Via *Email*: *regs.comments@federalreserve.gov*.

9 September 2009

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

Re: Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire, Docket No. R-1750; RIN 7100-AG16

As you may know, U.S. PIRG serves as the federation of and national lobbying office for the non-profit state Public Interest Research Groups. PIRGs take on powerful special interests on behalf of their members.

On behalf of U.S. Public Interest Research Group, our state affiliates and our citizen members, we thank you for the opportunity to comment on proposed changes to the FedNow payment system. U.S. PIRG believes that a public real-time payments system can provide important competition and could benefit all consumers and businesses. However, the system must be properly designed so all consumers and businesses will benefit from the widespread availability of person-to-person payments systems and faster financial transactions.

This comment supplements a consumer group coalition comment we co-signed with over 40 organizations.

Our analysis suggests that the FedNow proposal has features similar to those of certain peer-to-peer (P2P) payment systems, including Zelle (owned by several very large banks), Venmo (owned by Paypal), and Cash App (owned by Square).

We would like to use this additional comment to enter our recent report on P2P apps titled "Virtual Wallets, Real Complaints" (https://uspirg.org/feature/usp/virtual-wallets-real-complaints) into the docket record.

Unfortunately, based on the findings of that report, we believe the FedNow proposal does not include adequate consumer protection safeguards.

The report was based on an analysis of consumer complaints in the Consumer Financial Protection Bureau's public Consumer Complaint database. These complaints, in the CFPB's taxonomy, were in the product sub-category "mobile or virtual wallet."

Our report found that P2P payment systems were vulnerable to fraud and scammers, that consumers with payment disputes or scam problems were often left to fend for themselves by the apps and, most importantly, that current law does not provide adequate consumer protections. The Fed should not replicate a similarly unsafe payment system.

Highlights from the U.S. PIRG report:

- The CFPB received 9,277 complaints in the product category of "mobile or digital wallet" since it began accepting such complaints in 2017, through April of 2021. The CFPB includes complaints about peer- to-peer (P2P) payment apps in the digital wallet category.
- Complaint volume has steadily increased over time. In the first year of accepting complaints, the CFPB received slightly more than 1,000 complaints about digital wallets.
- Over the year preceding April 2021, the CFPB received more than 5,200 complaints. And in April 2021, there were 970 digital wallet complaints — almost double the previous complaint peak in July 2020.
- The report found that the three most commonly complained-about issues involving digital wallets are problems managing, opening or closing accounts; problems with fraud or scams; and problems with transactions (including unauthorized transactions).

The report made several recommendations:

- It urged that, at a minimum, regulators enforce current law by requiring app providers to investigate errors and fraud even when the consumer made the mistake or sent the money.
- The report also recommended changes to Regulation E so that consumers are protected if they are defrauded into sending money. Fraud by inducement is a real problem. The apps tell you it's on you and that you'll be fine if you follow their advice: "Well, don't use it with strangers." Then, of course, the apps urge you to use it with strangers.

The disclosures and warnings to consumers are an old-fashioned and ineffective method of consumer protection, especially in combatting fraud, since fraudsters create and abuse trust. In addition, the warnings are subverted by the apps' incessant and loud social media network strategy to encourage more use, well beyond just your "friends."

Further, in this modern era of big data, artificial intelligence, and machine learning, payment systems that take responsibility for fraud will develop sophisticated, ever-improving methods of preventing, detecting and remedying it that are far more effective than warnings to consumers. For that to happen, however, the system needs to incorporate incentives for the financial services providers in the payments chain to design robust fraud and error prevention and remediation methodologies.

Unfortunately, the proposed changes largely copy the P2P apps, with all their flaws, without improving consumer protections.

From the PIRG report: "Although transactions with P2P apps are covered by the federal Electronic Fund Transfer Act (EFTA) and its Regulation E, the EFTA's protections may not always apply. While EFTA's protections shield P2P users from some unauthorized transactions, the protections don't extend to include payments induced by fraud. Consumer-initiated transactions are exempt from the EFTA's definition of "unauthorized charge, even when they lead to fraud."

The CFPB database includes optional consumer narrative stories. From the PIRG report:

- Among PayPal digital wallet complaints, the most common problem is "managing, opening, or closing your mobile wallet account." Some of these complaints describe problems accessing funds. In the narrative published for one such complaint, which led to non-monetary relief, a consumer described problems closing their account and getting their money out: "PayPal has denied access to my account with funds in it and has been slow at 'closing the account down.' ... It's almost been 2 months and I still do not have access to the funds."
- PayPal complaints include complaints involving Venmo, a PayPal subsidiary. The term "Venmo" is mentioned in 7% of PayPal complaints that include a published consumer complaint narrative (and some complaints regarding Venmo may not mention the service by name). For complaints involving Venmo, the most complained-about issues are "unauthorized transactions or other transaction problems," "fraud or scam," and "managing, opening, or closing your mobile wallet account." In one complaint alleging a scam, which led to monetary relief, the consumer described being "scammed by a lady who tried to sell me a fake watch... Now, Venmo refuses to acknowledge the situation and says to file for a police report."
- Complaints detail how scammers take advantage of consumers due to easy availability of usernames and phone numbers to take over accounts. "Somehow an individual was able to hack into my Cashapp account which was linked to my bank account and fraudulently transfer $450 to themselves, also disable my phone notification so that I was unaware."

The FRB should not launch the FedNow service until sufficient protections ensure that the service is safe and reliable for consumers and small business users. The proposed rules do not meet that standard.

Our detailed coalition comments confirm our report's findings:

> "The response of current faster payment systems to fraud has primarily been to say: "Only use this with people you know," or "We warned you to be careful." That is, rules must protect consumers and small businesses against fraud in the inducement and impose ultimate liability on the institution that received the fraudulent payment. (The consumer should be reimbursed in the first instance from their bank, which in turn can pass on the liability to the receiving institution.) Liability for the receiving institution is consistent with their obligations under existing know-your-customer and anti-money laundering obligations to ensure that accounts are not opened with fraudulent identities and that an institution's customers are not using an account for illegal purposes."
>
> Rules that protect consumers and small businesses will give the providers of faster payment systems the incentive to develop and constantly improve measures to prevent fraud in the first place and to stop it as soon as possible. That is exactly what happens

> today with credit cards. The law does not tell institutions how to prevent fraud; it merely protects consumers and incents institutions to constantly improve their fraud prevention and monitoring tools."

The FRB, as a public agency, has a public responsibility to ensure that its system is safe, especially for those users for whom fraud or errors can be devastating. The FRB can provide a model for other systems developed by private companies that do not have the same public accountability.

Thank you for considering our comments here and in the report "Virtual Wallets, Real Complaints" and in the more detailed coalition comments. Please contact me with any questions.

Sincerely,

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