



**STATEMENT OF THE NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)
IN RESPONSE TO THE REQUEST FOR COMMENTS BY THE
FEDERAL TRADE COMMISSION STAFF REGARDING
THE IMPACT AND EFFECTIVENESS OF CREDIT FREEZE PROTECTIONS
FEBRUARY 22, 2008**

The New York Public Interest Research Group (NYPIRG) submits this statement in response to the request for comments by the staff of the Federal Trade Commission on credit freezes: impact and effectiveness.¹

NYPIRG is New York State's largest student directed non-profit non partisan research and advocacy organization. Since 1973 NYPIRG has worked to ensure the passage of over 150 pieces of legislation into law, including landmark consumer protection laws that help consumers save money and safeguard their privacy. NYPIRG has produced scores of reports and provided testimonies on issues of great importance to consumers. NYPIRG also has worked to provide consumers with meaningful information to make informed decisions in the market place. NYPIRG was among the first organizations pointing out the high level of errors in consumer credit reports, advocating consumer access to free credit reports, and drawing attention to the growing problems of identity theft.²

Most recently NYPIRG has developed its Cyber Street Smart Campaign to educate the public about online scams and ways to prevent identity theft.³

NYPIRG's cyberstreetsmart.org site is the centerpiece of the campaign to educate consumers with information and ways to prevent such online crimes. In addition to the Web site, the Cyber Street Smart Campaign includes a campus project using media, events, classroom presentations and written materials to teach students to recognize scams and avoid risky online actions. As part of this work NYPIRG conducts studies of online retailers' privacy policies.

¹ See www.ftc.gov/opa/2008/01/freeze.shtm, January 10, 2008.

² For additional information on NYPIRG and the range of our programs and issue areas, visit www.nypirg.org.

³ Visit the site at www.cyberstreetsmart.org

The United States Public Interest Research Group (USPIRG), NYPIRG's sister organization, has been advocating for consumer rights before Congress and Federal agencies for the past three decades. USPIRG has written and released several studies looking into credit report errors and has been a leading national advocate for a credit freeze law.

As the FTC has well documented, identity theft is rampant. Identity theft is a devastating crime that has wreaked havoc in the lives of tens of millions of U.S. consumers. Each year more than eight million U.S. consumers fall victim to identity theft costing victims and businesses \$50 billion annually.⁴ This represents an identity theft "tax" of some \$166 passed along to each woman, man and child in the U.S. in the form of higher costs for goods and services.⁵

Since 2005, the time of the ChoicePoint debacle, over 218 million personal and financial records have been lost, stolen or otherwise compromised, affecting millions of Americans.⁶ These security breaches underscore the need for an effective, *proactive* way to safeguard personal and financial information to thwart identity theft before it occurs.

According to a 2006 FTC survey, approximately 21.6% of identity theft victims had their personal information used to open a new account or engage in some other fraud that did not involve the misuse of an existing account. The median value of the goods and services taken by thieves who open new accounts is *three times greater* than the median value for goods and services acquired through existing accounts. The Federal Trade Commission – 2006 Identity Theft Survey Report shows that new account fraud has the greatest impact. The effects on individual identity theft victims and their families is devastating.

Goods and services obtained through this type of fraud are \$15,000 or more for ten percent of victims; result in out-of-pocket expenses of \$3,000 or more for this victim group; and force these victims to spend at least one hundred hours resolving their problems.⁷

Surveys by Javelin Strategy and Research paint an even harsher picture of the impacts of identity theft on its victims. According to Javelin's February 2007 survey, the mean fraud amount per victim was \$5,720 in 2007. The mean resolution time for victims was 25 hours.⁸

⁴ Javelin Strategy and Research 2007 Identity Fraud Survey Report (February 2007) summarized at <http://www.privacyrights.org/ar/idthefts-surveys.htm>.

⁵ \$50 billion ÷ 300 million U.S. residents = \$166.

⁶ The Privacy Rights Clearinghouse has kept a running tally of the number of Americans vulnerable to identity theft victims as a result of large database security breaches and lapses. For the latest calculation of the number of individuals whose information has been compromised to go to www.privacyrights.org/ar/ChronDataBreaches.htm.

⁷ The Federal Trade Commission – 2006 Identity Theft Survey Report, November 2007, p. 5. Accessed at <http://www.ftc.gov/os/2007/11/SynovateFinalReportIDTheft2006.pdf>.

The American public is well aware of the prevalence and severity of identity theft. A 2006 Harris poll found that 73% of respondents said that they monitor their account for suspicious activity.⁹

While security breach notification laws are a necessary consumer protection that shed light on the frequency and breadth of data security problems and consumer vulnerabilities, they do not protect consumers from identity theft. Simply put, freeze laws are the best method for preventing identity theft because they let consumers restrict access to their financial information to prevent new account fraud.

In response to this identity theft crime epidemic, as of November 2007, 39 states and the District of Columbia have enacted credit freeze laws.¹⁰ As a result of these state laws, the three national credit bureaus allow consumers in states without freeze laws to avail themselves of security freeze protections by contacting the national credit bureaus and in most cases paying a fee.¹¹

Unfortunately, freeze laws are not well publicized or well understood; and the obstacles to usage—in terms of ease and speed of placing and removing freezes, as well as front-end and back-end fees—discourage widespread usage thereby limiting the ability of these laws to achieve their full potential.

A recent AARP study of consumers in a number of states that had freeze laws in effect for at least a year prior to the survey shows that consumers in those states are not aware of freeze laws and that the costs of placing and removing a freeze deters usage. The net effect is that few consumers in states with freeze laws avail themselves of the law's protections.¹² This is true despite consumers' high level of concern about becoming an identity theft victim.

The experience in New York is instructive. New York's credit freeze law became effective on November 1, 2006. The New York freeze law allows for any consumer to place a freeze on their credit report whether they are a victim or not. Certified and overnight mail are the only placement methods specified in the New York statute for consumers who choose to activate a credit freeze.¹³

Under the New York law, the first freeze is free with each subsequent freeze costing \$5 per each of the three agencies, for a total of \$15 for each freeze. A fee of no more than \$5 can also be charged for

⁸ Javelin Strategy & Research Survey – February 2007, summary accessed at <http://www.privacyrights.org/ar/idtheftsurveys.htm>.

⁹ <http://www.harrisinteractive.com/news/allnewsbydate.asp?NewsID=1058>

¹⁰ Id.

¹¹ See FinancialPrivacyNow.org, a project of Consumers Union at www.consumersunion.org/campaigns/learn_more/003484indiv.html.

¹² www.aarp.org/research/credit-debt/credit/security_freeze.html

¹³ General Business Law section 380-T(a)a.

the the temporary lift or permanent removal of a credit freeze. Credit report freezes are free for those who can prove they are a victim of identity theft.¹⁴

According to recent Consumer Data Industry Association testimony before the New York State Consumer Protection Board, only 27,000 people have signed up for a credit freeze so far.¹⁵

The limited use of New York's credit freeze law highlights the problems with the states laws. The time, expense and difficulty of placing and lifting a freeze under New York's law ensures that it will not be widely used.

Credit freeze laws give consumers the ability to limit the release of their credit reports to reduce their vulnerability to identity theft. Credit freezes are the best method to proactively prevent someone from obtaining new credit in a consumer's name. Credit cards, mortgages, automobile loans and even insurance are all forms of new credit fraud, the most devastating form of identity theft. One commonality in all new credit fraud is that before credit may be fraudulently issued to a thief using a consumer's identity, a credit report must be issued. Thus, release of a consumer's credit report is the linchpin in the crime of identity theft.

The credit freeze option needs to be publicized much more extensively for there to be a substantial decline in new credit identity thefts. Currently of the thirty-nine states and D.C. that have enacted credit freeze laws to combat new account fraud, Montana's credit freeze law is perhaps the strongest in the nation. The fee for placing a freeze is \$3 per agency. As of January 31, 2009 a Montana consumer will have the option of placing or lifting a freeze electronically and freezes temporarily lifted or permanently removed will be required to be done in fifteen minutes.¹⁶

A regulation needs to be both strong and well publicized to increase the likelihood that consumers will use this to protect themselves. A powerful federal regulation should extend the avenues for placing freezes to include a phone number and a website in addition to regular mail.

NYPIRG agrees with the testimony of AARP/NYS before the New York State Consumer Protection Board earlier this month when it said that consumers, including its constituents, would be more likely to place a credit freeze if there was a single phone number they could call.¹⁷ The national and New York State "do not call" registries, which allow consumers to bar telemarketing calls, demonstrate the power of making it simple and easy to activate consumer protections.

¹⁴ General Business Law sections 380-T(1) and (2).

¹⁵ Testimony given by CDIA to the Consumer Protection Board on February 6, 2008

¹⁶ <http://www.consumersunion.org/pdf/security/securityMT.pdf>

¹⁷ Testimony before the Consumer Protection Board on February 6, 2008

The success of the state and federal do not call registries are models for success. The registries allow consumers to call a toll-free number or go to the Internet and get “one-stop shopping” to have their names placed on a universal do not call list. The result is that millions of New Yorkers availed themselves of the registry.

To be effective, a freeze law must be convenient and inexpensive to place and lift. In contrast, New York’s law requires consumers to place the freeze by either certified mail or overnight mail. There’s no justification for these requirements. Before the Federal Fair Credit Reporting Act was amended to allow consumers free annual credit reports, consumers that desired a copy of their report routinely did so by regular mail.

Consumers should not have to go through each of the three credit agencies to file a credit freeze. The FTC should support “one stop shopping” to allow consumers to simultaneously place a freeze with each of the three national credit bureaus by making a single call or visiting a single website.

This is already the case under the national free credit report law, with the three national credit reporting agencies—TransUnion, Experian and Equifax—required to allow consumers to directly download and print their credit reports directly through the Internet from a computer.¹⁸

Further, these companies will allow you to sign up for their credit monitoring services through the Internet—a service marketed on the premise that consumers can prevent or limit the damage of identity theft through vigilant monitoring.

For example, Experian’s Triple Advantage program provides free access to credit reports, credit scores and monitoring of who is requesting your report. The cost to consumers after the free 30 day trial is \$14.95 per month or \$179.40 per year. You can sign up online for this service.¹⁹ (While these services benefit the credit reporting agencies, they do not protect consumers by preventing identity theft. Trade line blocking and fraud alerts similarly provide no theft prevention benefit for consumers.)

Thus, the industry’s own practices clearly demonstrate that they can provide consumer access via phone and Internet for consumers who want to freeze their credit reports or lift a freeze.

NYPIRG recommends that the fees for placing, lifting or removing a freeze should be capped at \$3 and phased out after two years. This transitional fee will allow industry time to recoup any capital costs for establishing the system. Credit freezes and lifts should always be free for victims of identity

¹⁸ Consumers can go to www.annualcreditreport.com and access their credit reports from each of the three national credit reporting agencies. Consumers also can call toll free to 1 877 322-8228 to get a copy of their reports or make the request through regular mail. Congress directed that each of these methods be made available. See 114 Pub. L. No. 108-159, § 211 (2003).

theft, however. The credit agencies should comply with freeze requests within 24 hours and thaw freezes in fifteen minutes with a PIN. The national credit reporting agencies or their trade association on their behalf should also be required to report to the FTC on the number of freezes placed, their duration, the methods used and the experience with lifting freezes. FTC should survey consumers, identity theft victims, law enforcement and retailers about their experience with freezes and make recommendations for improving requirements after two years.

Finally, access to freeze protections will be ineffective without adequate publicity. The FTC must work with state and local governments, businesses and non-profit agencies to wage a substantial education campaign to promote the use of credit freeze consumer protections if we are to make substantial headway in the fight against identity theft.

Thank you for this opportunity to share our thoughts on this important issue, which touches on crime prevention, personal privacy and consumer financial protections.

¹⁹ Accessed at www.experian.com/consumer_online_products/triple_advantage.html.