III.C.3. Credit Card Issuer Obligations under the Fair Credit Billing Act

Identity thieves often make unauthorized charges on consumers' credit card accounts. This may happen either when they steal the actual credit card or obtain the credit card number through other means. Victims of identity theft would then have errors on their credit card statements caused by these unauthorized charges. The Fair Credit Billing Act, 15 U.S.C. § 1601, (FCBA) establishes procedures for resolving billing errors on consumer credit card accounts, including fraudulent charges on accounts that have been caused by identity theft. FCBA §§ 161-162, 15 U.S.C. §§ 1666-1666a.

Note: The FCBA applies only to "open ended" credit accounts, such as credit cards and revolving charge accounts (e.g. department store accounts). It does not cover installment contracts, such as loans or extensions of credit that consumers repay on a fixed schedule.

The FCBA limits liability for unauthorized credit card charges to a maximum of $50 per card. In order to trigger the FCBA's protections, a victim must send a timely notice of the billing error to the creditor or card issuer ("creditor"). 12 C.F.R. § 226.13(b)(1). Specifically, in order to preserve their rights under the FCBA victims must:

- Write to the creditor at the address given for "billing inquiries," not the address for sending payments. Include name, address, account number, and a description of the billing error, including the amount and date of the error; and
- Ensure that the letter reaches the creditor within 60 days after the first bill containing the error was mailed. If an identity thief changed the address on the victim's account and the victim did not receive the bill, the victim's dispute letter still must reach the creditor within 60 days of when the creditor would have mailed the bill. This is one reason it is essential for victims to keep track of their billing statements, and follow up quickly if their bills do not arrive on time.

Victims should send their letters by certified mail, and request return receipts, to prove the date the creditors received the letters. Victims also should include copies of their police report, Identity Theft Affidavit, or other documents that support their position, and keep copies of their dispute letters.

The creditor must acknowledge the victim's complaint in writing within 30 days after receiving it, unless the problem has been resolved. The creditor must resolve the dispute within two billing cycles (but not more than 90 days) after receiving the victim's letter. 12 C.F.R. § 226.13(c)(1).

During the dispute, victims may withhold the disputed amount (and related charges). The victim must pay any part of the bill not in question, including finance charges on the undisputed amount. The creditor may not take legal or other action to collect on the disputed amount and related charges during the investigation. 12 C.F.R. § 226.13(d)(1). The creditor also may not threaten to damage the victim's credit rating or report the victim as delinquent while the bill is in dispute. 12 C.F.R. § 226.13(d)(2).

If the victim's bill contains an error, the creditor must explain to the victim in writing how it will correct the victim's account. In addition to crediting the account, the creditor must remove and forgive all finance charges, late fees or other charges related to the error. 12 C.F.R. § 226.13(e)(1).

If the creditor determines that the victim owes a portion of the disputed amount, it must provide the victim with a written explanation. 12 C.F.R. § 226.13(g)(1) and Official Staff Commentary on § 226.13(g). The victim may request that the creditor provide copies of documents that purportedly prove that she owes the money.

Similarly, if the creditor determines that the entire bill is correct, it must tell the victim promptly and in writing how much she owes and why. 12 C.F.R. § 226.13(f). The victim may ask for copies of relevant documents. At this point, she will owe the disputed amount, plus any finance charges that accumulated while the amount was in dispute. The victim also may have to pay the minimum amount she missed paying because of the dispute. 12 C.F.R. § 226.13(g). The victim must be told in writing when payment is due.

If an identity theft victim disagrees with the results of the investigation, she may write to the creditor, but she must act within 10 days after receiving the explanation. The victim may also indicate that she refuses to pay the disputed amount. 12 C.F.R. § 226.13(g). At this point, the creditor may begin collection procedures. However, if the creditor reports the victim to a credit reporting agency as delinquent, the report also must state that the identity theft victim does not think she owes the money. The creditor must also tell the victim who receives these reports. 12 C.F.R. § 226.13(g)(4)(ii).

Any creditor who fails to follow the settlement procedure may not collect the amount in dispute, or any related finance charges, up to $50, even if the bill turns out to be correct and the bill plus finance charges are more than $50. 15 U.S.C. § 1666(e). For example, if a creditor acknowledges a victim's complaint in 45 days, 15 days too late - or takes more than two billing cycles to resolve a dispute, the $50 penalty applies. The $50 penalty also applies if a creditor threatens to report – or improperly reports – the victim's failure to pay to anyone during the dispute period.

Appendix C.5 contains a sample letter from a victim and follow-up letter from an attorney to a credit card company disputing errors on a credit card account and requesting an investigation and correction.

> **Note on Private Rights of Action:** Section 130 of the Truth in Lending Act provides a federal private right of action for violations of the provisions of the FCBA described above. TILA § 130, 15 U.S.C. § 1640.