§ 226.12 Special credit card provisions.

(a) Issuance of credit cards. Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except—

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.\[21\]

(b) Liability of cardholder for unauthorized use. (1)(i) Definition of unauthorized use. For purposes of this section, the term “unauthorized use” means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

(ii) Limitation on amount. The liability of a cardholder for unauthorized use\[22\] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) Conditions of liability. A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice\[23\] of the cardholder’s maximum potential liability and of means

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by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder’s liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) Notification to card issuer. Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) Effect of other applicable law or agreement. If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) Business use of credit cards. If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) Right of cardholder to assert claims or defenses against card issuer. 24 (1) General rule. When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. 25

(2) Adverse credit reports prohibited. If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) Limitations. (i) General. The rights stated in paragraphs (c)(1) and (c)(2) of this section apply only if:

(A) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(B) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder’s current designated address or, if not within the same state, within 100 miles from that address. 26

(ii) Exclusion. The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer’s products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

(d) Offsets by card issuer prohibited. (1) A card issuer may not take any action,
§ 226.13 Billing error resolution.27

(a) Definition of billing error. For purposes of this section, the term billing error means:

1. A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer’s credit card or open-end credit plan.

2. A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§226.7(a)(2) or (b)(2), as applicable, and 226.8.

3. A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer’s designee, or not delivered to the consumer or the consumer’s designee as agreed.

(b) Prompt notification of returns and crediting of refunds. When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer’s credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer’s normal channels for credit statements.

(c) Discount; tie-in arrangements. No card issuer may, by contract or otherwise:

1. Prohibit any person who honored the card issuer’s credit card plan from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

2. Require any person who honors the card issuer’s credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(75 FR 7312, Feb. 22, 2010)


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