NCLC National Consumer Law Center

Strategies to Prevent Payment Fraud and Keep Our Banking and Payment Systems Safe

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Payment fraud continues to pose a threat to U.S. households, businesses, financial institutions, and the economy as a whole. Americans are plagued by problems with unauthorized transactions and fraudulently induced payments involving peer-to-peer payment applications, crypto-assets, bank-to-bank wire transfers, check alterations and forgeries, and Electronic Benefits Transfer (EBT) card skimming.

Technological advances, making mobile and online banking easier to use, have created additional opportunities for scammers to exploit newer and older forms of payment.

To combat payment fraud, we recommend addressing the current gaps and ambiguities in the Electronic Fund Transfer Act (EFTA) that leave fraud victims unprotected. These include:

- Ensuring consumers are protected from liability when they are defrauded into initiating a transfer;
- Allowing the consumer's financial institution, after crediting the consumer for a fraudulent transfer, to be reimbursed by the financial institution that allowed the criminal fraudster to receive the fraudulent payment;
- Ensuring that the EFTA applies to stablecoins and crypto-assets when used for consumer payments;
- Eliminating the exemptions for bank wire transfers[1] and electronic transfers authorized by telephone call, bringing those transfers within the EFTA and its protections against unauthorized transfers and errors;
- Eliminating the exclusion of EBT cards from the EFTA, bringing those transfers within the EFTA and its protections against unauthorized transfers and errors;
- Clarifying that the EFTA's error resolution procedures apply when the consumer makes a mistake, such as in amount or recipient;
- Clarifying that the error resolution duties under the EFTA apply if a consumer's account is frozen or closed, or the consumer is otherwise unable to access their funds, with an exception if the consumer was denied access due to a court order or law enforcement, or the consumer obtained the funds through unlawful or fraudulent means; and
- Considering whether consumer protections for checks should be included in the EFTA.

Additionally, federal regulators should act to address fraud and protect fraud victims by:

- Enforcing and strengthening laws that require financial institutions and other companies to protect consumers from unauthorized and fraudulently induced charges, especially when EFTA violations occur;
- Devoting more attention to the responsibilities of institutions that receive fraudulent payments, including stepping up enforcement of Bank Secrecy Act /Anti-Money Laundering obligations;

- Establishing interagency collaboration to assist consumers with reporting fraud, collecting data on fraud, and establishing systems for sharing fraud data and findings; and
- Providing guidance to financial institutions about the timelines and procedures for consumers to regain access to improperly frozen funds, including providing clarity about what information can and should be given to accountholders regarding account closures and freezes.

States can also help victims of payment fraud by:

- Allowing victims to recover actual damages and attorneys' fees in any action brought against a financial institution for a violation of Articles 3, 4, and 4A of the Uniform Commercial Code, as enacted by each state;
- Ensuring victims have sufficient time to notify their financial institutions of check fraud under Articles 3 and 4 of the Uniform Commercial Code (UCC), as enacted by each state, and not allowing the time specified in the UCC to be shortened by agreement; and
- Enforcing consumer protection laws against non-bank peer-to-peer payment platforms, crypto exchanges, virtual currency kiosk companies, and state-chartered banks licensed in their state.

For more information, contact NCLC Senior Attorney Carla Sanchez-Adams (csanchezadams@nclc.org).

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[1] The EFTA does not directly exempt wire transfers; it exempts electronic transfers, other than ACH transfers, made "by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer." 15 U.S.C. §1693a(7)(B). However, Regulation E and the official interpretations of Regulation E interpret that exemption to cover wire transfers using Fedwire or through a similar wire transfer system, like SWIFT, CHIPS, and Telex, that is used primarily for transfers between financial institutions or between businesses. Reg. E, 12 C.F.R. § 1005.3(c)(3).