Payments Fraud

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Issue Update

Over the years multiple groups have attempted to expand the limitations on consumer liability in the Electronic Funds Transfer Act (EFTA) and its implementing regulation, Regulation E, which govern consumer electronic payments and transfers of money. Currently, EFTA limits a consumer's liability only for unauthorized transactions and not for authorized transactions (i.e. initiated by the consumer or someone the consumer authorized). With the rise in scams perpetrated against consumers, some groups are pushing to expand EFTA to require banks to reimburse consumers for an authorized payment that was fraudulently induced (i.e. the consumer was convinced to make the payment as part of a scam). These groups have convinced a small group in Congress to introduce S. 4943 / H.R. 9303, the Protecting Consumers from Payment Scams Act, which would expand bank's liability under EFTA.

Why It Matters

Massively Increases Bank Liabilities. Under the proposed bill, banks would be responsible for reimbursing customers for an authorized transaction that they claim was fraudulently induced. This approach removes responsibility from the customer to vet requested payments and places it solely on the bank, which cannot know the full circumstances behind each customer decision to authorize a transfer. Banks cannot and should not second-guess each decision a customer makes to transfer their own money. Even when the bank suspects a scam, it often cannot convince the customer they are a victim. Every bank has a story of a teller pleading with a customer not to send funds and being ignored. The bill would also encourage first party fraud where a customer sends money to an accomplice that they later claim was fraudulently induced. Community banks, in particular, cannot shoulder higher fraud losses, and could be put in the untenable position of having to restrict consumers' access to deposit accounts, which is bad for financial inclusion and reduces community banks' competitiveness.

Does Nothing to Stop Scams. This approach is only remedial and would do nothing to stop the criminals that are committing these scams. Instead, it would encourage fraud. Criminals would have new tools to convince consumers to send money under clearly suspicious circumstances if they could point out that the consumer has nothing to lose because only the bank's money is at risk.

Recommended Action Items

- **Tell Congress banks need help protecting consumers from scams.** Banks invest heavily to protect consumers from scams, but criminals use impersonated Caller ID or text messages or social media profiles that appear to be legitimate. FTC and FCC should establish rules forcing telecom and social media companies to disallow these impersonations and take them down when notified.

- **Tell Congress banks cannot second-guess customers.** Share your experiences of customers who could not be persuaded not to transfer funds to likely scammers.

- **Urge Congress to support development of a national anti-fraud and scam strategy.**
  Fraud and scams are a multi-billion dollar national problem, and yet there is no comprehensive strategy to protect Americans led by a single Federal agency or official.

American Bankers Association