



CFPB Goes Mobile*

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For the first time, the Consumer Financial Protection Bureau (CFPB) has officially taken interest in mobile financial services and how these services benefit consumers and what dangers they pose. In June, the CFPB held a field hearing on mobile financial services and announced a request for information about these services, who is impacted and how they are affected.

The use of smartphones in financial services has greatly increased over the last few years and continues to do so. According to the Federal Reserve Board, “one third (up from 21 percent in 2011) of mobile phone users and over half (up from 42 percent in 2011) of smartphone users used mobile banking services.”¹ Additionally, “93 percent of mobile banking users used mobile banking to check account balances or recent transactions and 24 percent of smartphone users have used their phone to track purchases and expenses during the preceding year.”²

Prior Activity

Prior to this summer, the CFPB has never taken any action — guidance, rulemaking, enforcement action or otherwise — related to mobile apps that provide financial services for consumers. Even more so, the CFPB has said very little publicly about mobile financial services.

In 2012, Marla Blow, Assistant Director of Card and Payment Markets at CFPB, testified before the House Financial Services Subcommittee on Financial Services and Consumer Credit about the opportunities, advantages and risks presented by mobile financial services.³ While recognizing that mobile financial services can have significant benefits for unbanked and underbanked populations, Assistant Director Blow recognized significant risks such as lack of meaningful disclosures and lack of

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¹Request for Information Regarding the Use of Mobile Financial Services by Consumers and Its Potential for Improving the Financial Lives of Economically Vulnerable Consumers, 79 Fed. Reg. 33731, 33731 (June 12, 2014).

²Id.

³Testimony of Marla Blow, Assistant Director, Card and Payment Markets, Consumer Financial Protection Bureau before the House Financial Services Subcommittee on Financial Services and Consumer Credit (June 29, 2012).

adequate protection under existing regulatory frameworks. She also raised concerns that a “mobile wallet could steer customers to suboptimal decisions due to vested interests of the mobile wallet provider or other underlying motives.”⁴

Notably, in this testimony the CFPB did not indicate that it was planning any specific actions, only that the CFPB is monitoring this area of financial services, and that regulators must examine current regulations to determine if there are barriers or gaps that must be addressed.

CFPB’s Inquiry

The CFPB’s request for information covers a wide variety of aspects of mobile financial services. The CFPB uses the term “mobile financial services” to include mobile banking services and mobile financial management services, but not point of sale payments, except if there are payment products targeted specifically to low-income and underserved consumers.

In its thirty-five questions, the CFPB is asking about how mobile financial services is creating access for the underserved and providing real-time money management for all consumers, and how customer service, privacy, and data breaches are handled.

The CFPB recognizes that mobile financial services can reduce cost and increase convenience for consumers and provide more financial stability through the ability of consumers to track their spending more effectively. The CFPB is asking how consumers utilize mobile technology in financial services, the benefits to doing so, and what barriers exist. The CFPB is seeking information about how mobile financial services can improve savings for consumers and what types of services are the most helpful and promising.

Foremost, the CFPB seems to be focused on how mobile financial services could expand access for the unbanked and underbanked. The CFPB recognizes that mobile financial services provide great opportunity to reach these populations and bring them products and services they do not otherwise have access. Many may not be able to reach a traditional bank branch, but do have a mobile phone and could do the vast majority of their banking on that phone. According to studies cited by the CFPB, 60% of the unbanked have access to a mobile phone, half of which are smartphones, and 88% of the underbanked have access to a mobile phone, 64% of which are smartphones.⁵ However, there is the potential that these consumers would not fully understand the products or services being provided since disclosures on smartphones can be more difficult to read or understand. It also may not be clear what entity is providing the product or service and what laws actually apply to that product or service or that provider.

The CFPB also poses several questions about the challenges and barriers in mobile financial services. Since the consumer is providing personal information, the protection of that information and the prevention and response to data breaches is critically important. The CFPB is asking for information about the distinct challenges for the provision of financial products and services via mobile devices and for economically vulnerable consumers to access these products or services, such as technical, regulatory, cost, education, security and language barriers. The CFPB is concerned about the potential lack of accountability for entities involved in mobile financial services, a point that has been raised by consumer groups.

⁴Id

⁵79 Fed. Reg. 33731, 33731.

What's Next?

What does this mean? What will the CFPB do with the information it is gathering through this inquiry? The CFPB has given no hints as to its plans. There are several directions the CFPB could take. The agency could issue a study or report based on the information it is collecting on the use and challenges of mobile financial services. This is likely given the public nature of the rollout of this request for information.

When the CFPB announced this inquiry, the agency also released tips for consumers utilizing mobile financial services. It may revise or enhance these by providing a consumer advisory about the risks inherent in mobile financial services.

The CFPB could take more serious actions such as issuing guidance or proposing a regulation for the financial services industry on the provision of mobile financial services. Perhaps this could include requirements for how disclosures are made and how a consumer's information is protected. With significant authority to expand the scope of its supervisory authority, the CFPB could engage in a rulemaking to supervise larger participants in mobile financial services. Finally, we could see the CFPB taking enforcement actions against mobile financial services providers, for example, if the CFPB finds unfair, deceptive or abusive conduct. A combination of any of the above also is very possible.

While we do not yet know where the CFPB is headed, it is clear that the CFPB is now engaged in this space. The information the CFPB receives in response to its request will do a great deal to shape its agenda and the course it will take. It is important that the mobile financial services take this opportunity provided by the CFPB to showcase how mobile financial services can positively impact consumers that otherwise do not have access to traditional banking. Comments are due September 10, 2014.

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