

WRITTEN STATEMENT OF

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ON BEHALF OF

VISA U.S.A. INC.

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

JULY 9, 2003

Chairman Oxley, Ranking Member Frank, and Members of the House Committee on Financial Services, my name is Rick Fischer. I am a partner in the law firm of Morrison & Foerster LLP, and practice in the firm's Washington, D.C. office. I have over 30 years of experience in advising banks and other financial services companies on retail banking issues, including those relating to privacy. My treatise, *The Law of Financial Privacy*, was first published in 1983 and is one of the leading authorities on this subject. I am pleased to appear before you today on behalf of Visa U.S.A.

The Visa payment system, of which Visa U.S.A. is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. There are more than one billion Visa-branded cards, and they are accepted at millions of locations in more than 150 countries. And Visa card transaction volume now exceeds one trillion dollars annually. Visa plays a pivotal role in advancing new payment products and technologies to benefit its 21,000 member financial institutions and their hundreds of millions of cardholders worldwide.

Visa appreciates the opportunity to address the important legislation currently being considered by the Committee, H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003," which would reauthorize the expiring national uniformity provisions of the Fair Credit Reporting Act ("FCRA") and help protect consumers from identity theft.

***Proposal to Reauthorize the FCRA National Uniformity Standards is an
Essential Element of H.R. 2622***

The Importance of the FCRA National Uniformity Standards

An essential cornerstone of H.R. 2622 is Title I, which would make permanent the key provisions of the FCRA that establish national uniformity in our nation's credit reporting system. An effective national credit reporting system and a competitive national credit granting process are vital to efficiency and productivity in the U.S. economy and, therefore, reauthorization of the FCRA's national uniformity standards is critical. Because of these national uniformity standards, an effective national marketplace for retail credit has evolved. This national market has enabled consumers in all parts of the country to enjoy prompt and convenient access to credit, as well as competitive pricing and innovative credit terms. Treasury Secretary John W. Snow recently expressed the Administration's support for the reauthorization of the FCRA's national uniformity standards because these standards "have become a pillar of our economy." Secretary Snow specifically noted that "[m]illions of Americans have access to credit today because of these standards and millions more get credit on better terms because of them. They have [led] to the democratization of credit and the miracle of modern credit markets, which do so much for average citizens. The widespread availability of credit on reasonable terms helps to keep this economy strong."

The GLB Act Also Needs National Uniformity, Even If It Cannot Be Accomplished Immediately

Another issue that is critical to these national markets is the privacy notices required under Title V of the Gramm-Leach-Bliley Act (“GLB Act”). In this regard, Visa agrees with the views expressed by many Members of this Committee in their June 25, 2003 letter to the federal banking regulators about the need to simplify notices. The Members urged the banking regulators to act expeditiously under their authority in the GLB Act to adopt “a standardized and simplified short-form notice that financial institutions could use to notify consumers of the institution’s information-sharing practices, give clear guidance regarding the consumer’s right to opt-out of such sharing and provide an easy mechanism for doing so.” In addition, the Members noted that providing such simplified notices will “greatly improve the public’s understanding of the important privacy protections currently available in federal law.” Visa fully expects that the banking agencies can and will respond to this important request and will make important progress toward simplified notices. Nevertheless, any solution to the notice problem must include national uniformity. Without national uniformity, problems will continue to arise where states adopt unique notice requirements that complicate the GLB Act notices. Nevertheless, Visa recognizes that the sunset date in the FCRA requires reauthorization of the FCRA’s national uniformity provisions before year end, even if that means that consideration of national uniformity under the GLB Act must follow.

Reauthorization of the FCRA Is Key to the Ability of Consumers to Apply for and Receive Credit

For example, if states establish additional state-specific furnisher obligations or special rules regarding the information about consumers that consumer reporting agencies can retain, the resulting incomplete and inconsistent information in credit reports would likely impair the reliability of the credit scoring models that are used today to make prompt and objective decisions. Reducing the reliability of credit scoring models would result in delays in making credit decisions, impose increased costs on consumers for credit transactions, and reduce the overall availability of consumer credit, particularly for consumers at the margin.

Prescreening—Helping Consumers Shop for Credit

The FCRA also makes it easier for consumers to shop for credit by helping them understand the terms of credit for which they actually qualify. The FCRA permits credit card issuers to prescreen potential customers in order to provide them with firm offers of credit that they are actually qualified to receive. As a result, prescreening provides consumers with more choices among credit card offers, thereby increasing competition, reducing prices, and fostering innovation. Prescreening also reduces costs for issuers, and reduces the volume of mail to consumers. A consumer who does not want to receive prescreened offers can opt out by calling one single, federally-mandated, toll-free telephone number. In addition, H.R. 2622 would result in further simplification of the notice and opt-out procedures associated with prescreening, for the benefit of consumers.

Because consumers know that there is a high likelihood that they will qualify for the prescreened credit offers they receive, consumers can compare the prices and other features and terms of those offers and then select the offer that they believe best fits their needs. Without prescreening, consumers would be far less certain about whether or not they would qualify for various credit products available in the marketplace. Without prescreening, less qualified consumers are likely to apply for credit at attractive rates or terms, but for which they do not qualify. Actually obtaining credit, let alone credit on the best terms, will necessarily be a process of trial and error. Further, the rejection of credit applications due to this trial and error process may further hurt consumer prospects for credit. For these reasons, from the standpoint of the consumer, prescreening enhances the consumer's ability to shop for credit and can help protect the consumer's credit record. And prescreening has been a welcome success for consumers; approximately 50% of all credit card accounts currently in place were originally opened by consumers through prescreening programs.

Prescreening Does Not Lead to Fraudulent Accounts

Contrary to some assertions, prescreening does not increase the potential for identity theft. Prescreened offers contain only names and addresses, less than the information that is contained in a telephone book. Consumers must complete a response form, supplying additional personal data for use in the identification process. In prescreening, there actually are two opportunities to check the consumer's identity—at the time of prescreening and at the time of response. Accordingly, the incidence of identity theft is actually lower for accounts established through prescreening than for accounts established in other ways.

The Importance of Identity Theft Prevention in Title II of H.R. 2622

Title II of H.R. 2622 could establish a number of important identity theft prevention measures. Financial institutions recognize that identity theft is a growing problem. In fact, identity theft is a problem for financial institutions, as well as for consumers. Financial institutions, particularly with respect to credit card and debit card transactions, ultimately bear much of the financial loss from identity theft. As a result, Visa has long been active in protecting consumers from identity theft and Visa applauds this Committee on its efforts in this area.

Truncation of Credit Card and Debit Card Account Numbers

Although Visa generally believes that the details of preventing identity theft should be left to financial institutions that are best situated to address ever evolving fraud techniques, Title II could provide important benefits to consumers and financial institutions alike by establishing workable identity theft provisions and ensuring that these provisions benefit from national uniformity. For example, Section 203 of Title II would prohibit any merchant or other entity that accepts credit cards and debit cards from printing more than the last four digits of the card account number or the expiration date upon receipts provided to cardholders at the point of sale. In March 2003, Visa announced a similar rule that applies to transactions with Visa cards. Under the Visa rule, a reasonable time is afforded to implement the truncation requirement, after which the rule would have appropriate application, with limited exceptions. These same elements—compliance time and appropriate application, with limited exceptions—are built into Section

203, just as they are incorporated into Visa's corresponding rule. Therefore, Visa supports the Committee's effort to establish a broader national uniform rule on this topic.

Additional Visa Efforts to Counter Identity Theft

Fraud prevention has long been a top priority for Visa. Visa continues to work diligently in developing technology, products, and services that protect consumers from identity theft and other forms of fraud. Many security measures are now in place to help prevent identity theft from occurring. For example, Visa's fraud control programs include Verified by Visa, which is a service that allows cardholders to authenticate their identities while shopping online. Verified by Visa allows cardholders to add a personal password of their choosing to their existing Visa cards. When they get to the "checkout line" of a participating online store, they enter their personal password in a special Verified by Visa window. The password links legitimate cardholders to their account information. This verification process protects consumers' cards from unauthorized use and gives them greater control over when and where they are used.

Visa's fraud control programs also include the Cardholder Information Security Program, which is a set of data security requirements for merchants, gateways, and Internet Service Providers, and any other entity that holds cardholder data. Additionally, Visa now offers Personal Identity Theft Coverage as a new optional benefit for Visa cardholders, which provides eligible cardholders with coverage ranging from \$1,000 to \$15,000 in reimbursement for lost wages, legal fees, and other costs associated with recovering from identity theft. Visa also continues efforts in educating consumers to better understand and prevent identity theft by

providing useful information on its Web site, including links to other Web sites designed for consumers if they are victimized by identity theft.

Importantly, under Visa rules, there is zero liability for the unauthorized use of Visa credit cards and debit cards, whether the unauthorized use results from identity theft or other fraud. In this respect, Visa rules go beyond existing protections under the Truth in Lending Act or Electronic Fund Transfer Act. As a result of these Visa rules, the Visa member financial institutions, rather than their customers, bear much of the financial losses of identity theft. Nevertheless, because consumers still suffer the frustrations and reputational risks of identity theft, steps to help prevent and respond to identity theft are very important, and Visa supports the Committee's efforts to do so.

Fraud Alert Notices

For example, H.R. 2622 would establish, in Section 202, procedures for placing fraud alerts in credit files to warn prospective creditors when identity theft is likely. Such fraud alerts could play an important role in preventing identity theft, but the procedures must be carefully crafted. For example, under Section 202, an institution cannot issue or extend credit where an alert has been placed in a consumer's credit file without obtaining the verbal or other authorization of the consumer. It is critical the legislation make it clear that any such limitation applies only to the making of a new loan or the opening of a new account, and not to individual transactions on existing credit accounts. In this regard, for example, as many as four thousand Visa transactions can occur in a single second and while Visa successfully employs sophisticated

neural networks to detect fraud 24 hours a day, it simply is not possible to check for credit bureau fraud alerts and obtain verbal or other authorization from cardholders in connection with individual transactions.

Federal Banking Agency Guidance

In addition, Section 206 would require the federal banking agencies to establish procedures to identify possible instances of identity theft. More specifically, Section 206 would require the banking agencies to jointly implement and maintain “Red Flag” guidelines for use by insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. It is not clear, however, from the language of Section 206 whether these procedures would focus on account openings, or whether they would focus on activity in accounts after they are opened. Since recently enacted Section 326 of the USA PATRIOT Act already establishes procedures for verifying the identity of new customers, any new procedures should more appropriately focus on activity in existing accounts. Account opening procedures required by Section 326 of the USA PATRIOT Act are intended to ensure that customers are properly identified for purposes of national security, and so presumably, Section 326 should provide an appropriate standard for addressing identity theft as well.

The Resulting Federal Rules Must be Uniform Nationally

As indicated earlier, Title II of H.R. 2622 could establish important identity theft prevention measures for consumers and financial institutions alike. In order for even the most carefully crafted measures to be effective in preventing identity theft, however, the rules established by Congress in Title II must be the uniform standard throughout the country. There cannot be multiple sets of rules regarding fraud alerts, consumer rights notices, or procedures for identifying customers and blocking potential fraud accounts under H.R. 2622, any more than for identifying customers under Section 326 of the USA PATRIOT Act. In other words, national uniformity is essential to the effectiveness of any identity theft rules adopted by Congress.

Improving Resolution of Consumer Disputes in Title III

H.R. 2622 also would establish new requirements designed to improve the resolution of consumer disputes. In particular, Section 301 calls for the Federal Trade Commission (“FTC”) to write rules to carry out this purpose. However, since most of the affected accounts will involve financial institutions, it is critically important that any such rules be developed jointly with the federal banking agencies.

Additionally, Section 303 would require the prompt investigation of disputed consumer information. Specifically, Section 303 would require the Federal Reserve Board (“FRB”) and the FTC to study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information are complying with the provisions of the FCRA for the

prompt investigation of disputed accuracy and the prompt correction or deletion of inaccurate or incomplete information. The FRB and FTC would be required to submit a report to Congress on their findings and recommendations. While Section 303 says that each agency will conduct such a study and submit such a report, Congress should make it clear that a single cooperative study is contemplated and that a joint report will be submitted.

Improving Accuracy of Consumer Records in Title IV

Section 401 would require consumer reporting agencies to notify a requester of a consumer report when the request includes a discrepancy in the consumer's address from the current address in the agency's credit report file. Section 401 also would require the consumer reporting agency to reconcile or resolve, within 30 days, such address discrepancies. We believe that Section 401 could help financial institutions in their fight against identity theft, as well as in complying with Section 326 of the USA PATRIOT Act. However, like the provisions of Title II of H.R. 2622, to which this proposed section relates, any resulting federal requirement should be subject to a uniform national standard, since multiple rules regarding such notices and the reconciliation of address discrepancies would be counterproductive.

Improvements in Use of and Consumer Access to Credit Information in Title V

Credit scores are important to the control of credit risks and to broaden credit availability. As Federal Reserve Chairman Alan Greenspan has noted, "[c]redit-scoring technologies have served as the foundation for the development of our national markets for consumer and mortgage

credit, allowing lenders to build highly diversified loan portfolios that substantially mitigate credit risk. [Credit scoring has] played a major role in promoting the efficiency and expanding the scope of our credit-delivery systems and allowing lenders to broaden the populations they are willing and able to serve profitably.”

Title V would add new a requirement under which a consumer report requested by the consumer must include the consumer’s credit score, if one has been generated by the consumer reporting agency for the consumer; specifically, a summary of how the score was derived, and how such a score can be improved. It is important that any such disclosure requirement should only be a summary of how the credit score is computed, and not the specific scoring methodology, in order to avoid fraud. And, the summary should focus on the most recent credit score in the consumer’s credit file generated by the credit bureau. To do otherwise could cause great consumer confusion, and make it virtually impossible for consumers to identify and understand changes in their credit score. Because there are many different types of credit and fraud scores, the focus should be on the credit bureau generated score actually contained in the consumer’s credit file.

Additional Considerations

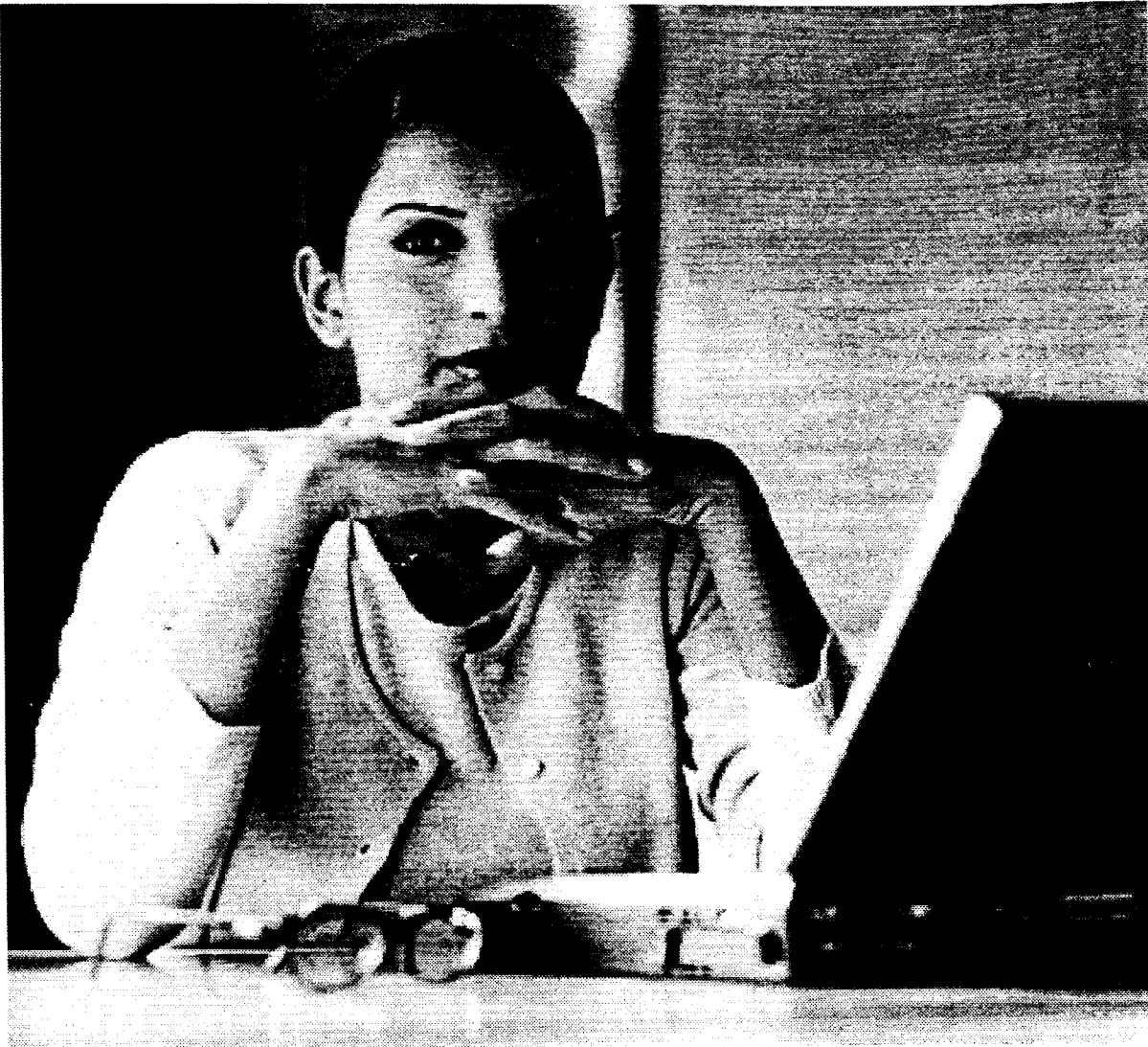
I understand that consideration is being given to the possibility of revising H.R. 2622 by incorporating various additional requirements. Any such revisions should be considered carefully to avoid adverse consequences. For example, a requirement that consumers be notified each time negative information is posted to their credit report would be problematic. Such a

notification requirement would result in tens of millions of notices which, in fact, serve no real purpose. The expense will only discourage furnishers from reporting information, or at least from reporting negative information. As a result, such a requirement would have an adverse impact on credit files and dramatically reduce the reliability of credit report information. Instead, periodic review of the consumer's credit file provides a far clearer picture of the status of the consumer's credit accounts, while also providing an opportunity to spot instances of identity theft.

It also has been suggested that a special rule should be established for the reporting of credit information on accounts of service personnel while they are in active, foreign combat situations. Visa concurs that active military personnel "in harms way" in foreign combat situations deserve our support at home. However, the focus on any such changes should be the Soldiers' and Sailors' Civil Relief Act, not the FCRA, so that the tested administrative provisions of that statute would apply equally to any new protections adopted by Congress.

Again, I appreciate the opportunity to appear before the Committee today on behalf of Visa, and I would be pleased to answer any questions.

Protecting Consumers from Identity Theft



Visa's Comprehensive
Security Program



Visa's comprehensive security program ensures that consumers have new protections and many more resources for help than ever before.

Fraud prevention is a top priority for Visa. It is an essential part of our commitment to consumers that ensures their Visa card can be used with confidence and peace of mind anytime and anywhere they choose. Visa protects cardholders from fraud, even though it is quite rare within the Visa system. Our extensive fraud detection and prevention programs have achieved significant success. Fraud within the Visa system is at an all-time low of just seven cents per \$100 transacted.

Fraud and identity theft are issues of concern to everyone, which is why Visa continues to work diligently developing technology, products and services that protect consumers against these crimes. Many new and existing security measures are now in place to help prevent identity theft and other forms of fraud from occurring in the first place. Victims have new protections and many more resources for help than ever before. A wealth of newly available information also allows consumers to take matters into their own hands to better protect their identities.

In the case of Visa cardholders, they can enjoy the peace of mind that comes with knowing that they are protected by Visa's zero liability policy. That means consumers pay zero in the event of unauthorized purchases. This protection exceeds federal regulations, which limit liability to \$50 - or more in some cases.



Overview of Visa's Security Program and Cardholder Protections

"Visa USA is partnering
with a consumer network
to help identity theft victims
put their lives back together."

Credit Union Journal,
April 28, 2003

Zero Liability - The Cardholder's Bottom-line Protection

Although card fraud is extremely rare, all Visa debit and credit cardholders are protected by Visa's zero liability commitment, which means consumers won't pay for any unauthorized purchase on their Visa card. Visa's zero liability commitment surpasses protections mandated by federal regulations.

Fraud Control Program

Despite the dramatic growth of Visa card transaction volume – now in excess of \$1 trillion annually – the incidence of Visa-system fraud has actually fallen to an all-time industry low. Visa's success is the result of significant investments in technology, cooperative efforts between Visa, its participating financial institutions, and law enforcement agencies along with a wide variety of educational initiatives. Visa and its member financial institutions have developed an array of fraud control programs to help merchants reduce the incidence of unauthorized use of Visa payment cards. These programs include:

Verified by Visa

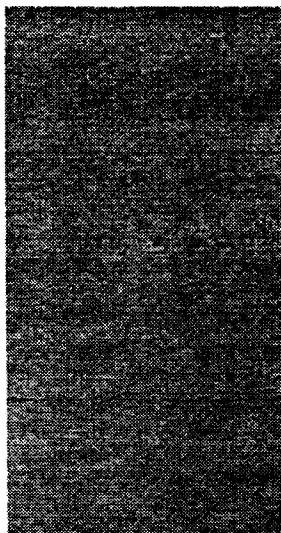
Verified by Visa (VbV) is a new service that allows cardholders to authenticate their identities while shopping online. Verified by Visa's password protection adds another level of comfort and safety by reducing the potential for fraud and identity theft over the Internet.

Cardholder Information Security Program

Visa's Cardholder Information Security Program (CISP) is a set of data security requirements for merchants, gateways and Internet Service Providers, and any other entity that holds or touches cardholder data.

Truncation of Cardholder Receipts

Visa's new receipt truncation policy will limit cardholder information on receipts to the last four digits of their account numbers. Visa's new truncation policy – the first such policy to be announced within the payments industry – will protect consumers by limiting the information on receipts that "dumpster-diving" identity thieves can access.



"Identity thieves thrive on discarded receipts and documents containing consumers' information such as payment account numbers, addresses, Social Security numbers, and more. Visa's new policy will protect consumers by limiting the information these thieves can access."

*Visa CEO Carl Pascarella
March 6, 2003*

Personal Identity Theft Coverage

Visa offers Personal Identity Theft Coverage as a new optional benefit for Visa cardholders through participating member financial institutions. The policy will provide eligible cardholders with coverage ranging from \$1,000 to \$15,000 in reimbursement for lost wages, legal fees and other costs associated with recovering from identity theft.

Identity Theft Victim Hotline

Through a unique partnership with the consumer network Call For Action, identity theft victims can receive free, confidential counseling by calling at telephone hotline (1-866-ID-HOTLINE) or by requesting help online at www.callforaction.org.

Application Verification

The Application Verification system verifies an applicant's address, telephone and Social Security number, and whether the address, telephone and/or Social Security number provided on submitted applications have previously appeared on fraudulent applications or in prior credit card fraud transactions.

Card Activation Method

The Card Activation Method is used by most Visa card issuers to confirm that the cardholder has received a card before activating the account. Under this method, cards are blocked from use at the time of mailing. For the card to be activated, the cardholder typically must call the issuer, often from the same phone number previously provided to the issuer by the cardholder, and must confirm receipt and provide proof of identity.

Address Verification Service

The Address Verification Service (AVS) is an automated fraud prevention system that allows card-not-present merchants to confirm a cardholder's billing address while authorizing a transaction. The ability to confirm the billing address is a key indicator of whether or not a transaction is valid. This service helps merchants minimize the risk that they will accept fraudulent orders from persons using stolen cardholder information.

Neural Networks

Visa's sophisticated neural networks detect fraud at its earliest stages by analyzing cardholder accounts for unusual spending patterns, and confirmed risk characteristics to find behavior indicative of fraud. To help card issuers detect fraud at its earliest stages, Visa's network delivers alerts to issuers 24 hours a day.

Consumers can enjoy the peace of mind that comes with knowing that they are protected by Visa's zero liability policy.

It works like this: when the system notices unusual spending behavior, Visa's neural networks immediately contact the cardholder's issuing financial institution. The financial institution will then notify the cardholder that abnormal activity has taken place on the account and ask the cardholder to confirm that the transactions are theirs.

Exception File

Visa's Exception File (Warning Bulletin) is a worldwide database of account numbers of lost/stolen cards or other cards that issuers have designated for confiscation, referral to issuers or other special handling. All transactions routed to Visa's processing system have their account numbers checked against this Exception File.

Recovered Account Analysis

Visa assists law enforcement by notifying issuers of recovered, compromised account numbers and requesting that the issuers contact the investigating agency. Visa works closely with local investigators, the FBI, Secret Service, Treasury officials, and other law enforcement personnel on a wide range of fraud issues.

Cardholder Verification Value

The Cardholder Verification Value (CVV) is a unique three-digit code included on the magnetic stripe located on the back of all valid Visa cards. The CVV is electronically checked during the authorization process for card-present sales to ensure that a valid card is present. We have extended the cryptographic capabilities of CVV by embedding the value on the chip in smart cards as well.

Card Verification Value 2

The Card Verification Value (CVV2) is a unique three-digit code printed on the signature strip on the back of all Visa bankcards. These codes help merchants confirm that cardholders are in possession of the actual card. Online merchants and other merchants in situations where the card is not present at the merchant's premises during the transaction can verify that their customers have the actual card in their possession by requesting the customer to provide the CVV2 number from the signature strip.





New Visa Protections Against Identity Theft and Fraud

Verified by Visa

According to Visa research, 76 percent of consumers thought online stores should incorporate password protection in their checkout process. In response to this feedback, Verified by Visa is the newest of Visa's online security protections. Verified by Visa allows cardholders to add a personal password of their choosing to their existing Visa cards. When they get to the "checkout line" of a participating online store, they enter their personal password in a special Verified by Visa window. The password links legitimate cardholders to their account information. The verification process protects consumers' cards from unauthorized use and gives them greater control over when and where they are used.

Cardholder Information Security Program

Visa developed and implemented the Cardholder Information Security Program (CISP), a set of data security requirements for any entity that touches a Visa transaction, including merchants, gateways and Internet Service Providers that hold cardholder data. This program, which sets forth requirements for how to store, protect and grant access to cardholder information, was the first set of standards within the payments industry for online data security and served as a best practices model by the G-8 conference on cyber-crime in Tokyo. Not only does compliance with CISP requirements protect cardholders from fraud and identity theft, it helps companies protect their e-commerce business base and maintain consumer trust in their brand reputation.

Truncation of Cardholder Receipts

Visa's new receipt truncation policy will limit cardholder information on receipts to the last four digits of their account numbers. The card expiration date will be eliminated from receipts altogether. Visa was the first payments brand to announce such a move to protect cardholders' identities by restricting access to their account information on receipts. Receipt truncation is good news for consumers, and bad news for identity thieves. Identity thieves thrive on discarded receipts and documents containing consumers' information such as payment account numbers, addresses, Social Security numbers, and more.

Personal Identity Theft Coverage

Visa now offers Personal Identity Theft Coverage as a new optional benefit for Visa cardholders. Participating member financial institutions purchase this coverage and offer it as a no-fee benefit to their cardholders. The insurance coverage goes beyond Visa's zero liability policy by providing eligible cardholders with coverage ranging from \$1,000 to \$15,000 in reimbursement for lost wages, legal fees and other costs associated with recovering from identity theft. Visa is one of the first companies to offer this type of insurance coverage as a payment card enhancement.

Identity Theft Victim Hotline

Through a unique partnership with the consumer network Call For Action, victims of identity theft can receive free, confidential counseling by calling 1-866-ID-HOTLINE. Call For Action's consumer hotline offers the assistance of trained professionals to walk consumers step-by-step through the process of getting their identities back, including providing important phone numbers for law enforcement and credit bureaus that need to be notified. Consumers can also request the assistance of Call For Action's trained counselors through its Web site, www.callforaction.org.

Identity Theft Education and Victim Assistance Information

Visa has an Identity Theft section on www.visa.com that is designed to help consumers better understand and prevent Identity Theft. A downloadable Visa Identity Theft brochure is also available on the Visa website. The Identity Theft section has links to the FTC and Call for Action websites that provide further steps for the consumer to take if they are victimized.

Best Practices

Visa has sponsored an Identity Theft Working Group comprised of 14 Visa member financial institutions. A primary focus of the group is to share and publish best practices for Identity Theft prevention and detection.



Fraud and identity theft are issues of concern to many consumers, which is why Visa continues to work diligently developing technology, products and services that protect consumers against these crimes.