *supra* note 18, at 18, 28.

Low-income households and households of color in particular are more likely to be unbanked or underbanked,[31] and these same demographics are more likely to use mobile phones, and smart phones in particular.[32] This presents an opportunity for mobile payment technologies to penetrate these markets.

While mobile payment technologies may return to consumers some control over their payments, that control may come at a cost. In some cases it may be unclear whether a consumer is protected financially if something goes wrong in a transaction made with a mobile device. Vulnerable consumers may be at particular risk.

Currently, consumers are left to figure out on their own what types of protections might be provided in the event they discover unauthorized use or an error that resulted from a mobile payment transaction. Multiple parties are involved in completing a transaction. Consumers, merchants, third-party processors, wireless carriers, and financial institutions all play a role in the mobile payment ecosystem. With so many players involved, the risk of confusion increases should something go wrong. Who is responsible for fixing a problem? If the different parties all point the finger at one another, the consumer may be out of luck.

Today, the protections a consumer is entitled to receive in the event of an unauthorized transaction or other error during a mobile financial transaction depend upon the payment method used to fund that transaction. For example, consumers who link mobile payments to credit cards have the strongest rights, with broad caps on liability, the ability to withhold payment of disputed amounts and the right to prompt recredit. Consumers who link their mobile payments to debit cards or bank accounts have the second-best set of consumer protections, which include limits on liability and the right to recredit within a specified period of time.

On the other hand, consumers who link their mobile payments to general-purpose prepaid cards and gift cards don’t have the same guaranteed protections as credit and debit cards. The same applies to mobile payments that are debited directly from a prepaid mobile account or are charged to a mobile phone bill. Generally, consumers are required to pay the wireless company for disputed charges on a phone bill even if a report of a disputed amount was made and the report is pending investigation. Many wireless carrier contracts have provisions that allow the carrier to consider the consumer to be in default if any payments are not made on time, even if an investigation of a disputed charge is pending.[33]

Payments linked to prepaid cards, gift cards or charged directly to wireless accounts may be covered by voluntary protections that provide no real protection at all: a voluntary policy is subject to the risk of uneven application and to the discretion of employees as to how and when to apply the policy. A *Consumer Reports*® secret

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[31] FED. RESERVE SYS., CONSUMERS AND MOBILE FINANCIAL SERVICES 3 (2012), *available at* http://www.federalreserve.gov/econresdata/mobile-device-report-201203.pdf (hereinafter CONSUMERS AND MOBILE FINANCIAL SERVICES).

[32] Kathryn Zickuhr & Aaron Smith, *Digital Differences*, PEW RESEARCH INTERNET PROJECT, Apr. 13, 2012, http://www.pewinternet.org/2012/04/13/digital-differences/.

[33] *See* MICHELLE JUN, CONSUMERS UNION, MOBILE PAY OR MOBILE MESS: CLOSING THE GAP BETWEEN MOBILE PAYMENT SYSTEMS AND CONSUMER PROTECTIONS 10-13 (2011), *available at* http://consumersunion.org/pdf/Mobile-Pay-or-Mobile-Mess.pdf.

shopper investigation from 2011 found that mobile service providers' customer service representatives often did not know how to handle bill-to-mobile problems.[34] Furthermore, discretionary policies may disadvantage consumers whose primary language is not English, and those who are less able to spend time on the phone with customer service due to the nature of their jobs, or those who are less able to write a persuasive letter describing the problem.[35]

Consumers should have the strongest guaranteed protections against unauthorized use and other errors regardless of the payment method used for the mobile payment transaction. Without stronger and more consistent protections for all mobile payments, consumers will risk losing a variable amount of money depending on which payment method they use. Consumers should have the strong, guaranteed protections provided to credit and debit cards for all mobile payments, which includes protections against unauthorized charges and other errors that may occur. The Bureau should act now to protect all ways to pay by:

- Ensuring that Regulation E is properly enforced to protect consumers who charge mobile payments to prepaid phone deposits, and clarifying Regulation E to explicitly include prepaid phone deposits under the definition of "account," and wireless carriers holding deposits under the definition of "financial institution";

- Ensuring that consumers who charge mobile payments to phone bills have the same mandatory protections against unauthorized transactions and billing errors as consumers who use credit cards, and clarifying Regulation Z to explicitly include wireless carriers under the definition of "card issuer";

- Providing chargeback rights for payments linked to bank debit cards, prepaid cards and prepaid phone deposits, and amending Regulation E to include a right to reverse disputed charges where the goods and services are not delivered or not delivered as agreed upon, similar to the rights now provided to credit card or charge card users under the Fair Credit Billing Act.

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[34] Jeff Blyskal, *Bill to Your Cell Phone? Be Cautious*, CONSUMERREPORTS.ORG, Dec. 20, 2011, http://www.consumerreports.org/cro/news/2011/12/bill-to-your-cell-phone-be-cautious/index.htm.
[35] *See* Hillebrand, *supra* note 25, at 789.

THE RUSH TO MOBILE SHOULD NOT MEAN THAT NO-TOUCH SERVICES ARE CONSUMERS' ONLY OPTIONS, AND NON-MOBILE ENABLED CONSUMERS SHOULD NOT BE LEFT BEHIND
(Questions 10, 12, 19-20)

However potentially beneficial mobile technology promises to be, as of now, mobile financial services are not an unalloyed win for consumers. As noted above, *Consumer Reports*® investigations into the mobile financial services market have found that features vary, disclosures and fees can be hard to find, and consumer protections may be wanting. Many mobile financial products are offered by new companies without proven track records in financial services — these companies may therefore lack knowledge of regulatory compliance requirements, or exploit gaps in consumer protection laws by targeting low and moderate income consumers with products that do not have some of the basic consumer protections that users of financial services have come to expect.

For some consumers, and especially for consumers living paycheck-to-paycheck, the potential risks of using mobile technology cannot be overstated. One mishap — for example, a check is deposited via mobile phone but the funds never make it into the consumer's account — can wreck a household's fragile finances. This may be why hundreds of consumers have shared their concerns about mobile financial services with Consumers Union.[36] While many consumers who contacted us said they are excited about the promise of the technology, many, such as Donna, who contacted us last year, said that they are concerned enough to be slow to adopt mobile:

> "I have paid for various objects and have made small donations to many organizations. But I am wary because I am unclear about the security, and I've found no app for anything like Norton or McAfee for use with my iPhone."

While some are taking baby steps toward mobile, others insist it just isn't for them. "RW" from Seattle, Washington, told us last year:

> "I would rather pay out of my pocket than have a 'smart phone' do it for me. What will happen if I lose my phone, anyone can shop and do what ever they please all through the convenience of your cell phone. That is very creepy!"

Earlier this year, Margaret said:

> "I wouldn't use that feature [mRDC] – I don't even use my ATM card as a debit card. I have relatively little faith in the privacy and security of mobile technology."[37]

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[36] Consumers Union collects consumer stories through our Stori.es database. Consumers submit stories to Stori.es after we have invited them to do so through a story "ask" or through a link to the "ask" on one of our websites, or via comments on our blog posts. An ask usually contains a brief description of an issue and requests that consumers who have experience with that issue share their story with us. In 2013 and 2014, CU did a series of mobile stories asks; topics include remote deposit capture, payments and remittances.
[37] Consumers Union, DefendYourDollars, Go Bank and Simple: What Consumers Need to Know, http://defendyourdollars.org/posts/2542-go-bank-and-simple-what-consumers-should-know (see comments below post).

Consumers like RW and Margaret are in danger of being left behind if there is too great an emphasis on mobile.

While some are worried about the safety of using a mobile device for financial matters, others may need the high-touch services that mobile cannot deliver. While mobile banking may be convenient, many more consumers report working with a bank employee than using mobile banking in the last year.[38] This indicates that at least some consumers want (or need) the personal touch. In addition, there is a good deal of evidence that consumers value customer service. In a recent survey of California consumers, 85 percent of account holders and 71 of those without a transaction account rated customer service as "very important" in choosing financial services.[39] However promising, mobile channels should not supplant channels that permit in-person activity unless and until there is clear evidence that all demographic groups (including age and income groups) are in fact being served equally well by mobile compared with other channels, including brick and mortar bank outlets.

Providing great customer service may help mobile providers as well. In-person services may give underserved consumers in particular — some of whom cite "don't like dealing with/don't trust banks" as the reason they don't have a bank account[40] — a reason to choose mobile financial service providers over higher-cost options. If these consumers can get face-to-face help from well-trained, helpful staff at a neighborhood location, they may be to drawn to mobile products. If those products are safe, transparent, and low-fee, these consumers who might otherwise rely on alternatives could save the hundreds or even thousands of dollars they might otherwise spend on check cashing and money orders.

Finally, there are consumers for whom cash will always be king. In data released just a few months ago, the Federal Reserve Bank of Boston noted that cash is still used for 40 percent of consumer transactions, and 30 percent of consumers primary payment preference is cash.[41] Anecdotal evidence, such as the consumer stories shared above, and research by the Federal Reserve[42] and industry[43] show that as yet consumers have not found a compelling reason to use mobile financial services, and some cash-preferred consumers may never find a compelling reason to switch. Therefore, while access to safe, high-quality, low-fee, convenient financial services is a one of the

[38] In a survey, 82 percent of consumers reported that they had "spoken with a teller or a bank employee at a bank branch in the past 12 months" as compared to 30 percent that had used mobile banking in that time. Board of Governors of the Federal Reserve System, Consumers and Mobile Financial Services 2014, 7, http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201403.pdf.

[39] NAT'L COUNCIL OF LA RAZA, LATINO FINANCIAL ACCESS AND INCLUSION IN CALIFORNIA 17 (2013), http://www.nclr.org/images/uploads/publications/CA_Latino_Financial_Access_ReportWeb.pdf.

[40] FED. DEPOSIT INS. CORP., 2011 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 27 (2012), *available at* https://www.fdic.gov/HOUSEHOLDSURVEY/2012_unbankedreport.pdf (see Figures 5.9, 5.10)

[41] BARBARA BENNETT ET AL., FED. RESERVE SYS., CASH CONTINUES TO PLAY A KEY ROLE IN CONSUMER SPENDING: EVIDENCE FROM THE DIARY OF CONSUMER PAYMENT CHOICE 2 (2014), *available at* http://www.frbsf.org/cash/files/FedNotes_Evidence_from_DCPC.pdf.

[42] CONSUMERS AND MOBILE FINANCIAL SERVICES, *supra* note 32, at 13.

[43] ACCENTURE, CONSUMER MOBILE PAYMENTS SURVEY: DRIVING VALUE AND ADOPTION OF MOBILE PAYMENTS – CONSUMERS WANT MORE 4 (2013), *available at* http://www.accenture.com/SiteCollectionDocuments/PDF/FinancialServices/Accenture-Consumer-Mobile-Payments-Survey.pdf.

promises of mobile, regulators and industry should keep in mind that there will be consumers who are unable or unwilling to jump on the mobile bandwagon.

CONSUMERS USING MOBILE FINANCIAL SERVICES SHOULD BE ASSURED OF SAFETY AND SECURITY

(Questions 18, 25 and 27)

Today's smartphone users fill their phones with personal information, often without protecting their phones with so much as a pass code. In fact, a recent *Consumer Reports®* survey showed that a mere 36 percent of consumers take even this most basic step.[44] This means that losing a smartphone isn't like just losing an address book: it is the kind of loss that exposes the smartphone owner to the possible theft of important personal information, including financial information, and instant access to financial accounts. Moreover, consumers often become crime targets when they use mobile devices. Based upon a nationally representative survey of adult Internet users, *Consumer Reports®* projected that 1.6 million American were victims of smartphone theft in 2012.[45] Consumers in cities may be especially vulnerable. Over fifty percent of the robberies committed in San Francisco, for example, are of mobile devices.[46]

Consumers should be empowered to make a lost or stolen phone useless to a thief. A "kill switch" allows consumers to disable a phone, even if they do not have physical possession of the phone. California has enacted a law to require kill switches in every smartphone sold in California after July 1, 2015.[47] Under this new law, the kill switch must already be turned on when the phone is sold, a first-in-the nation victory for consumers — the rest of the nation should follow suit.

Consumers face the risk that data on a retired phone will be misused as well, and mobile financial services providers should be required to warn consumers of that risk when the consumer signs up for the services. Consumers may not know it, but simply deleting information from electronic devices doesn't actually remove it. Recently, the antivirus software maker Avast reported that it was able to "recover" erased personal information from 20 Android phones it had purchased on eBay.[48] Among other personal information on these phones, researchers found a completed loan application.[49] To make data truly unrecoverable, it must be overwritten, or the device that contains the information must be destroyed. Since few consumers are apparently aware of the dangers of identity theft lurking on their old phones, mobile financial service providers should be required to warn consumers of the risks they face when they do not remove

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[44] Donna Tapellini, *Smart phone thefts rose to 3.1 million last year, Consumer Reports finds*, CONSUMERREPORTS.ORG, May 28, 2014, http://www.consumerreports.org/cro/news/2014/04/smart-phone-thefts-rose-to-3-1-million-last-year/index.htm.

[45] *Id.*

[46] Thefts of cell phones rise rapidly nationwide, ASSOC. PRESS., Oct. 10, 2012, *available at* http://www.usatoday.com/story/tech/2012/10/20/thefts-of-cell-phones-rise-rapidly-nationwide/1646767/.

[47] S.B. 962, 2013-2014 Reg. Sess. (Cal. 2014).

[48] Press Release, AVAST, AVAST Demonstrates Risk of Selling Used Smartphones – Recovers 40,000 Personal Photos and Emails from Phones Bought Online (July 8, 2014), *available at* http://press.avast.com/en-us/avast-demonstrates-risk-of-selling-used-smartphones--recovers-40000-personal-photos-and-emails-from-phones-bought-online.

[49] Anthony Giorgianni, *Erasing data isn't enough to prevent identity theft when recycling gadgets*, CONSUMERREPORTS.ORG, Aug. 19, 2014, http://www.consumerreports.org/cro/news/2014/08/erasing-data-is-not-enough-to-prevent-identity-theft/index.htm.

leftover data from a retired mobile phone, and should be required to offer advice to consumers on how to remove leftover data when changing mobile devices.

CONCLUSION

Mobile financial services may provide consumers lower-cost, more convenient ways to manage their money. However, regulatory uncertainty continues to breed hesitation among market stakeholders, as well as consumer mistrust. Lawmakers, regulators, and industry actors need to move now to ensure that adequate consumer protections for users are baked into the design of these services at the outset. Meanwhile, consumers who cannot or choose not to participate in the mobile financial ecosystem should continue to be provided high-quality, low-cost non-mobile services. We look forward to working with the Bureau to make sure that this is tomorrow's reality.

Sincerely,

Suzanne Martindale
Staff Attorney

Christina Tetreault

Christina Tetreault
Staff Attorney