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Wells Fargo Bank, N.A.

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Office of the Secretary
Federal Trade Commission
Submitted via "Commentworks"

RE: Credit Report Freezes – Comment, Project No. P075420

Ladies and Gentlemen:

Wells Fargo & Company ("Wells Fargo") is one of the country's largest diversified financial services providers. Our operating subsidiaries include banks, a consumer finance company, insurance underwriters and agents and brokers, securities brokers, and investment managers. Many of these units, in particular the banks and the consumer finance company, are significant users of consumer reports (also known as "credit reports") and thus have a deep interest in the efficient functioning of the credit reporting system. We appreciate the opportunity to submit comments to the Federal Trade Commission (the "Commission") in connection with its review of credit report freezes (also referred to as "file freezes").

While the request for comments on this topic may be primarily educational, we assume the Commission will also consider whether federal legislation on this topic is desirable.

LEGISLATIVE PERSPECTIVE

As you know, about 40 states have already enacted credit freeze legislation, and the nationwide consumer reporting agencies have each announced that they will allow consumers residing in the remaining states also to freeze their credit files. It is simply inconceivable that credit freeze legislation will be eliminated at any time in the foreseeable future. Realistically the Commission has three options at this point:

1. To support federal credit freeze legislation that would preempt existing and future state laws in order to achieve uniformity;
2. To support a federal law that would provide a “floor” in the area of credit freezes but not preempt “more protective” state legislation; or
3. To conclude that federal legislation is unnecessary at this time.

As a financial service provider with customers in all 50 states, Wells Fargo strongly supports nationwide uniformity on subjects such as credit reporting. However, it is hard to imagine that Congress would preempt the 40 existing states laws in this field in order to achieve true uniformity. Thus the real legislative choice is probably between a federal “floor” or simply leaving this topic to state regulation. It is not at all clear that there is any demand for such federal legislation from either the consumer or industry perspective. Accordingly, Wells Fargo recommends that the Commission *not* seek federal legislation in the area of credit file freezes.

INFORMATION REQUESTS

We will now turn to the specific questions posed by the Commission in its request for comments. For the most part, our comments are directed at the “General” and “Experiences of Users of Credit Reports” sections of the request.

General

We believe credit freezes can prevent most new account fraud with respect to a particular consumer if the freeze is put in place before fraud occurs. Freezes probably do not prevent existing account fraud nor, except in cases where “lightning” really does strike twice – in the form of different fraudsters – are they effective in mitigating losses when initiated after fraud has already occurred. It is not clear whether credit freezes add significantly to the protections afforded by fraud alerts under the provisions of the Fair and Accurate Credit Transactions Act (“FACT Act”).

While there is obvious appeal to a “one-stop shopping” mechanism for initiating credit freezes, a centralized source may not work so well when a consumer wants to lift a freeze in anticipation of, or after, applying for credit. For most types of credit other than real estate secured (i.e. mortgage and home equity) credit, lenders obtain only one credit report. If a consumer applying for credit can learn which credit reporting agency is the lender’s first choice, he or she can lift the freeze just at that bureau while leaving it in place at the others. It is not clear how easily this could be accomplished with a “central source” for freezes.

The ability to lift a credit freeze for a specific period of time permits a consumer who has requested a freeze to shop and apply for credit. Attempts to lift the freeze as to a particular creditor are generally not very efficient for a number of reasons. First, in many cases the consumer does not properly specify the name of creditor to be allowed access (“Wells Fargo” rather than “Wells Fargo Bank, N.A.” or “Wells Fargo Financial Corporation”) or does not even know the identity of the actual creditor or creditors to whom the application will be submitted (e.g. in private label programs for retailers or “shotgunning” by auto dealers or loan brokers). Secondly, most large lenders’ credit bureau pulls are highly automated and there is no easy way to supply a PIN or password to gain access to the credit report as part of that process.

Consumer reporting agencies (“CRAs”) should be permitted to charge fees in connection with all aspects of credit freezes – initiation, temporary lifts and “unfreezing” – that are sufficient to cover their actual costs. Otherwise, the CRA’s will have no choice but to recover those costs from their primary paying customers – credit report users – who will, in turn, pass those costs on to their customers, i.e. credit consumers. Since only a very small fraction of credit-active consumers avail themselves of these services, the costs should be borne by those who use this service, not subsidized by all consumers.

While “nearly instant” permanent and temporary lifts would benefit both consumers and credit grantors by permitting them to move forward with transactions with minimal delays, it is not clear that 15-minute requirements are compatible with reasonable security. If a credit freeze system is worth having at all, maintaining the integrity of the process, especially with respect to lifting the freeze, must take precedence over convenience.

It is not apparent that credit freezes impact credit scoring or other data modeling, since those activities do not require access to individually identifiable data.

Finally, it is not clear that the credit freeze system as a whole is really cost effective, since the CRAs must have the systems and processes in place regardless of how many consumers avail themselves of this right. Only the CRAs would be able to estimate their costs, and it is doubtful that there is any way to accurately estimate the amount of losses avoided as a result of credit freezes.

Experience of Users of Credit Reports

As a user of credit reports, we encounter frozen files only infrequently, which is not surprising since only a small fraction of consumers have frozen their files. Moreover, most consumers who have frozen their files realize they must request at least a temporary lift of the freeze before shopping for credit. The CRAs clearly indicate when a file is

frozen. In almost all cases, a frozen file will be treated as an incomplete application, and the consumer will be invited to unfreeze the file, at least temporarily. Absent extraordinary circumstances (e.g. a high-value customer with significant deposits), credit will not be extended if we are unable to access a credit report.

While the presence of a freeze may delay or derail a particular transaction, it is not clear that freezes have had a significant operational effect overall. Indeed, because they are so rarely encountered, in many cases the response of the user/credit grantor is rather ad hoc. It is difficult if not impossible to estimate whether freezes prevent a significant number of fraudulent transactions. As noted above, while “nearly instant” freeze lifts would seem to benefit users, security/integrity concerns remain unresolved.

We have not experienced any noticeable difference between state mandated freezes and CRA developed freeze options, nor have we had significant complaints or operational issues related to the handling of freezes by the CRAs.

OTHER ISSUES

Availability of Reports to Existing Creditors

All of the state credit freeze laws permit furnishing credit reports, despite the existence of a freeze, to entities that have (or, prior to assignment, had) an account or contract with the consumer, or to whom the consumer has issued a negotiable instrument, for account review or collection purposes. This is an extremely important provision. There is no evidence that account review or collection activities initiated by financial institutions and other business entities are a source of fraud. Indeed, if reports from frozen files were not available under these circumstances, the result would probably be increased fraud. If there were to be federal credit freeze legislation, it must incorporate this feature. Although not a pressing concern, additional guidance to the CRAs regarding how they should determine when this exception applies might be helpful.

ECOA & Regulation B Implications

All of the state credit freeze laws permit a creditor who is unable to obtain a credit report because of a file freeze to treat the application as “incomplete.” This treatment properly places the burden of making the credit report available on the consumer who has chosen to implement the freeze. Should there be federal legislation, this feature should be retained. Consumers who have placed freezes on their credit report have strongly expressed their desire that credit *not* be extended in their names. If, after being advised that the application is incomplete because of the freeze, the consumer fails to lift the freeze (either temporarily or permanently), the credit grantor should be entitled to assume

(a) the application was fraudulent or (b) the consumer really did not want the credit after all, without having to worry about this being construed as discrimination because of the exercise of a right under the Consumer Credit Protection Act. I.e., it should be made clear that the position invoked by some with respect to the creditor's duty when encountering a FACT Act "alert" should *not* be applicable to file freezes.

Conclusion

While the use of credit file freezes almost certainly has prevented some fraudulent account openings, it is impossible to quantify the monetary savings. The requirements for CRAs to offer file freezes and administer temporary and permanent freeze lifts has clearly imposed non-trivial costs on the credit reporting system. Those costs are subsidized by all credit-active consumers because the statutorily limited "user fees" do not cover the actual cost of maintaining the file freeze system. Whether the savings from avoided fraud are greater than the cost of the file freeze system is impossible to determine.

As a nationwide lender, Wells Fargo would prefer to have uniform national standards applicable to all aspects of the credit reporting systems. However, that seems highly unlikely at the present time. Especially since the CRAs have voluntarily provided file freeze capability in the minority of states with no statute requiring it, we see no need for federal legislation to set a "floor" in this area.

If you have any questions regarding the foregoing comments, please feel free to contact the undersigned at mccorkpl@wellsfargo.com or (415) 396-0940.

Sincerely,