

## **Payments Fraud Liability Matrix**

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# **Payments Fraud Liability Matrix**

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**Prepared by the Federal Reserve Bank of Minneapolis'**  
**Payments, Standards, and Outreach Group**

**April 2016**

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
ACH					
	Credit Items (ppd)	\$0 Consumer not liable if they report fraud within 60 days after transmittal of the consumer's periodic statement.	Reg. E ( <a href="#">12 CFR §205.6(b)(3)</a> )	Originating Depository Financial Institution ("ODFI") <sup>1</sup> is liable for breach of warranty that item is authorized. Credit Items can be returned at any time.	The ODFI warranty is set forth in NACHA <sup>2</sup> OR §2.4.1 Liability for breach of warranty is set forth in NACHA OR §2.4.5 Return deadlines for credit items are set forth in NACHA OR §3.8
	Debit Items (ARC, BOC, IAT, POP and RCK have similar recredit rights pursuant to NACHA OR §§3.11.2.1 – 3.11.2.3) <sup>3</sup>	\$0 Consumer not liable if they report fraud within 60 days after transmittal of the consumer's periodic statement.	Reg. E ( <a href="#">12 CFR §205.6(b)(3)</a> )	ODFI is liable for breach of warranty that item is authorized.	The ODFI warranty is set forth in NACHA OR §2.4.1
		Consumer has right of immediate recredit if notifies bank within 15 days after receiving statement.	NACHA OR §3.11.1	ODFI must accept the return of unauthorized items that the Receiving Depository Financial Institution ("RDFI") <sup>6</sup>	Liability for breach of warranty is set forth in NACHA OR §2.4.5 Return deadlines for

<sup>1</sup> 2016 NACHA Operating Rules ("OR") 8.66.

<sup>2</sup> Any reference herein to "NACHA" is specifically to the 2016 NACHA OR & Guidelines ("OG").

<sup>3</sup> "ARC" means lockbox items pursuant to NACHA OR §8.1. "BOC" refers to Back Office Conversion items pursuant to NACHA OR §8.14. "IAT" means International ACH Transaction (NACHA OR §8.54). "POP" means Point of Purchase conversion items pursuant to NACHA OR §8.75. Re-presented check entries ("RCK") (NACHA OR §8.80) are items that are collected via ACH after the original paper check has been dishonored, are not covered by Reg. E as it specifically excludes items that were first originated by a check.

<sup>6</sup> Receiving Depository Financial Institution. See NACHA OR §8.83.

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ACH					
	WEB <sup>4</sup> entries have return rights found at NACHA OG <sup>5</sup> 247-248.			returns within 60 days after the settlement date. Separate warranty claims can be brought after the 60-day period outside of the ACH network.	debit items are set forth in NACHA OG 126 and in Appendix Four to the NACHA OR.

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<sup>4</sup> "WEB" means Internet-Initiated/Mobile Entries (WEB entries) that are debit or credit entries transmitted to a consumer Receiver's account. NACHA OR §8.55. WEB entries can be either single or recurring. The WEB SEC Code helps to address unique risk issues inherent to the Internet and wireless payment environments through requirements for added security procedures and obligations.

Debit WEB Entries: Are used by non-consumer Originators to debit a consumer based on an authorization that is communicated, other than by an oral communication, from the Receiver to the Originator via the Internet or a Wireless Network. This Standard Entry Class Code also includes debit entries authorized under any form of authorization when the instruction for the initiation of the entry is provided to the Originator, other than by an oral communication, over a Wireless Network.

Credit WEB Entries: Also known as Person-to-Person or P2P transactions, are used when payments are exchanged between consumers. Because credit WEB entries are exchanged between consumers, no authorization is required.

<sup>5</sup> NACHA OG (2016). The number following OG refers to the page number.

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
Check <sup>7</sup>					
	Forged (Counterfeit) Check	\$0 Consumer not liable as the check is not properly payable <sup>8</sup> , which means that it was not authorized or not in accordance with any agreement.	<a href="#">UCC §4-401</a> . If check is not properly payable, the depository bank must not charge or is required to recredit the amount of the fraudulent check.	Paying bank is liable as there is no breach of presentment warranty.	Presentment warranties <sup>9</sup> are set forth in <a href="#">UCC §§3-417</a> and <a href="#">4-208</a>
	Forged Drawer's Signature	\$0 Consumer not liable as the check is not properly payable, which means that it was not authorized or not in accordance with any agreement.	<a href="#">UCC §4-401</a> . If check is not properly payable, the depository bank must not charge or is required to recredit the amount of the fraudulent check.	Paying bank is liable as there is no breach of presentment warranty.	Presentment warranties are set forth in <a href="#">UCC §§3-417</a> and <a href="#">4-208</a>
		Possible exception if consumer's negligence substantially contributed to the forged signature or if consumer's failure to timely report forgery.	<a href="#">UCC §3-406</a> drawer's negligence <a href="#">UCC §4-406</a> drawer's failure to report		
	Forged Endorsement	\$0 Consumer not liable as check is not properly payable, which means that it was not authorized or not in accordance with any agreement.	<a href="#">UCC §4-401</a> . If check is not properly payable, the depository bank must not charge or is required to recredit amount of the fraudulent check.	Depository bank is liable as there is breach of transfer or presentment warranties.	Presentment warranties are set forth in <a href="#">UCC §§3-417</a> and <a href="#">4-208</a> Transfer warranties <sup>10</sup> are set forth in <a href="#">UCC §§3-416</a> and <a href="#">4-207</a>

<sup>7</sup> These protections also apply to business checks.

<sup>8</sup> An item is “properly payable” if it is authorized by the customer and is in accordance with any agreement between the customer and bank. [UCC §4-401\(a\)](#).

<sup>9</sup> A presentment warranty refers to an implied promise as to the title and credibility of an instrument made by a payer or acceptor upon the presentment of the instrument for payment. (<http://definitions.uslegal.com/p/presentment-warranty/>) See UCC §§3-417 and 4-208 for the specific warranty.

<sup>10</sup> A transfer warranty is an implied promise relating to the title and credibility of an instrument made by a transferor to a transferee. (<http://definitions.uslegal.com/t/transfer-warranty/>) See UCC §§3-416 and 4-207 for the specific warranty.

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Check <sup>7</sup>					
	Fraudulent Alteration	\$0 Consumer not liable as check is not properly payable, which means that it was not authorized or not in accordance with any agreement.	<a href="#">UCC §§3-407</a> and <a href="#">UCC §4-401</a> . If check is not properly payable, the depository bank must not charge or is required to recredit amount of fraudulent check.	Depository bank is liable as there is breach of transfer or presentment warranties.	Presentment warranties are set forth in <a href="#">UCC §§3-417</a> and <a href="#">4-208</a>
		Possible exception if consumer's negligence substantially contributed to the alteration or if consumer failed to timely report the alteration.	<a href="#">UCC §3-406</a> drawer's negligence <a href="#">UCC §4-406</a> drawer's failure to report		Transfer warranties are set forth in <a href="#">UCC §§3-416</a> and <a href="#">4-207</a>
	Remotely Created Checks	\$0 Consumer not liable as check is not properly payable, which means that it was not authorized or not in accordance with any agreement.	<a href="#">UCC §4-401</a> . If check is not properly payable, the depository bank must not charge or is required to recredit amount of the fraudulent check.	Depository bank is liable for all kinds of fraud for remotely created checks.	Reg. CC ( <a href="#">12 CFR §229.34(d)</a> ) contains transfer and presentment warranties for remotely created checks in which depository bank warrants that the check is authorized.

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
Credit Cards <sup>11</sup>					
	Card Present (signature or PIN required)	\$50 The consumer's maximum liability under federal law is \$50 for unauthorized use.	Truth in Lending Act ("TILA") ( <a href="#">15 USC §1643(a)</a> ) and Reg. Z ( <a href="#">12 CFR §226.12(b)</a> )	The Issuing Bank is generally liable for fraudulent transactions, but may try to recover funds from the merchant. <sup>13</sup>	Visa and MasterCard Policies <sup>14</sup>
		If the credit card is reported as lost or stolen before it is used by an unauthorized person, then the card issuer cannot hold the customer liable for unauthorized charges.	<a href="#">Ftc.gov</a> <sup>12</sup>		
		\$0 The consumer has no liability for unauthorized use under Visa/MasterCard consumer policies, provided that the consumer has taken reasonable measures to protect the card and has not acted negligently in failing to timely report the loss.  MasterCard has more specific requirements for a Cardholder to have \$0 liability ("Zero Liability" policy) <sup>15</sup> : a. The Cardholder has exercised reasonable care in safeguarding such Card from risk	Visa/ MasterCard websites		

<sup>11</sup> MasterCard and Visa are used in this document as examples for illustrative purposes only since there are many other credit card companies. If you have specific questions regarding other credit card companies, please consult their websites, policies, and/or terms and conditions.

<sup>12</sup> Federal Trade Commission consumer fact sheet, LOST OR STOLEN CREDIT, ATM, AND DEBIT CARDS, <http://www.consumer.ftc.gov/articles/0213-lost-or-stolen-credit-atm-and-debit-cards> (March 11, 2016).

<sup>13</sup> <https://www.nerdwallet.com/blog/credit-cards/merchants-victims-credit-card-fraud/> (March 15, 2016).

<sup>14</sup> The Visa and MasterCard network rules apply only between the Issuing Bank (the bank that issues cards to cardholders) and the Acquiring Bank (the bank that has the relationship with the merchant). Visa publishes its [Card Acceptance Guidelines for Visa Merchants](#) and [Visa Core Rules and Visa Product and Service Rules](#) (March 11, 2016). Visa's legal authority is derived from statements made by Visa and in litigation and from other secondary sources. MasterCard publishes its policies and rules (<https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>) (March 11, 2016).

<sup>15</sup> MasterCard's "Zero Liability" policy applies to the following: purchases made in the store, over the telephone, online, or via a mobile device. It does not apply to the following MasterCard payment cards: 1) commercial cards; or 2) unregistered prepaid cards or gift cards. <http://www.mastercard.us/zero-liability.html> (March 11, 2016).

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Credit Cards <sup>11</sup>					
	<b>Card Present continued</b>	<p>of loss or theft; and</p> <p>b. The Cardholder has promptly reported to their financial institution when they knew their MasterCard was lost or stolen.</p> <p>If a MasterCard Cardholder does not meet these requirements, then the Cardholder is liable for the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the Issuer.<sup>16</sup></p> <p>Visa's Zero Liability Policy<sup>17</sup> provides a guarantee that a Cardholder won't be held responsible for unauthorized charges made with the Cardholder's account or account information.</p> <p>EMV<sup>18</sup> LIABILITY SHIFT<sup>19</sup>:</p> <p>Three (3) liability shifts have and will be occurring between 2015-2017 that will shift liability from the Issuing Bank to the merchant or any party that has not implemented EMV. After the liability shift, liability for card present counterfeit fraud</p>			

<sup>16</sup> Reg. Z, 12 C.F.R. § 226.12(b)(1)(ii).

<sup>17</sup> Under Visa's Zero Liability Policy, a Cardholder is protected if their Visa credit or debit card is lost, stolen or fraudulently used, online or offline. The policy does not apply to cards that are not issued in the U.S., Visa corporate or Visa purchasing card or account transactions, or any transactions that are not processed by Visa.

<https://www.visa.com/chip/personal/security/zero-liability.jsp> (March 11, 2016).

<sup>18</sup> EMV (Europay, MasterCard and Visa) is a global, interoperable standard for inter-operation of integrated circuit cards ("IC cards" or "chip cards") and IC card capable point-of-sale ("POS") terminals and automated teller machines ("ATMs"), for authenticating credit and debit card transactions. EMV is also referred to as smart card, smart-chip card, EMV smart card, EMV card, "chip and PIN", "chip and signature", or a chip enabled card.

<sup>19</sup> In order to facilitate the transition to EMV in the U.S., the four major networks (Visa, MasterCard, American Express, and Discover) are implementing a staggered EMV migration schedule and liability shift to compel merchants to update their POS terminals and software to be EMV-enabled. This is not a mandate.

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Credit Cards <sup>11</sup>					
	<b>Card Present continued</b>	<p>losses (credit) will shift to the party (Acquirer or Issuer<sup>20</sup>) that has not adopted EMV chip technology (e.g., merchant upgrades of their point-of-sale terminal to support chip transactions, issuance of chip cards, etc.).</p> <p>The three liability shifts are:</p> <ol style="list-style-type: none"> <li>1. October 2015 <ul style="list-style-type: none"> <li>• Liability shift for most merchants (not including automated fuel dispensers ("AFD")) (Visa<sup>21</sup>, MasterCard<sup>22</sup>, American Express<sup>23</sup>, Discover<sup>24</sup>).</li> </ul> </li> </ol>			

<sup>20</sup> "Issuer" here does not refer to the card networks, but to banks, credit unions, and any other financial institution that issues credit or debit cards.

<sup>21</sup> Visa's liability shift policy states that a party that has not adopted chip technology (either the issuing financial institution or merchant) will be liable for any resulting card present counterfeit fraud losses. If neither or both parties are EMV compliant, then the fraud liability remains the same as it is today. This applies to all U.S. domestic and cross-border counterfeit transactions. The EMV liability shift does not apply to card-not-present transactions, lost and stolen fraud, or Visa payWave transactions. In these cases, the liability remains subject to existing liability and chargeback rules. <https://www.visa.com/chip/merchants/grow-your-business/payment-technologies/credit-card-chip/docs/VISA LIABILITY SHIFT FINAL.pdf> (March 15, 2016).

<sup>22</sup> Under the MasterCard liability regime, the party (Issuer or merchant) that does not support EMV will assume liability for counterfeit card transactions. Also, there will be a liability shift for lost, stolen, and never received or issued ("NRI") cards to the party that does not support PIN as a cardholder verification method. If neither party supports PIN, only the counterfeit liability shift rules apply. In addition, if PIN is the preferred or required cardholder verification method ("CVM") in a country or MasterCard region, the liability for lost, stolen, and never-received cards resulting in fraudulent MasterCard transactions when one customer is not yet able to support chip/PIN transactions will be on that customer.

MasterCard supports two levels of chip liability shift participation in the U.S.:

### Level 1—Chip Liability Shift (Counterfeit Fraud)

- Issuers assume counterfeit fraud-related liability if a non-EMV chip card is presented at a hybrid POS terminal.
- Acquirers assume counterfeit fraud-related liability if an EMV chip card is presented at a non-hybrid POS terminal.

### Level 2—Chip/PIN Liability Shift (Lost/Stolen/NRI Fraud)

- Issuers assume lost, stolen, and NRI fraud-related liability unless a card is a hybrid PIN-preferring card used at a terminal that is not a hybrid PIN- capable POS terminal or where the PIN pad is not present or not working.

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Credit Cards <sup>11</sup>					
	<b>Card Present continued</b>	2. October 2016 <ul style="list-style-type: none"> <li>• Liability shift for ATM owners (MasterCard).</li> </ul> 3. October 2017 <ul style="list-style-type: none"> <li>• Liability shift for ATM owners (Visa).</li> <li>• Liability shift for AFDs (Visa, MasterCard, American Express, Discover).</li> </ul>			
	<b>Card Not Present (telephone order, mail order, subsequent recurring payment, and e-commerce transactions)</b>	<p>\$50 The consumer's maximum liability under federal law is \$50 for unauthorized use.</p> <p>No liability for unauthorized use if credit card number was used, but not the actual card itself.</p>	Truth in Lending Act ("TILA") ( <a href="#">15 USC §1643(a)</a> ) and Reg. Z ( <a href="#">12 CFR §226.12(b)</a> ) <a href="#">Ftc.gov</a> <sup>27</sup>	The Issuing Bank recovers the funds from the merchant's bank (the Acquiring Bank), and the Acquiring Bank tries to recover the funds from the merchant. <sup>25</sup> The Acquiring Bank is generally liable for fraudulent transactions if the Acquirer is not able to pass the liability on to	Visa <a href="#">Rules</a> <sup>26</sup> and/or <a href="#">Chargeback Guide</a> , <a href="#">MasterCard Rules and/or Chargeback Guide</a>
		<p>\$0 The consumer has no liability for unauthorized use under Visa/ MasterCard consumer policies, provided that the consumer has taken reasonable measures to protect the card and has not acted negligently in failing to timely report</p>	Visa/ MasterCard websites		

- Acquirers assume lost, stolen, and NRI fraud-related liability if a hybrid PIN-preferring card is used at a terminal that is not a hybrid PIN-capable POS terminal or where the PIN pad is not present or not working.

<sup>23</sup> American Express's Fraud Liability Shift policy will transfer liability for certain types of fraudulent transactions away from the party that has the most secure form of EMV technology.

<sup>24</sup> Discover's Fraud Liability Shift policy ensures participants that deploy EMV technology will not be liable for counterfeit card transactions.

[https://www.discovernetwork.com/chip-card/empy\\_education/fraud\\_liability\\_shift.html](https://www.discovernetwork.com/chip-card/empy_education/fraud_liability_shift.html). Further, if a participant deploys Chip and PIN terminal capability, they will not be liable for lost and stolen transactions. If fraud occurs, the party - the issuer or merchant/acquirer - that has the lowest level of EMV technology will generally bear the liability. [https://www.discovernetwork.com/chip-card/images/Merchant%20Store%20Owner\\_Fraud%20Liability%20Shift%20Overview.pdf](https://www.discovernetwork.com/chip-card/images/Merchant%20Store%20Owner_Fraud%20Liability%20Shift%20Overview.pdf).

<sup>25</sup> Fraud and Loss, <https://www.wepay.com/api/payments-101/payments-fraud-and-loss> (March 15, 2016).

<sup>26</sup> Visa's assignment of liability for counterfeit transactions is specifically laid out in their Rules at Section 1.10.7.1.

<sup>27</sup> Federal Trade Commission consumer fact sheet, LOST OR STOLEN CREDIT, ATM, AND DEBIT CARDS, <http://www.consumer.ftc.gov/articles/0213-lost-or-stolen-credit-atm-and-debit-cards> (March 11, 2016).

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Credit Cards <sup>11</sup>					
	<b>Card Not Present continued</b>	<p>the loss.</p> <p>MasterCard has more specific requirements for a Cardholder to have \$0 liability ("Zero Liability" policy)<sup>28</sup>:</p> <ul style="list-style-type: none"> <li>a. The Cardholder has exercised reasonable care in safeguarding such Card from risk of loss or theft; and</li> <li>b. The Cardholder has promptly reported to their financial institution when they knew their MasterCard was lost or stolen.</li> </ul> <p>If a MasterCard Cardholder does not meet these requirements, then the Cardholder is liable for the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the Issuer.<sup>29</sup></p> <p>Visa's Zero Liability Policy<sup>30</sup> provides a guarantee that a Cardholder won't be held responsible for unauthorized charges made with the Cardholder's account or account information.</p>			

<sup>28</sup> MasterCard's "Zero Liability" policy applies to the following: purchases made in the store, over the telephone, online, or via a mobile device. It does not apply to the following MasterCard payment cards: 1) commercial cards; or 2) unregistered prepaid cards or gift cards. <http://www.mastercard.us/zero-liability.html> (March 11, 2016).

<sup>29</sup> Reg. Z, 12 C.F.R. § 226.12(b)(1)(ii).

<sup>30</sup> Under Visa's Zero Liability Policy, a Cardholder is protected if their Visa credit or debit card is lost, stolen or fraudulently used, online or offline. The policy does not apply to cards that are not issued in the U.S., Visa corporate or Visa purchasing card or account transactions, or any transactions that are not processed by Visa. <https://www.visa.com/chip/personal/security/zero-liability.jsp> (March 11, 2016).

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Debit Cards					
	Card Present (signature or PIN required)	\$0 If the loss or theft is reported immediately and prior to the card being used.	Ftc.gov <sup>31</sup>	Fraud losses are usually shared between card issuers and merchants. <sup>32</sup> The Issuing Bank is generally liable for fraudulent transactions if merchant has obtained signature or required use of PIN.	Visa <a href="#">Rules</a> <sup>33</sup> and/or <a href="#">Chargeback Guide</a> , <a href="#">MasterCard Rules</a> and/or <a href="#">Chargeback Guide</a>
		Up to \$50 If the consumer provides notice within two business days after learning of the loss of the debit card.	Reg. E ( <a href="#">12 CFR §205.6(b)(1)</a> )		
		Up to \$500 If the consumer fails to notify the bank within two business days after learning of loss or theft, but does notify within 60 days after transmittal of the consumer's periodic statement listing the unauthorized withdrawals.	Reg. E ( <a href="#">12 CFR §205.6(b)(2)</a> )		
		Unlimited consumer liability for transactions occurring in the period starting 60 days after transmittal of the consumer's periodic statement listing the unauthorized withdrawals and until notice is provided.	Reg. E ( <a href="#">12 CFR §205.6(b)(3)</a> )		
		\$0 The consumer has no liability for unauthorized use under Visa/ MasterCard consumer policies, provided that the consumer has taken reasonable measures to protect the card or has acted negligently in failing to report the loss timely.	Visa/MasterCard websites		

<sup>31</sup> Federal Trade Commission consumer fact sheet, LOST OR STOLEN CREDIT, ATM, AND DEBIT CARDS, <http://www.consumer.ftc.gov/articles/0213-lost-or-stolen-credit-atm-and-debit-cards> (March 11, 2016).

<sup>32</sup> Fraud and Loss, <https://www.wepay.com/api/payments-101/payments-fraud-and-loss> (March 15, 2016).

<sup>33</sup> Visa's assignment of liability for counterfeit transactions is specifically laid out in their Rules at Section 1.10.7.1.

## Payments Fraud Liability Matrix

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
Debit Cards					
	<b>Card Present continued</b>	<p>MasterCard has more specific requirements for a Cardholder to have \$0 liability ("Zero Liability" policy)<sup>34</sup>:</p> <ul style="list-style-type: none"> <li>a. The Cardholder has exercised reasonable care in safeguarding such Card from risk of loss or theft; and</li> <li>b. The Cardholder has promptly reported to their financial institution when they knew their MasterCard was lost or stolen.</li> </ul> <p>Exception for MasterCard debit (PIN): \$0 liability only if the transaction is processed by MasterCard; No liability protection above what the law provides if transaction is not processed by MasterCard.<sup>35</sup></p> <p>Visa's Zero Liability Policy<sup>36</sup> provides a guarantee that a Cardholder won't be held responsible for unauthorized charges made with the Cardholder's account or account information.</p> <p>Exception for Visa debit (PIN): \$0 liability only if</p>			

<sup>34</sup> MasterCard's "Zero Liability" policy applies to the following: purchases made in the store, over the telephone, online, or via a mobile device. It does not apply to the following MasterCard payment cards: 1) commercial cards; or 2) unregistered prepaid cards or gift cards. <http://www.mastercard.us/zero-liability.html> (March 11, 2016).

<sup>35</sup> John Kiernan, *Fraud Liability Study: Which Cards Protect You Best?*, <http://www.cardhub.com/edu/fraud-liability-study/> (viewed on March 14, 2016).

<sup>36</sup> Under Visa's Zero Liability Policy, a Cardholder is protected if their Visa credit or debit card is lost, stolen or fraudulently used, online or offline. The policy does not apply to cards that are not issued in the U.S., Visa corporate or Visa purchasing card or account transactions, or any transactions that are not processed by Visa.

<https://www.visa.com/chip/personal/security/zero-liability.jsp> (March 11, 2016). If the unauthorized transaction involves a Visa debit card or account, Visa's Zero Liability Policy requires issuers to replace any funds taken from the Cardholder's account as the result of an unauthorized debit transaction within 5 business days of notification. Replacement funds for unauthorized transactions are provided on a provisional basis and may be withheld, delayed, limited, or rescinded by the issuer based on the following: 1) gross negligence or fraud; 2) delay in reporting unauthorized use; 3) investigation and verification of claim; and 4) account standing and history. <http://usa.visa.com/personal/security/zero-liability.jsp> (March 11, 2016). The transaction-at-issue must be posted to the Cardholder's account before replacement funds may be issued.

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
Debit Cards					
	<b>Card Present continued</b>	<p>the transaction is processed by Visa; No liability protection above what the law provides if transaction is not processed by Visa.<sup>37</sup></p> <p>EMV LIABILITY SHIFT<sup>38</sup>:</p> <p>Three (3) liability shifts have and will be occurring between 2015-2017 that will shift liability from the Issuing Bank to the merchant or any party that has not implemented EMV. After the liability shift, liability for card present counterfeit fraud losses (debit) will shift to the party (Acquirer or Issuer<sup>39</sup>) that has not adopted EMV chip technology (e.g., merchant upgrades of their point-of-sale terminal to support chip transactions, issuance of chip cards, etc.).</p> <p>The three liability shifts are:</p> <ol style="list-style-type: none"> <li>1. October 2015 <ul style="list-style-type: none"> <li>• Liability shift for most merchants (not including automated fuel dispensers ("AFD")) (Visa<sup>40</sup>, MasterCard<sup>41</sup>, American Express<sup>42</sup>, Discover<sup>43</sup>).</li> </ul> </li> </ol>			

<sup>37</sup> John Kiernan, *Fraud Liability Study: Which Cards Protect You Best?*, <http://www.cardhub.com/edu/fraud-liability-study/> (viewed on March 14, 2016).

<sup>38</sup> In order to facilitate the transition to EMV in the U.S., the four major networks (Visa, MasterCard, American Express, and Discover) are implementing a staggered EMV migration schedule and liability shift to compel merchants to update their POS terminals and software to be EMV-enabled. This is not a mandate.

<sup>39</sup> "Issuer" here does not refer to the card networks, but to banks, credit unions, and any other financial institution that issues credit or debit cards.

<sup>40</sup> Visa's liability shift policy states that a party that has not adopted chip technology (either the issuing financial institution or merchant) will be liable for any resulting card present counterfeit fraud losses. If neither or both parties are EMV compliant, then the fraud liability remains the same as it is today. This applies to all U.S. domestic and cross-border counterfeit transactions. The EMV liability shift does not apply to card-not-present transactions, lost and stolen fraud, or Visa payWave transactions. In these cases, the liability remains subject to existing liability and chargeback rules. [https://www.visa.com/chip/merchants/grow-your-business/payment-technologies/credit-card-chip/docs/VISA LIABILITY SHIFT\\_FINAL.pdf](https://www.visa.com/chip/merchants/grow-your-business/payment-technologies/credit-card-chip/docs/VISA LIABILITY SHIFT_FINAL.pdf) (March 15, 2016).

<sup>41</sup> Under the MasterCard liability regime, the party (Issuer or merchant) that does not support EMV will assume liability for counterfeit card transactions. Also, there will be a liability shift for lost, stolen, and NRI cards to the party that does not support PIN as a cardholder verification method. If neither party supports PIN, only the

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority	
Debit Cards						
	Card Present continued	2. October 2016 <ul style="list-style-type: none"> <li>• Liability shift for ATM owners (MasterCard).</li> </ul> 3. October 2017 <ul style="list-style-type: none"> <li>• Liability shift for ATM owners (Visa).</li> <li>• Liability shift for AFDs (Visa, MasterCard, American Express, Discover).</li> </ul>				

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counterfeit liability shift rules apply. In addition, if PIN is the preferred or required cardholder verification method ("CVM") in a country or MasterCard region, the liability for lost, stolen, and never-received cards resulting in fraudulent MasterCard transactions when one customer is not yet able to support chip/PIN transactions will be on that customer.

MasterCard supports two levels of chip liability shift participation in the U.S.:

**Level 1—Chip Liability Shift (Counterfeit Fraud)**

- Issuers assume counterfeit fraud-related liability if a non-EMV chip card is presented at a hybrid POS terminal.
- Acquirers assume counterfeit fraud-related liability if an EMV chip card is presented at a non-hybrid POS terminal.

**Level 2—Chip/PIN Liability Shift (Lost/Stolen/NRI Fraud)**

- Issuers assume lost, stolen, and NRI fraud-related liability unless a card is a hybrid PIN-preferring card used at a terminal that is not a hybrid PIN-capable POS terminal or where the PIN pad is not present or not working.
- Acquirers assume lost, stolen, and NRI fraud-related liability if a hybrid PIN-preferring card is used at a terminal that is not a hybrid PIN-capable POS terminal or where the PIN pad is not present or not working.

<sup>42</sup> American Express's Fraud Liability Shift policy will transfer liability for certain types of fraudulent transactions away from the party that has the most secure form of EMV technology.

<sup>43</sup> Discover's Fraud Liability Shift policy ensures participants that deploy EMV technology will not be liable for counterfeit card transactions.

[https://www.discovernetwork.com/chip-card/emv\\_education/fraud\\_liability\\_shift.html](https://www.discovernetwork.com/chip-card/emv_education/fraud_liability_shift.html). Further, if a participant deploys Chip and PIN terminal capability, they will not be liable for lost and stolen transactions. If fraud occurs, the party - the issuer or merchant/acquirer - that has the lowest level of EMV technology will generally bear the liability. [https://www.discovernetwork.com/chip-card/images/Merchant%20Store%20Owner\\_Fraud%20Liability%20Shift%20Overview.pdf](https://www.discovernetwork.com/chip-card/images/Merchant%20Store%20Owner_Fraud%20Liability%20Shift%20Overview.pdf).

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
Debit Cards					
<b>Card Not Present</b> (telephone or web initiated use)	Up to \$50 If the consumer provides notice within two business days after learning of the loss of the debit card.	Reg. E ( <a href="#">12 CFR §205.6(b)(1)</a> )	The Issuing Bank recovers the funds from the merchant's bank (the Acquiring Bank), and the Acquiring Bank tries to recover the funds from the merchant. <sup>44</sup> The Acquiring Bank is generally liable for fraudulent transactions if the Acquirer is not able to pass the liability on to the merchant pursuant to the merchant agreement.	Visa <a href="#">Rules<sup>45</sup></a> and/or <a href="#">Chargeback Guide</a> , <a href="#">MasterCard Rules and/or Chargeback Guide</a> , Secondary Sources <sup>46</sup>	
	Up to \$500 If the consumer fails to notify the bank within two business days after learning of loss or theft, but does notify within 60 days after transmittal of the consumer's periodic statement listing the unauthorized withdrawals.	Reg. E ( <a href="#">12 CFR §205.6(b)(2)</a> )			
	\$0 The consumer has no liability for unauthorized use under Visa/MasterCard consumer policies, provided that the consumer has taken reasonable measures to protect the card or has acted negligently in failing to report the loss timely.  MasterCard has more specific requirements for a Cardholder to have \$0 liability ("Zero Liability" policy) <sup>47</sup> : a. The Cardholder has exercised reasonable care in safeguarding such Card from risk of loss or theft; and	Visa/MasterCard websites			

<sup>44</sup> Fraud and Loss, <https://www.wepay.com/api/payments-101/payments-fraud-and-loss> (March 15, 2016).

<sup>45</sup> Visa's assignment of liability for counterfeit transactions is specifically laid out in their Rules at Section 1.10.7.1.

<sup>46</sup> There is very little hard law on this issue. A number of secondary sources, however, assign the liability to the issuing bank. See Arnold S. Rosenberg, "Better than Cash? Global Proliferation of Debit and Prepaid Cards and Consumer Protections Policy." 44 Column. J. Transnat'l L. 520, 587 (2006).

<sup>47</sup> MasterCard's "Zero Liability" policy applies to the following: purchases made in the store, over the telephone, online, or via a mobile device. It does not apply to the following MasterCard payment cards: 1) commercial cards; or 2) unregistered prepaid cards or gift cards. <http://www.mastercard.us/zero-liability.html> (March 11, 2016).

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
Debit Cards					
	<b>Card Not Present continued</b>	<p>b. The Cardholder has promptly reported to their financial institution when they knew their MasterCard was lost or stolen.</p> <p>Visa's Zero Liability Policy<sup>48</sup> provides a guarantee that a Cardholder won't be held responsible for unauthorized charges made with the Cardholder's account or account information.</p>			
	<b>Decoupled Debit Cards</b> (Cards issued by Institution other than Bank in which consumer maintains an account. Settlement between merchant and	<p>Unlimited consumer liability for transactions occurring in the period starting 60 days after transmittal of the consumer's periodic statement listing the unauthorized withdrawals and until notice is provided.</p> <p>\$0 The consumer has no liability for unauthorized use under Visa/MasterCard consumer policies, provided that the consumer has taken reasonable measures to protect the card or has acted negligently in failing to timely report the loss.</p>	Reg. E ( <a href="#">12 CFR §205.6(b)(3)</a> )  Visa/MasterCard websites	Under NACHA Rules, the ODFI, which is likely the Card Issuer's bank, is liable for breach of warranty as described above under ACH Debits. The ODFI is likely to pass liability to card issuer by agreement.  Under Payment network	

<sup>48</sup> Under Visa's Zero Liability Policy, a Cardholder is protected if their Visa credit or debit card is lost, stolen or fraudulently used, online or offline. The policy does not apply to cards that are not issued in the U.S., Visa corporate or Visa purchasing card or account transactions, or any transactions that are not processed by Visa. <https://www.visa.com/chip/personal/security/zero-liability.jsp> (March 11, 2016). If the unauthorized transaction involves a Visa debit card or account, Visa's Zero Liability Policy requires issuers to replace any funds taken from the Cardholder's account as the result of an unauthorized debit transaction within 5 business days of notification. Replacement funds for unauthorized transactions are provided on a provisional basis and may be withheld, delayed, limited, or rescinded by the issuer based on the following: 1) gross negligence or fraud; 2) delay in reporting unauthorized use; 3) investigation and verification of claim; and 4) account standing and history. <http://usa.visa.com/personal/security/zero-liability.jsp> (March 11, 2016). The transaction-at-issue must be posted to the Cardholder's account before replacement funds may be issued.

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Payment Type	Subtype (Fraud Type)	Consumer Protection	Legal Authority	Who is liable if cannot recover against fraudster or merchant	Legal Authority
Debit Cards					
card issuer is through branded payment networks, such as Visa or MasterCard. Settlement between Card issuer and consumer is via ACH debits to consumer's bank account)	MasterCard has more specific requirements for a Cardholder to have \$0 liability ("Zero Liability" policy) <sup>49</sup> :  a. The Cardholder has exercised reasonable care in safeguarding such Card from risk of loss or theft; and b. The Cardholder has promptly reported to their financial institution when they knew their MasterCard was lost or stolen.  If a MasterCard Cardholder does not meet these requirements, then the Cardholder is liable for the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the Issuer.  Visa's Zero Liability Policy <sup>50</sup> provides a guarantee that a Cardholder won't be held responsible for unauthorized charges made with the Cardholder's account or account information.		rules, it is either the Card Issuer or the Acquiring Bank that is liable depending on whether it is a card-present or card not present situation. See above for debit cards.		

<sup>49</sup> MasterCard's "Zero Liability" policy applies to the following: purchases made in the store, over the telephone, online, or via a mobile device. It does not apply to the following MasterCard payment cards: 1) commercial cards; or 2) unregistered prepaid cards or gift cards. <http://www.mastercard.us/zero-liability.html> (March 11, 2016).

<sup>50</sup> Under Visa's Zero Liability Policy, a Cardholder is protected if their Visa credit or debit card is lost, stolen or fraudulently used, online or offline. The policy does not apply to cards that are not issued in the U.S., Visa corporate or Visa purchasing card or account transactions, or any transactions that are not processed by Visa.

<https://www.visa.com/chip/personal/security/zero-liability.jsp> (March 11, 2016). If the unauthorized transaction involves a Visa debit card or account, Visa's Zero Liability Policy requires issuers to replace any funds taken from the Cardholder's account as the result of an unauthorized debit transaction within 5 business days of notification. Replacement funds for unauthorized transactions are provided on a provisional basis and may be withheld, delayed, limited, or rescinded by the issuer based on the following: 1) gross negligence or fraud; 2) delay in reporting unauthorized use; 3) investigation and verification of claim; and 4) account standing and history. <http://usa.visa.com/personal/security/zero-liability.jsp> (March 11, 2016). The transaction-at-issue must be posted to the Cardholder's account before replacement funds may be issued.

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Debit Cards					
	<b>Decoupled Debit Cards continued</b>	Up to \$50 If the consumer provides notice within four business days after learning of the loss of the debit card.	Reg. E ( <a href="#">12 CFR §205.14(b)(1)(v)</a> and <a href="#">§205.6(b)(2)</a> )		
		Up to \$500 If the consumer fails to notify the bank within four business days after learning of loss or theft, but does notify within 60 days after transmittal of the consumer's periodic statement listing the unauthorized withdrawals.	Reg. E ( <a href="#">12 CFR §205.14(b)(1)(v)</a> and <a href="#">§205.6(b)(2))</a>		
		Unlimited consumer liability for transactions occurring in the period starting 90 days after transmittal of the consumer's periodic statement listing the unauthorized withdrawals and until notice is provided.	Reg. E ( <a href="#">12 CFR §205.14(b)(1)(v)</a> and <a href="#">§205.6(b)(3))</a>		
		Consumer has right of immediate recredit under NACHA Rules if notifies its bank within 15 days after receiving statement.	NACHA OR §3.11.1		