

**Comment of the
Consumer Data Industry Association
to the
Federal Trade Commission
Concerning
Credit Report Freezes - Comment, Project No. P075420**

The President's Identity Theft Task Force ("Task Force") recommended that the Federal Trade Commission ("FTC"), with support from the Task Force member agencies, assess the impact and effectiveness of credit freeze laws and report on the results. The Consumer Data Industry Association ("CDIA") is pleased to offer this comment in response to the FTC's request for comments.¹

Background

The first freeze law was enacted by the California legislature and it went into effect on January 1, 2003. Since then 39 states and the District of Columbia have enacted some variation of the California law and approximately 170,000,000 consumers have access to the choice to freeze their files through these enactments. However, thanks to the voluntary initiatives of Equifax, Experian, and TransUnion in 2007, 100% of the US adult population now has access to the choice to freeze their credit reports.

Credit freezing is one tool that consumers can choose to protect themselves against new account fraud. While most consumers are not choosing to freeze their credit files, they are making choices to request fraud alerts, review their free credit file disclosures, and subscribe to credit monitoring services. Consumers should be aware of all of their identity theft protection choices.

Timing of Attempting an Assessment

The FTC will have great difficulty in assessing effectiveness of credit freezes and their impact on identity theft at this time given the limited use of credit freezes and the information about why consumers choose a freeze. To date approximately 125,000 consumers nationwide have chosen to freeze their files. Thus it is difficult and perhaps premature to attempt to fully understand the extent to which consumers like the option of freezing a file and also the extent to which it is an effective deterrent to some forms of identity theft. Ultimately freezing is but one identity theft protection option.

Assessment Methodology

The FTC proposes an extensive list of questions about the operation and effectiveness of credit freezes. It is our view that the FTC's approach to any assessment will be extremely difficult for a range of reasons.

First, as discussed above, the size of the population which has frozen their files is very small relative to the entire adult population. Further, it is not clear whether or not the population which has frozen their files to date is representative of the population which is at risk of being a victim of new account fraud identity theft.

Also, identity theft risks are falling. Fraud prevention and identity authentication products our members produce are having the desired effect, particularly relative to new account fraud. The new and clear evidence of downward trends in identity theft presents a challenge to the FTC in evaluating the effectiveness of a credit freeze. For example:

- Javelin Strategy & Research reports show an 19.8% decrease in all identity theft from 2003 to 2007² and just 0.95% of all adult consumers were new account identity theft victims in 2007. This is down from 1.52% in 2005 and 1.05% in 2006.
- U.S. Department of Justice data indicates an 11% drop in all identity theft from 2004 to 2005.³

¹ CDIA is the international trade association representing over 250 consumer data companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, data for insurance underwriting and also collection services.

² Identity Fraud Survey Reports, Javelin Strategy & Research.

- FTC/Synovate data shows a 16.2% decline in all identity theft from 2003 to 2005.⁴
- FTC data shows that identity theft complaints have dropped 7% from 2004 to 2007 as a percentage of all complaints received. Said differently, there was a decrease from 39% to 32% of total complaints received.

All of these trends are encouraging, and the fact is that most states did not have freeze laws in effect when much of the foregoing data was collected and for those states that did, very few people froze their files. Therefore, it does not appear likely that credit freezes played any significant role in reducing identity theft during this period of time where downward trends in identity theft have been identified.

With the above information in mind, CDIA wonders what methodology the FTC will use to assess the effectiveness of the choice to freeze. For example, will the FTC be able to unbundle the effectiveness of the credit freeze relative to other factors such as better educated consumers, better data security practices, use of better identity verification products, better account opening practices, and implementation of FACTA requirements like fraud alerts and address discrepancy notices? As is the case with many crimes, it is likely the confluence of many factors which have driven downward trending.

Scope of Inquiry

We are also concerned that the FTC is, though perhaps unintentionally, broadening the inquiry beyond the specific direction of the task force which is to “assess the impact and effectiveness of credit freeze laws.” The task force report discusses a range of issues relative to freezes, but the direction of the task force to the FTC is limited to the statement above. We urge the FTC to stay within the mandate of the Task Force particularly where it appears to be exploring concepts which are not found in any current law.

The Term “Identity Theft” – New v. Existing Account Fraud

Some questions posed by the FTC use the term “identity theft” generically. However, in both the FTC’s annual report on identity theft complaints and also in its consumer surveys it breaks out identity theft into subcategories of existing account fraud and new account fraud. In fact the November 2007 survey breaks down fraud into:

- New Accounts and Other Fraud
- Misuse of Existing Non-Credit Card Account or Account Number
- Misuse of Existing Credit Card or Credit Card Number

In doing this the FTC rightly distinguishes among the various targets of identity thieves. The FTC should carry forward that distinction throughout the discussion of the credit freeze. The option to freeze a file generally protects against new account fraud where a consumer report derived from the file is used in the transaction.

Distinguishing between various types of identity theft is important to this inquiry. For example, the FTC’s November 2007 survey data helps us to understand that 78.3% of the consumers experienced a form of existing account fraud which could not have been prevented by a frozen file. We believe this is helpful context for the answers we provide to individual questions below.

³ *National Crime Victimization Survey, Identity Theft, 2005*, Bureau of Justice Statistics, Special Report, Nov. 2007; *First Estimates from the National Crime Victimization Survey, Identity Theft, 2004*, Bureau of Justice Statistics, Special Report, April 2006 (“DOJ”).

⁴ Federal Trade Commission – 2006 Identity Theft Survey Report, Nov. 2007; Federal Trade Commission – Identity Theft Report, Sept. 2003 (“FTC/Synovate”).

1.A. To what extent, if any, are credit freezes effective in preventing identity theft?

Only when an identity thief attempts to commit new account fraud and a credit report is accessed does credit freezing come into play, but other prevention measures do as well, like fraud alerts, active duty alerts, red flag guidelines, request for address change protocols, and address discrepancy indicators.

As discussed above, it is difficult to assess real-world effectiveness of the credit freeze due to the limited number of consumers having chosen to freeze their files, and also the difficulty in determining what causal variables have contributed to positive downward trends in the incidents of identity theft. The FTC's question number three below helps expand on this point in that it does suggest there is merit to exploring other rights consumers have and also other factors influencing downward trends. For example, key factors driving positive trends may be better account opening practices (including recognition of fraud alerts), better examination reviews of lender practices by bank agencies, better identity authentication products produced by our members, better overall data security practices, and credit file monitoring services purchased by consumers.

1.B. Are there more effective alternatives to freezes for preventing identity theft?

As discussed above, the option to place a freeze would not seem to prevent the majority of identity theft since the FTC's survey data shows 78.3% of fraud relates to existing accounts. What is effective in preventing a particular form of identity theft naturally ties back to the particular facts and type of risk. For example, a freeze would not apply in a situation where a retailer has not properly encrypted or otherwise rendered credit card data unusable and is transmitting such data via wireless systems. In this scenario, such a transaction can be hacked in the store and the freeze will only help to prevent subsequent opening of a new account, which is not necessarily a high risk in this type of crime due to the nature of the data involved. A freeze will have no impact where consumers become victims of account takeover or card-not-present transaction fraud as a result of a keystroke logging programs on their computers. However, recently finalized red flag rules provide additional guidance on how to prevent such situations as well as in the case of new account fraud.

Generally a freeze is primarily effective in stopping new account fraud where the application processing involves requesting consumer report derived from a file which is frozen and receiving a message that the file is frozen and where the institution to which the consumer has made application cannot process it absent access to the consumer report. Fraud alerts, active duty alerts, address discrepancy indicators, current fraud prevention and account opening practices in the private sector and red flag guidelines all contribute to effective fraud prevention at the time of application processing.

Clearly the decrease in identity theft and new account fraud shows that existing tools are working. Hope that the FTC's report will make this point and help consumers understand that new account fraud, while still a risk, is not a point of great risk relative to current account fraud risks. As discussed above, there is clear data showing that new account fraud is not the preponderant problem including data from FTC and Javelin Research surveys. FTC complaint data shows new account fraud resulting from identity theft dropping for credit card, wireless and telephone accounts all in the absence of extensive use of an option to freeze. Below is an illustrative case study:

A 2006 case study in credit fraud prevention: Debunking the myth that fast decisions lead to large-scale new account fraud resulting from identity theft.

- Over 33 million in-store applications are processed by a single lender annually or over 90,000 applications per day.
- Approximately 60% of all applications are approved or 19.8 million annually.

- There is 1 fraudulent account per 1,613 approved applications.
- Total fraudulent applications are 0.06% of the 19.8 million approved applications.

The above data are real-world examples and demonstrate that new account fraud can be effectively driven down to the level hundredths of a percent through effective practices. We believe that the positive downward trending for new account fraud is sustainable with wider use of identity verification, fraud and active duty alerts, address discrepancy indicators, and other red flag fraud prevention products produced by our members.

As for actions a consumer can take, a credit freeze is but one of many tools consumers can use to reduce the consequences of identity theft. Consumers are clearly choosing the option that is best for them in a given situation and appear to be often choosing options other than a credit freeze to protect themselves such as placing fraud and active alerts on their credit reports, reviewing free file disclosures and working with lenders where the crime is focused on current account fraud.

2. What types of identity fraud, if any, are credit freezes effective in preventing, i.e., new account fraud (thief opens new accounts in victim's name), existing account fraud (thief misuses victim's existing accounts), other?

Since all state freeze laws understandably exempt a credit report provided to businesses with which a consumer has an existing relationship, a freeze will have little impact on existing account fraud or possibly even new application fraud. In these situations, a frozen file is not accessed as part of the transaction or an application can be processed even where an attempt was made to access a frozen file. Thus, a freeze is a "very limited solution."⁵ Further, as discussed above, while the credit freeze may contribute to reducing risk of some types of new account fraud, there are many other factors which are already contributing to positive downward trends.

3. How do credit freezes compare to, complement, or detract from rights provided under federal law to consumers to prevent identity theft, such as fraud alerts?

Our discussion above helps to answer this question. We believe consumers will be make choices regarding the options available to them depending on the circumstances. Some consumers will use initial fraud or active duty alerts during times where they feel they may be at some level of risk or extended alerts when they actually have been victimized. The option of placing a freeze may be too extreme for consumers who do not experience invasive new account fraud and merely a form of credit card transaction fraud. On the other hand, consumers who have been victims or repeat victims of new account identity theft, such as at the hands of family members, may find the choice to place a freeze, in addition to an extended alert, as the right option. Millions of consumers choose to manage risk by purchasing credit file monitoring products which notify them when certain events regarding their files have occurred. Consumers who are empowered with choices are in the best position to decide which are best suited to them.

4. Generally, under state laws consumers must place a credit freeze with each CRA separately. How well does this procedure function? Should consumers be able to place a credit freeze with each of the CRAs through a one-call system, similar to that mandated by federal law for placing fraud alerts? What would be the advantages or disadvantages of such a mechanism?

⁵ Comment of Jeannine Kenney, Senior Policy Analyst, Consumers Union, before the FTC Conference on Social Security Numbers and Identity Theft, Dec. 11, 2008.

We believe the current system works well for consumers and offers flexibility in terms of how they exercise their rights. The choice a consumer makes to freeze their credit file is significant and can generally involve an ongoing contact relationship with the consumer reporting agency, in connection with the placement, temporary lifting, and permanent removal of the freeze. These activities are best implemented if the consumer is directly contacting the consumer reporting agency with which the consumer has frozen his or her file.

All 40 state freeze laws (39 states and D.C.) require consumers to place a credit freeze with each CRA separately. Equally important is the fact that there is not a finite number of consumer reporting agencies regulated under such laws and thus a bundled choice or system of exchange may have unintended consequences for consumers who may not know all the CRAs to which a request is being transferred. Further CRAs are not in a position to determine which other CRAs should participate in an exchange mechanism.

We are still in the early stages of understanding consumer expectations relative to freezes, the extent to which consumers really believe that this is an effective and practical tool for them, and the impacts freezes have on consumers in the market place. It would be premature to force more operational complexity into these systems and jeopardize the security consumers expect when they choose to freeze.

5. Should credit freeze requests be processed through a centralized source, similar to the mechanism that exists under a federally-mandated program to provide free annual credit reports to consumers? What would be the advantages or disadvantages of such a mechanism?

Consistent with and for the same reasons in our answer above, we do not believe it is advisable to insert additional operational complexity into the systems our members have designed to allow consumers to freeze their files. Centralized systems can create centralized targets for cyber-security attacks, as well as pretexting efforts, etc. Cyber-squatting, where an entity buys a variant of a legitimate website domain name and then tries to siphon off consumers for purposes of phishing is yet another risk. While CDIA members are well-prepared to handle the constant barrage of attack, some degree of decentralization can be, in and of itself, a protection against a consumer's information being compromised through a single event.

6. Some states limit the right to place a credit freeze to identity theft victims, or waive the placement fees for such victims or for individuals over 65. Should credit freezes be available to all consumers or only certain population groups? Should the placement fees be adjusted or waived for certain population groups?

Our members' decisions to voluntarily make available the choice to freeze to all consumers even those living in states without a law speaks to their values and willingness to ensure that all adult consumers can make the decision that is best for them in their circumstance. Our members' voluntary initiatives allow victims of identity theft to make this choice without charge. Finally, CDIA has supported enactment of the choice to freezes in the 40 state laws which are on the books today.

It is our view that fees should not be waived or adjusted for populations other than identity theft victims. The drive for credit freezes has been the result of concerns about security breaches and identity theft. Our members shoulder some of the impacts of security breaches incurred by others, such as government agencies, retailers, employers, educational institutions. For our members this includes, placement of fraud and active duty alerts, and building and maintaining systems to implement the ever more complex requirements of state freeze laws.

Ten states prevent the charging of fees to consumers based on age,⁶ but a waiver of fees for populations based on age is unfair and inappropriate. We suspect fees are waived for persons in certain population groups because it is assumed that these populations have a more difficult time “affording” a credit freeze. However, to date no correlation has been shown between a consumer’s age and their inability to pay for fees associated with placing a credit freeze.

For example, according to an AARP “Blueprint for the Future”, “[o]ld age is no longer as synonymous with low income as it once was.” The report bases this conclusion on “[r]esearchers at the Urban Institute [who] used a forecasting model to project that an aging U.S. population would actually result in increased savings decades from now.” <

http://www.aarp.org/research/blueprint/overstatedproblem/an_aging_society_does_not_necessarily_mean_steep_d.html> (viewed Jan. 15, 2008). Further, data consistently shows that consumers ages sixty-five and over become identity theft victims at rates well below their percentage of the overall population.

7. Many state laws enable a consumer to temporarily remove (lift) a credit freeze so that his/her credit report is available to a particular third party or for a specific time period. What are the costs and benefits for consumers and businesses of allowing temporary lifts?

We support the concept of a temporary lift and provide consumers with a variety of choices in terms of how to make this request. By allowing consumers to lift temporarily, it reduces the severity of the consequences of freezing a file and allows consumers flexibility to continue to benefit from their consumer reports.

Most consumers prefer to choose to lift a freeze for a period of time rather than for a specific third party. In fact the challenge with the option to lift the freeze for a specific party is that often the consumer will not know the exact name, for example, of the auto dealership or other party requesting the credit file, making identification of the party very difficult for the consumer reporting agency which has to determine whether or not it has a customer relationship with a given party in the first place. In another example of problems with third-parties, consumers will sometimes know the name of a retailer, but not the name of the card or loan issuing bank which is managing the retailer’s portfolio.

State laws generally permit the consumer reporting agency to charge a fee for each temporary lift request with the amount of the fees ranging quite a bit. However, many states allow for a \$10 fee to temporarily lift a freeze.

8. The fees charged to consumers for each of the different aspects of the credit freeze mechanism (e.g., placing, temporarily lifting, or permanently removing a freeze) vary from state to state. What fees, if any, should CRAs be allowed to charge consumers for these actions?

A consumer reporting agency should be permitted to charge a fee for different aspects of the freeze process. This fee should apply to all consumers who are not identity theft victims. In general, of the 36 states that allow all consumers to freeze their files – not just identity theft victims - 22 states cap the fee for placing a freeze at \$10 or more.⁷

⁶ Nebraska prohibits a fee to be charged to those under 18, Louisiana prevents a fee to be charged to those 62 and over and eight states prevent a charge for those 65 and over (Florida, Illinois, Nevada, New Mexico, Oklahoma, Pennsylvania, Rhode Island, and when effective on Sept. 1, 2008, Washington).

⁷ Delaware allows a \$20 initial fee with no fees for lifting or removal. Utah’s law, effective on Sept. 1, 2008 is unlimited.

A \$10 administrative fee for non-identity theft victims is fair and reasonable. As discussed more fully in our answer to question number 6, the catalyst for the freeze concept was identity theft and concerns about security breaches. Our members should not be left to bear the costs of the security breaches of others, but nor have our members advocated that a fee be prohibitively high.

The value of the consumer's choice to freeze his or her file and to pay for the freeze must be put in context with other personal protection or safety decisions consumers make. For example, a consumer is likely to spend in excess of \$30 a month for a home security system. Similarly, a consumer will likely pay far more than the cost of placing freezes on a monthly basis for an in-vehicle safety and security system. No law has mandated a cap on these personal safety choices. In fact, in spite of perceptions to the contrary, the credit freeze does not address most forms of identity theft even based on the FTC's own surveys. New account identity theft, to which a freeze is targeted to prevent, is trending down even in the absence of wide use of the credit freeze.

9. Many state laws require that CRAs place, temporarily lift, or permanently remove credit freezes within a specified period of time from the initial request, ranging from 15 minutes to several days. What is an appropriate amount of time to allow CRAs to place, temporarily lift, or permanently remove a credit freeze? Is a 15-minute temporary lift requirement operationally feasible? What are the costs and benefits to consumers and businesses of different time periods for temporary lifts?

It is true that all the state laws set a time frame by which the temporary lifting of a freeze should be effectuated. We believe that many have confused a standard approach to consumer protection law with how law is then implemented. For example, in the Fair Credit Reporting Act a reinvestigation of a consumer's dispute regarding an item of information must be completed within 30 days. In fact our members report that 72% of disputes are completed within 1-14 days. Most states recognize that the time needed for lifting a freeze will vary depending on the facts and have structured their laws in much the same way that the FCRA is structured

A number of factors can affect timing for lifting a freeze. The method by which a consumer makes a request (internet/telephone/mail) can have an effect on the speed with which a freeze is lifted. Authenticating and identifying consumers may be done almost instantly in some cases, but not in others.

With regard to a 15-minute requirement, while this puts our members in a position of tension between having to properly authenticate the consumer and also to do so within a short period of time, has been the will of some states. By Feb. 1, 2009, ten states will require a temporary lift within 15-minutes and more states are following suit. Our members report that a 15-minute lift is feasible so long as: (1) the consumer uses an automated system, like a website or a toll-free number provided by the CRA for freeze requests; (2) the CRA is able to properly authenticate the consumer; and, (3) in the case of a temporary lift for, the consumer can properly identify the period of time or the specific party.⁸

Our members are already testing new approaches to serving consumers and customers when it comes to effectuating a temporary lift. They did not need an incentive built into the laws to do so. Ultimately we don't believe that performance standards, such as a 15-minute standard, are necessary in laws. They can create unintended tension between a CRA's duty to maintain the freeze, that we properly identify consumers and the duty to lift a freeze quickly. Quickly is not always better.

⁸ Most state freeze laws with a 15-minute lift provision allow for denial of a 15-minute lift in cases like intervening circumstances, like acts of God, maintenance, and labor unrest. E.g., Utah Code § 13-42-202(3)(b).

10. Are there aspects of credit freeze mechanisms that encourage or hinder their use?

No specific mechanisms that either encourage or hinder the use of file freezes have been identified; it is too soon to draw conclusions about the operation of current laws.

11. How do CRA-developed freeze options (CDFOs) compare or differ in practice from credit freezes mandated by state laws?

In the second half of 2007, Equifax, Experian, and TransUnion all rolled out voluntary freeze programs to consumers so that even in the 11 states that did not have a credit freeze law consumers had a choice to freeze their credit file. While these programs will vary slightly among these companies they are all premised on the same basic freeze concept found in current state laws.

12. How do credit freezes impact credit scoring or data modeling?

In those situations in which a file is frozen and a report can not be provided, the file is not available for credit scoring and no credit score based on a frozen file is provided. However, in those situations in which a frozen file can be reported, such as to an existing account holder or other statutory exemption, a credit score based on the file could also be provided. When a credit score is provided, the fact of the file being frozen is not used in calculating the credit score.

13. What other beneficial or burdensome effects do credit freezes have on consumers, businesses, or the economy in general?

Freezes may stop some forms of new account fraud. However, other than a consumer's possible peace of mind, we are not aware of other potential benefits. Similarly, we do not know if there were specific situations in which consumers wanted to obtain credit, but were unable to do so because their files were frozen. The current system of freezes functions appropriately and as we learn more about expectations of consumers and customers, such systems will continue to evolve. However, based on the small number of files frozen this question may be premature and answers to it may not be able to provide the proper market context for freezes.

II. Experiences of Consumers

14. How and from whom do consumers learn about the availability of credit freezes? What are the most effective ways to disseminate information about credit freeze availability?

Consumers can learn about credit freezes from a variety of sources, including consumer reporting agencies, government entities, media and consumer groups. Twenty-one states require consumer reporting agencies to offer pre-freeze notices of a right to freeze, such as when the consumer receives a disclosure of his or her file. For example, California requires that whenever a consumer credit reporting agency provides a file disclosure to a consumer which it informs consumers, along with other rights, of their right to place a credit freeze on their file. Cal. Civil Code § 1785.15(f).

Equifax, Experian, and TransUnion all have links on their consumer home pages to information about credit freezes. In addition to information available on CRA websites, credit freeze information is also available from government entities, like the FTC, state attorneys general and consumer affairs offices. Consumers can also obtain credit freeze information from print media outlets and from consumer organizations.

Consumers have access to information on credit freezes on the Internet.⁹ On Jan. 16, 2008, CDIA conducted a review of credit freeze information available on the Internet and this information is attached as Appendix II. For example:

- Searching the terms credit + freeze on Google yielded approximately 325,000 hits.
- Searching the phrase “credit freeze” on Yahoo yielded approximately 846,000 hits.
- Stories about credit freezes have appeared recently in bankrate.com, cbsnews.com, *Chicago Tribune*, *COSTCO Connection*, *Dallas Morning News*, *Forbes*, *Houston Chronicle*, *Los Angeles Times*, and *Wall Street Journal*. Stories about credit freezes have appeared on CNN and MSNBC, among others.
- Wikipedia has a listing for a credit freeze (with a redirection to the credit freeze listing from a search for security freeze).
- Substantial information about credit freezes is found on sites of many state attorneys general and the FTC.

15. How and from whom do consumers obtain instructions on using freeze mechanisms (i.e., placing, temporarily lifting, or permanently removing)? What are the most effective ways by which consumers can obtain instructions? What information/instructions do consumers need in order to use these mechanisms efficiently?

As discussed above, consumers can learn about credit freezes and how to place a freeze by visiting any one of the websites of our members who have this duty. Again, file disclosures are often accompanied by a notice to the consumer of his/her right to place a freeze. Additionally, when consumers have requested a file freeze, the consumer reporting agencies send a confirmation letter that provides information to the consumers on how to temporarily lift, and permanently remove a freeze.

However, CRAs should not be solely responsible for informing consumers about their right to freeze, lift, or remove freezes. Consumer education provided by consumer organizations and government agencies will be of value to consumers as well. See Appendix II for various ways to judge the extent of general information on freezes which is available via media and other sources.

16. What has been the consumer experience in attempting to place, temporarily lift, or permanently remove a credit freeze? Is the system user-friendly? If not, are there specific ways to improve the system?

The current system of freezes functions appropriately and as we learn more about consumer and business customer expectations, such systems will continue to evolve. Further, the requirements of various laws dictate in many ways how our members are to build their systems.

We caution the FTC with regard to this question because any system which is new to consumers may require a learning curve and thus judging a consumer’s initial reaction or experiences the first time through cannot tell the entire story.

Finally, we believe that the ideal of user friendliness must be balanced against the requirements of data security and fraud prevention, as our members must design and implement systems which are acceptable to consumers while at the same time protecting them and securing the data.

⁹ In 2004, nearly three-quarters of all Americans had access to computers. Pew Internet & American Life Project Tracking Survey, Feb. 3–March 1, 2004. The study showed that 57% of people ages 59–68 had access to a computer, and 82% of households with incomes between \$30,000 and \$50,000.

17. For what reasons, if any, have consumers permanently removed credit freezes?

File freeze removal is a small volume of total file freeze requests. However, the current file freeze removal process does not require or include the reason for which consumers are removing their file freeze. Accordingly, this information is not available to our members.

18. What mechanisms are used by CRAs to authenticate consumers seeking to place, temporarily lift, or permanently remove credit freezes (e.g., PIN-based authentication)? What are the advantages and disadvantages of each such mechanism?

Each CRA has its own internal processes and procedures to authenticate consumers. Nineteen states specifically require a consumer to provide proper identification and these requirements sometimes vary slightly from one state to the next. Most if not all states require the use of a PIN as part of the authentication system thus generally it is not an option to not use a PIN.

Practically speaking, a CRA will not place, lift, or remove a freeze unless the CRA can authenticate the consumer. An inability to authenticate consumers for the placement, lifting, or removal of a credit freeze could result in additional fraud for consumers and financial institutions as well increased liability for consumer reporting agencies.

If the above question is intended to determine if a consumer should be able to lift or remove a freeze with a PIN alone, the answer is no. Single-factor identification, like a PIN, should be discouraged as a means to lift or remove a credit freeze from a credit file.

19. What documentation have CRAs required for identity theft victims to place a credit freeze in those states where freezes are free for victims? What has been the identity theft victim experience in placing a freeze without charge?

In general state laws require that a victim of identity theft present a valid police report in order to place a freeze without charge. Where a consumer cannot obtain a valid police report, our members have individual business rules regarding accepting alternatives such as possibly accepting an FTC affidavit. We are unaware of any adverse experiences with this process.

20. What actions have CRAs taken to inform consumers of the availability of CRA-developed freeze options, or CDFOs? To what extent are consumers aware of CDFOs?

Our members' announcements regarding their voluntary programs were met with extensive media coverage via the internet, print media and even coverage national network television. Few could hope for better earned media coverage. Further, all of our members have made information about the choice to freeze available on their websites. Generally Equifax, Experian, and TransUnion all provide information about their CDFOs when they provide information about statutorily required freezes. This said consumer knowledge of rights and available services will expand over time and it is likely premature to measure consumer's knowledge of the choice to freeze. See Appendix II for ways to measure the availability of information on freezes. There is no data available yet to measure consumer awareness of CDFOs.

21. How many consumers in states without credit freeze laws or where the laws only apply to identity theft victims have placed CDFOs?

The rollout of these CDFOs is very recent and CDIA members are not prepared to provide this data at this time. It would be impossible to draw any conclusions about these programs based on early-stage data.

22. What problems, if any, have consumers experienced in placing, temporarily lifting, or removing credit freezes? For example, have CRAs placed, temporarily lifted, or permanently removed freezes for the incorrect individual or for the wrong time period?

While isolated incidents of errors are impossible to completely avoid in any complex and dynamic database, our members report no material or systemic problems.

23. From the consumers' perspective, what are the advantages and disadvantages of federal legislation establishing a nationwide credit freeze system? What provisions should federal credit freeze legislation include?

At this point, there is no benefit for consumers or businesses in enacting a federal credit freeze law. The 39 states and D.C. with freeze laws represent nearly 80% of the American adult population. Our members' voluntary efforts have provided that the remaining 20% of the population have the choice to freeze as well. Further, as previously reported, the majority of the remaining states will have enacted a law by the end of 2008. A federal law would interfere with the operation of 50 state legislatures, each of which has made its own judgment regarding how it wishes to protect its citizens.

III. Experiences of Users of Credit Reports

24. How often do users of credit reports ("users"), i.e., business entities with a permissible purpose to access a consumer's credit file, encounter frozen credit reports?

Neither CDIA nor its members are in a position to respond to this question.

25. When a credit report has been frozen, what information is provided by the CRAs to the user, i.e., the entity requesting the report? If the information provided by the CRAs to the users is not adequate or clear, in what ways can it be improved?

A user of consumer reports which requests a frozen file will receive a notification that the file is frozen and unavailable and that to access the file the freeze must be lifted. We are unaware of any problems with what is being provided.

26. What do users do when they cannot access a credit report because the consumer has placed a freeze on it? What should they do? How often do creditors extend credit without first accessing a credit report?

Neither CDIA nor its members are in a position to respond to this question.

27. What procedures have users implemented to respond to credit freezes? What costs are involved?

This question is again premature and must be viewed in context. Approximately 125,000 files have been frozen nationwide since 2003. More than three billion consumer reports are sold each year. Most users are likely still in the early stage of assessing and understanding consumer expectations; the FTC should also be in this position.

28. How has the existence of state credit freeze laws and/or the CDFOs affected specific industries? For example, are freezes reducing the number of credit extensions? Do they provide an early warning regarding fraudulent requests for new credit?

See our response to question 27.

29. What advantages and disadvantages do freezes provide to users?

Neither CDIA nor its members are in position to respond to this question.

30. How has the freeze mechanism affected the way a user interacts with the consumer and/or the consumer reporting agencies?

Neither CDIA nor its members are in a position to respond to this question.

31. Some states require that CRAs develop procedures to enable consumers to temporarily lift the freeze nearly-instantly (e.g., within 15 minutes of receiving the request). What are the advantages and the disadvantages of the nearly-instant lift required in certain states to accommodate a specific consumer-authorized credit transaction?

Our answer to question 9 is relevant to this question as well. An expedited lift will soon be required in 25% of the credit freeze laws. These nine states and D.C., whose effective dates for expedited lifts are between Sept. 1, 2008 and Feb. 1, 2009, will require a temporary lift to occur in 15 minutes or less. A 15 minute lift, which is for consumer convenience and not consumer protection, is intended to meet consumers' desires for instant credit transactions and the companies with which they do business to meet the needs of their customers.

It is in the best interests of consumers, users, and consumer reporting agencies to have freezes lifted as quickly as reasonably possible if the consumer who wants a lift complies with the lifting requirements under the applicable freeze law and can be properly authenticated by the consumer reporting agency.¹⁰ Our concern with these performance-based requirements is that they can put data security in conflict with service levels. A consumer who chooses to freeze a file clearly expects this step to be protective.

32. From the user's perspective, do state-mandated credit freezes or CDFOs function differently? For example, does the temporary lift mechanism operate differently in jurisdictions where only CDFOs are available?

Since the CDFOs were modeled after most existing freeze laws, users should not see significant differences between CDFOs and state freeze laws.

33. Have the CRAs implemented a mechanism for users to communicate complaints or operational issues related to freezes? If so, what feedback have the users provided to the CRAs?

Consumer reporting agencies are in regular communication with users and furnishers to promote compliance with laws and adherence to business standards.

¹⁰ Most state freeze laws with a 15-minute lift provision allow for denial of a 15-minute lift in cases like intervening circumstances, like acts of God, maintenance, and labor unrest. E.g., Utah Code § 13-42-202(3)(b).

IV. Experiences of Consumer Reporting Agencies

34. How many consumers have placed credit freezes nationwide? What is the geographic distribution of the placement of those freezes?

The first freeze law, California, went in to effect on January 1, 2003 and from that date to Dec. 31, 2007, approximately 125,000 files have been frozen nationwide.

35. How many of the consumers who have placed credit freezes have used CDFOs?

The rollout of these CDFOs is very recent and CDIA members are not prepared to provide this data at this time. It would be impossible to draw any conclusions about these programs based on early-stage data..

36. How many requests have CRAs received from consumers to temporarily lift state mandated credit freezes and CDFOs? How many requests have CRAs received from consumers to permanently remove state-mandated credit freezes and CDFOs?

CDIA members are not prepared to provide this data.

37. Are CDFOs offered to consumers in states with credit freeze laws in effect? If so, what aspects of CDFOs are made available to those consumers?

If a consumer lives in a state that already has a credit freeze law in place, then the provisions of that state's credit freeze law will generally control. The CDFO option is modeled on most states' existing freeze law. Additionally, if a state allows placement only by victims of identity theft, CDFOs allow non-victims the option of placing a freeze.

38. What aspects of state-mandated credit freeze requirements could be improved? What aspects of state-mandated credit freeze requirements would or would not operate well at the federal level?

While the state laws vary, our members have developed and are developing procedures and mechanisms to comply with them. The state freeze laws and the CDFOs are both appropriate and sufficient. Accordingly, no federal freeze legislation is necessary.

39. What mechanisms are used by CRAs to authenticate consumers seeking to place, temporarily lift, or permanently remove credit freezes? What are the advantages and disadvantages of each such mechanism?

As noted above in the response to Question 9, each CRA has its own processes and procedures to authenticate consumers in a time and manner that complies with the freeze laws.

40. What methods do CRAs use to deliver PIN-based authenticators to consumers? What security safeguards are taken in transmitting PINs to consumers? How many requests have CRAs received for replacement PINs?

Once a consumer has provided all necessary identifying information to place a freeze, including proof of address, the freeze is implemented. The consumer is then sent, via postal mail, a physical copy of their PIN.

41. Can a consumer change the PIN issued by a CRA to one of the consumer's choice? If so, are there restrictions on the PIN selected by the consumer?

At present, a consumer cannot self-select their PIN. A PIN is provided at the time of freezing as well as any replacement PIN needed at a later date.

42. How and when do CRAs provide instructions to consumers on using the credit freeze mechanisms (i.e., placing, temporarily lifting, or permanently removing)?

As noted in Question 14, consumers have access to freeze information from a wide array of sources, including consumer reporting agencies. Equifax, Experian, and TransUnion all make freeze information available via a link on the home pages of their websites. All state freeze laws require CRAs to send a confirmation to consumers following the placement of a freeze that provides instructions on how to use freeze mechanisms. In addition to CRA websites, consumers can also find in these confirmation letters, information about lifting and removing freezes.

43. State laws allow certain entities to access a credit report even if a freeze is in place. How do these exemptions work operationally? For example, do they depend on an automated or manual process to exempt the entity that is seeking access to the consumer's frozen credit report?

When an entity has an exception under the law to access a frozen file, generally the entity must provide their exception with each transaction for additional processing.

44. Some states require that the CRAs develop procedures to enable consumers to temporarily lift the freeze within 15 minutes of receiving the request. Under the procedures developed by the CRAs, how will these nearly-instant lifts for state-mandated credit freezes operate?

In general, a temporary lift will be made by a CRA in 15 minutes or less pursuant to the requirements of the state law and if the consumer meets the standards set by the applicable state law. For example, depending on the requirements of a state law a consumer must contact a CRA using an electronic medium, like a website or a telephone; provide proper identification, provide the time period in which the lift will occur or, when applicable, the third party to receive the credit report; and pay any applicable fee.

45. Do CDFOs have a nearly-instant lift option? If so, how does it differ from the nearly instant lift option mandated by state systems? Can residents of states with credit freeze laws that do not require nearly-instant lifts use the nearly-instant lift offered in CDFOs?

Some CDFOs allow consumers the option of a nearly-instant lift. Under a CDFO, a consumer can temporarily remove a credit freeze by contacting a CDFO provider, either electronically or by phone, and providing their identification, PIN and payment.

46. What costs have CRAs incurred in implementing and maintaining a credit freeze system?

Establishing and maintaining a credit freeze system, which is mandated by the laws of 39 states and the District of Columbia, is expensive and CRAs are limited by state laws in recovering these costs. The specific costs incurred cannot be enumerated at this time. This said, CDIA and its members see no value in the enactment of a federal credit freeze law.

47. What problems, if any, have CRAs encountered with respect to credit freezes? How were the problems resolved? What changes, if any, in the credit freeze mechanism could eliminate, reduce or mitigate such problems?

No problems.

48. From the CRAs' perspective, what are the advantages and disadvantages of federal legislation establishing a nationwide credit freeze system? What provisions should federal credit freeze legislation include?

We do not see any advantage to enacting a federal credit freeze statute because 39 states and the District of Columbia have done their work. For the remaining 11 states CRA CDFOs provide consumers in with the choice to freeze their files.

V. Other

49. Please provide any other comments or information regarding credit freezes that have not been elicited by one of the foregoing questions.

No additional comments.

Conclusion

We appreciate this opportunity to provide information and comment on credit freezes.

As stated earlier, approximately 170,000,000 consumers have access to the choice to freeze their files through statutory enactments. However, thanks to the voluntary initiatives of Equifax, Experian, and TransUnion in 2007, 100% of the adult population now has access to the choice to freeze their credit reports.

Again, credit freezing is one tool that consumers can choose to protect themselves against new account fraud. While most consumers are not choosing to freeze their credit files, they are making choices to request fraud alerts and subscribe to credit monitoring services. Consumers should be aware of all of their identity theft protection choices.

Even though consumers have numerous ways to learn of credit freezes, they are choosing not to freeze their files. Thus a complete analysis of the effectiveness of a credit freeze may be premature. What is clear from ample data, however, is that identity theft as a whole is down significantly by all measures over several years and new account fraud represents a decreasing and small component of overall identity theft.

Respectfully submitted,

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Vice President, Law and Public Policy

Enclosures

Appendix I



**Summary of ID Theft Solutions
in the
Federal Fair and Accurate Credit Transactions Act of 2003 (FACTA), Pub. L. 108-159
Amending the
Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 *et seq.***

- *Free Credit Reports.* Consumers are entitled to one free credit report per year. Pub. L. 108-159, Sec. 211. This is in addition to the free reports consumers are entitled to receive if they are on public assistance, victims of fraud, or they have been denied credit or insurance on the basis of a consumer report. 15 U.S.C. Sec. 1681j.
- *Tradeline Blocking.* Consumers with an identity theft report, as that term is defined by law, can block from appearing on a credit report, any item that was compromised by fraud that appears on the identity theft report. Pub. L. 108-159, Sec. 152.
- *Fraud Alerts and Active Duty Alerts.* Consumers who believe they are identity fraud victims can request that a fraud alert be placed on their credit reports to signal to prospective users of that report that the consumer may be a fraud victim. Pub. L. 108-159, Secs. 112(a), (b). Consumers who are on active military duty away from their duty station may request that an active military duty alert be placed on their credit reports to signal to prospective users of that report that the consumer may not be the actual applicant for credit. Pub. L. 108-159, Secs. 112(c).
- *Social Security Number Truncation.* Consumers may request that consumer reporting agencies truncate their SSNs on credit reports. Pub. L. 108-159, Sec. 115.
- *Credit and Debit Card Number Truncation.* Merchants must truncate debit and credit card account numbers on receipts. Pub. L. 108-159, Sec. 113.
- *Establishment of Red Flag Guidelines.* Federal banking agencies and users of consumer reports (i.e. lenders) must establish red flag guidelines to better identify fraud patterns. Pub. L. 108-159, Sec. 114.
- *Summary of Rights.* Consumer reporting agencies must provide to consumers a summary of their rights if they become identity fraud victims. Pub. L. 108-159, Sec. 151.
- *Complaint Coordination.* The FTC and national consumer reporting agencies must develop a system to coordinate consumer complaints. Pub. L. 108-159, Sec. 153.
- *Prevention of Reappearance of Fraudulent Information.* Companies that furnish data to consumer reporting agencies must develop procedures to prevent the reappearance of data that was subject to fraud. Pub. L. 108-159, Sec. 154.
- *Debt Collection.* Debt collectors collecting for a third party must, when notified by a consumer that the collection item is the subject of fraud, inform the company for whom the collector is collecting of the alleged fraud. In addition and upon request, the collector must share with the consumer information relative to the debt. Pub. L. 108-159, Sec. 155.
- *Statute of Limitations Extension.* The statute of limitations against consumer reporting agencies, and users of information from and furnishers of information to consumer reporting agencies is extended to two years from the date of the discovery of the violation or five years from the date the cause of action arises. Pub. L. 108-159, Sec. 156.

- *Studies on Identity Fraud.* The Treasury Department is required to conduct an identity fraud study. Pub. L. 108-159., Sec. 157.
- *Enhanced Opt-Out from Pre-approved Credit or Insurance Offers.* New easier and simpler method lenders inform consumers of their right to remove their names from pre-approved credit or insurance offer lists. In addition, the timeframe for opt-out is extended from two to five years. Pub. L. 108-159, Sec. 213
- *Disposal of Records.* FTC and federal banking agencies to develop rules concerning the disposal of credit records. Pub. L. 108-159, Sec. 216.
- *Reporting of Negative Information to Consumer Reporting Agency.* Lenders must inform consumers that negative information may be reported to consumer reporting agencies. Pub. L. 108-159, Sec. 217.
- *Enhanced Obligations on Furnishers to Report Accurate Information.* Pub. L. 108-159, Sec. 314.
- *Address Reconciliation.* Consumer reporting agencies must notify users of consumer reports about a substantially different address between an address on an application and an address on the credit report. Users must have policies to handle this situation under regulations from federal banking agencies. Pub. L. 108-159, Sec. 315.

February 2004

Appendix II

Survey of Credit Freeze Information on the Internet

On Jan. 16, 2008, CDIA conducted a review of credit freeze information available on the Internet.

Searching the terms credit + freeze on Google yielded approximately 325,000 hits. The first link was to Consumers Union. Experian and TransUnion were on the first page and Experian was in the top 20. The FTC, the New York State Consumer Protection Board, and PIRG were in the top 20 hits. The top 20 hits also included a number of news organizations, including CBS News, CNN/Money, and MSN Money.

Searching the phrase "credit freeze" on Yahoo yielded approximately 846,000 hits. The top 20 hits included one CRA, TransUnion; several news organizations, including bankrate.com and the Dallas Morning News; and several governments, including the FTC, California Office of Privacy Protection, New Jersey Division of Consumer Affairs, the Colorado Office of the Attorney General, and the Wisconsin Office of Privacy Protection.