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The CFPB Goes Mobile

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The plastic credit card will one day go the way of the flip phone as consumers increasingly adopt innovative digital payment methods, such as Apple Pay, already available to them on their mobile devices. As a result of this trend and America's embrace of the smartphone, more and more financial institutions and non-traditional banking businesses are developing mobile payment products, often referred to as digital wallets.

This trend has not gone unnoticed by the Consumer Financial Protection Bureau (CFPB).

Using the power transferred to it by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, with its November 2014 proposal to amend Regulation E (Electronic Fund Transfer Act) and Regulation Z (Truth in Lending Act), the CFPB has demonstrated its intent to regulate mobile payments and digital wallets. The proposed rules include the regulation of mobile and digital payment products.

"Consumers are increasingly relying on prepaid products to make purchases and access funds, but they are not guaranteed the same protections or disclosures as traditional bank accounts," CFPB Director Richard Cordray said when the proposed rule was announced. "Our proposal would close the loopholes in this market and ensure prepaid consumers are protected whether they are swiping a card, scanning their smartphone, or sending a payment."

Cordray delivered more pointed remarks in a November 2014 address to The Clearing House (TCH), which provides payment-system infrastructure and helps operate the Automated Clearing House (ACH).

"[W]e have concerns that electronic payment systems can be misused to victimize consumers unless banks and the system administrators work to police and enforce safeguards. We must shine a light on the murkier corners of electronic payment systems and related practices, and we must be vigilant about preserving consumer protections no matter how these approaches may evolve in the future."

The proposed rules include "Know Before You Owe" disclosure rules; limit the consumer's responsibility to \$50 for unauthorized charges when a registered card or device is lost or stolen; require card issuers to provide free transaction statements to customers; and regulate the way that card issuers investigate and resolve account errors reported by consumers. The CFPB claims these proposed regulations would provide protections similar to those already enjoyed by consumers with checking accounts.

Changes in the electronic payment regulatory landscape are more important than ever as a growing number of Americans make purchases from, on and now with their mobile devices. Recent studies indicate that more than 90% of Americans own a mobile device, and mobile commerce is projected to represent 27% of total e-commerce sales in the United States in 2015. These trends clearly project the expanding role of mobile payments in the consumer experience.

American consumers are going mobile, and the CFPB has demonstrated that it intends to go, too.