Correcting Erroneous or Unauthorized Credit Card Charges and Electronic Funds Transfers

1. So, you have just reviewed your monthly credit card statement and you find that you have been billed for purchases you didn't make, or for the wrong amount on purchases you did make. Or maybe you bought something with your credit card and it was never delivered. Or perhaps you review your bank statement and find unauthorized withdrawals using an ATM or debit card. What do you do? What are your rights?

2. Federal law spells out consumer rights and responsibilities in all of these situations. The Electronic Funds Transfer Act (15 USC 1693) and its implementing regulation (12 CFR 1005.1 et seq) address the issue of electronic transfers; including, but not limited to: transfer of funds through an Automatic Teller machine (ATM), direct deposit or withdrawal, and transfers initiated by telephone or debit card. The Fair Credit Billing Act (15 USC 1666), supplemented by applicable portions of Regulation Z (12 CFR part 226, see esp. 226.13) addresses credit card transactions. In general, both of these laws limit consumer liability for unauthorized transactions so long as the consumer notifies the financial institution of the problem in a timely manner.

3. First, let's address electronic transfers under EFTA.

a. *EFTA Notice Requirements Generally.* If you see an unauthorized or otherwise incorrect transfer or withdrawal of funds from your account, report it immediately by phone or in person to the relevant financial institution and follow up in writing. EFTA does not require the initial notice to the financial institution to be in writing, but it is best to have such written notice to prove that it was given and that it provided the necessary information. Additionally, the financial institution may require you to follow up oral notice with written notice. There is no special form for the notice, but it must meet certain basic requirements. It must:

-Identify the consumer's name and the account number (or at least provide sufficient information for the financial institution to identify the consumer and account)
-Assert that the account contains an error, and the amount of the error; and
-Set forth the reason for the consumer's belief that an error has occurred.

Additionally, it is a good practice for the complaining consumer to provide any evidence tending to show that the transaction was unauthorized; for example, military orders showing deployment to Afghanistan at the same time as a transaction occurring in Memphis.

b. *Where to send the notice.* When you initiate an account that allows electronic funds transfer (EFT) service, the financial institution is required to provide the address and phone number to complain to about unauthorized transfers. This contact information must also be provided in or with the monthly account statement.

c. *Timeliness of Notice.* You should notify your financial institution of the erroneous electronic transfer as soon as possible. Timely notice helps the financial institution fix the error and such early notice may also help prevent further unauthorized transactions. Additionally, the timeliness of your notice has a direct effect on consumer liability for the unauthorized transactions. In general, the sooner you provide notice, the less you have to pay.

When Notice Provided	Liability Limit
Within 2 business days after learning of the of the loss or theft	$50 or the amount of the unauthorized transactions prior to notice, whichever is less
Greater than 2 business days after learning of the theft or loss but sooner than 60 days after the financial institution transmits the statement containing the error to the consumer	The lessor of (a) $500 or (b) the liability limit above plus the amount of the unauthorized transactions after two business days and prior to notice
61 or more days after transmittal to the consumer of the statement containing the error.	All transactions prior to notice

e. Extenuating Circumstances. In extenuating circumstances, "such as extended travel or hospitalization," the 60 day notice requirement may be extended to "a reasonable time under the circumstances." [15 USC 1693g (2)]

d. *Error Resolution Procedures.* If, after receipt of proper notice, the financial institution agrees that an error has occurred, it must credit the customer's account within one day of making that determination. Alternatively, after receipt of the required notice, the financial institution may, within ten days, provisionally credit the complaining customer's account and investigate the allegation of error. Such investigation must be completed within 45 days of receipt of the notice. If the financial institution concludes that no error occurred, it must provide the consumer with an explanation for findings. Further, upon the consumer's request, the financial institution must provide all the documents it relied upon to reach its conclusion.

e. *Additional Redress.* Three options remain to the consumer who disagrees with the financial institution's conclusion that no error occurred.

(1) *Civil Lawsuit.* The consumer may sue the financial institution in court. In such a lawsuit, some special rules that apply. The consumer plaintiff is not required to prove error; rather, the defendant financial institution is required to prove that there was no error. Additionally, if the plaintiff wins, the financial institution is liable to the consumer for the actual damage caused by the error (in an amount not less than $100 nor more than $1,000), plus court costs and attorney fees, as well as proximate 'i.e., collateral, damage caused by the financial institution's error and failure to correct it. Finally, the consumer shall be entitled to treble damages if the court concludes any of the following occurred:

-The defendant failed to provide a provisional credit within ten days of the complaint and failed to make a good faith investigation of the error, or had no reasonable basis to believe that there was no error, or

-knowingly and willfully concluded that there was no error when such conclusion could not have reasonably been drawn based on the evidence available to the defendant.

(2) *Criminal charges.* If done knowingly and willfully, providing false information, failing to provide information required to be provided, or otherwise failing to comply with EFTA requirements is a crime punishable by up to a year imprisonment and a fine of up to $5,000. The individual, of course, can not pursue a criminal case; rather, the aggrieved consumer provides information to the appropriate federal law enforcement authority, which will determine whether to pursue the case.

(3) *Complaint to the Consumer Finance Protection Bureau (CFPB).* Aggrieved consumers may make an on line complaint to the CFPB, which has jurisdiction and oversight over EFTA. CFPB inquiry to the financial institution may be very helpful in resolving the case. Furthermore, the CFPB can pursue legal action against the defendant, which, if successful, will almost certainly result in restitution for the consumer. Additionally, information provided to the CFPB assists that organization to determine which business to investigate and target for public enforcement, and whether additional or different regulation should be imposed.

4. Now, let's examine the Fair Credit Billing Act (FCBA) which governs the resolution of credit card billing errors. It is similar to EFTA, but there are some significant differences as well.

a. *FCBA Notice Requirements Generally.* As with EFTA, a consumer may limit liability by providing timely notice of billing errors. It is a good idea to provide notice as quickly as possible, and follow up promptly in writing. However, the notice requirements of EFTA and FCBA are not identical. First, it is important to understand the term "billing error." It includes, but is not limited to, billing statements that:

-Identify credit not actually extended to the customer or to a person who has actual, implied, or apparent authority to use the credit card on behalf of the customer; i.e., unauthorized charges;
-Reflect the wrong amount of credit extended;
-Reflect goods or services not accepted by the customer or not delivered in accordance with the agreement; and
-Fail to properly credit payments to the customer

Additionally, it is a good practice for the complaining consumer to provide any evidence tending to show that the transaction was unauthorized; for example, a police report documenting the theft of the credit card.

b. *Time for Notice.* The consumer must provide notice of the credit card billing error within 60 days of the credit card issuer transmitting the statement that contains the alleged error.

c. *Form of the notice.* Unlike EFTA, the FCBA notice must be in writing. Additionally, the notice must:

-Identify the customer's name and account number, or otherwise provide sufficient information to enable the creditor to identify the name and account number;

-Assert that the statement contains a billing error and the amount of the error; and

-Provide the reasons for the customer's belief that the statement is in error.

d. *Place to provide the notice.* The notice must be sent to the address designated for such complaints either in or with the billing statement.

e. *Billing Error Resolution under FCBA.* The financial institution must, in writing, acknowledge receipt of the notice within 30 days. Further, within two billing cycles (and in any event no later than 90 days after receipt of the notice of error) the financial institution must either (1) correct the error, or (2) conduct an investigation and provide a written explanation of why it believes that there was no error. Further, upon customer request, it must provide copies of documentary evidence of indebtedness. If the alleged error is that the purchased goods were not delivered in accordance with the agreement with the seller, the credit card issuer is not authorized to determine that the bill was correct unless it determines that the goods were actually delivered and provides a statement of such determination. If the financial institution fails to meet any of the FCBA timelines, it can't collect the amount in dispute, regardless of whether the bill was correct or not.

f. *Procedure while pending resolution.* Prior to the completion of the investigation and providing the customer with this notice that there was no error, the consumer is not required to pay the amount in dispute, the creditor can not take action to collect the disputed amount, nor can the creditor provide any adverse information to any credit reporting agency.

5. Credit Card Chargebacks. In addition to rights under the FCBA, federal law (15 USC 1666i) gives credit card users additional rights. In general, if certain requirements are met, the purchaser of goods or services can assert the same claims and defenses against the credit card issuer (for example, goods were not delivered or were defective) that it can against the seller. To obtain such a chargeback, the consumer must have a valid claim and, in addition, all of the following must be true:

-The consumer has first attempted in good faith to resolve the issue with the merchant who sold the good or service;
-The purchase was made in the consumer's home state or within 100 miles of his home address;
-The price of the good or service was more than $50:
-The credit card was used to make the purchase: and
-The consumer has not yet fully paid for the product or service.

6. *Fair Credit Billing Act Enforcement.* Aggrieved consumers can make an on line complaint to the CFPB concerning alleged violations of the FCBA and can, if not waived in the credit card agreement, file suit against the credit card issue. Many credit card agreements will contain a waiver of the right to sue in favor of mandatory arbitration.

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