



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
8400 Westpark Drive • McLean, Virginia 22102
703/821-7040 • 703/821-7041

Legal & Regulatory Group

February 25, 2008

VIA E-MAIL

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex K)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Impact and Effectiveness of Credit Report Freezes - Project No. P075420

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) submits the following comments regarding the impact and effectiveness of credit freeze laws to aid the Commission, and the President’s Identity Theft Task Force, in considering whether a federal credit freeze law would be appropriate.

NADA represents over 19,000 franchised automobile and truck dealers who sell new and used motor vehicles, and engage in service, repair, and parts sales. Together our members employ in excess of 1.1 million people nationwide. Our members engage in millions of transactions every year that rely on the availability and accuracy of consumer credit reports. Accordingly, NADA is particularly focused on regulatory efforts that have an impact on the credit reporting process.

NADA supports the anti-identity theft goals underlying the credit freeze laws because identity theft is an especially pernicious crime that can inflict wide-ranging harm on consumers and businesses alike. Indeed, because automobile and truck dealers typically assume the risk of loss in finance and lease transactions involving identity theft, they have an especially strong business incentive to support efforts to combat identity theft.

In its Request for Comments the Commission states that it is “gathering information regarding the impact and effectiveness of the existing state credit freeze laws, as well as the [credit reporting agency-developed credit freeze options].” As the Commission is aware, the states have provided a fertile testing ground for legal solutions in this arena. Thirty-nine states and the

District of Columbia have enacted credit freeze laws. Furthermore, all three of the major credit reporting agencies now offer credit freeze protection to consumers in the eleven states not currently covered by a state credit freeze statute. As a result, credit freeze protection is currently available nationwide.

The inherent difficulty in implementing any credit freeze regime is to properly balance the need to protect consumers from identity fraud, with consumer convenience, access to credit, and marketplace efficiency. We do not believe these goals are exclusive. Indeed, we believe that the impact of the existing laws has been generally to aid in protecting the small subset of consumers whose credit identities have been compromised, or are in danger of being compromised. At the same time, these current laws have not been an undue impediment to the efficiency of commerce or consumer convenience by unnecessarily delaying access to credit. As a result, we believe that the current protection has been generally effective in serving the important goal of preventing identity theft, and any benefit of clarity and consistency provided by a federal action is outweighed by the risk that such a law could upset this delicate balance. In addition, recent federal mandates such as the FTC Safeguards Rule, the "Red Flags Rule," and the Address Discrepancy rule have significantly strengthened consumer protection against identity theft. Therefore, we do not believe that a federal freeze law is needed at this time.

Consumers Should Be Educated On All Options Available To Protect Their Credit, And The Benefits And Weaknesses Of Credit Freezes

While we do not think that a federal law is necessary, we do believe that the Federal Agencies have an important role to play. Consumers have an array of options under current law to protect themselves from identity theft, including the ability to place a fraud or active duty alert on their credit report pursuant to § 112 of the FACT Act of 2003. However, many of them either do not know of all the options, or misunderstand those that are available.

We believe that the Commission's foremost goal should be to educate consumers so that they completely understand the advantages and disadvantages of each solution. Well-educated consumers would help limit the administrative burden on the consumer reporting agencies and credit report users alike, and will also help consumers by preventing the unpleasant surprises that may accompany a credit freeze. We are concerned that under-informed or misinformed consumers may be likely to place freezes on their credit without knowing exactly what they may be giving up in flexibility and convenience.

Customers should have enough information to rationally evaluate whether the remedy provided by placing a freeze on their credit is appropriate for the threat they face from identity theft. A balance must be reached so that consumers who understand what they want and need can institute credit freezes when necessary. But the process should have some built-in protections to prevent its overuse, because if credit freezes are overused, they could lose much of their efficacy in deterring identity theft, and become problematic for consumers and credit report users alike. For example, a credit freeze only prevents an identity thief from attempting to obtain a new credit line, not from committing fraud on existing, open lines of credit. Many consumers,

however, may incorrectly conclude that a credit freeze prevents all credit fraud and therefore become less vigilant in monitoring their existing accounts.

It is our understanding that at present, only a relatively small percentage of consumers have instituted credit freezes. We believe that if a majority, or even a significant percentage of consumers instituted a freeze on their credit, it may result in a decrease in the overall effectiveness of the system, and create significant commercial inefficiencies. Consumer transactions and overall economic efficiency would suffer greatly if freezes were widely adopted by creating a huge gap between the large number of consumers whose credit freezes would deny creditors legitimate access to their credit files and the much smaller number of consumers who actually are threatened by a significant risk of identity theft. It is axiomatic that more time and effort spent in conducting legitimate credit inquiries increases costs throughout the system, which would inevitably lead to higher costs for consumers. We believe that credit freezes are appropriate in some circumstances, but that when people routinely institute a freeze without regard to their level of risk, it may result in greater harm than good. Consumers need to understand when a freeze is appropriate and we believe information and education should be made readily available to all consumers.

In response to specific questions contained in the Topics for Comment:

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?

We believe that consumers should have access to information about credit freezes from as many sources as possible, and that this is a role that the Commission and other Federal Agencies should play. The Commission is in an ideal position to provide and disseminate information to consumers about credit freezes. We believe that education is crucial to avoid the possibility of confusion and frustration among consumers, and the frustration of the smooth flow of consumer commerce. In addition, Consumers should know that while credit freezes provide some protection against identity thieves, they do not provide complete protection from credit fraud.

Consumers Should Be Able To Easily “Thaw” A Freeze So They Are Not Unnecessarily Restricted In Their Access To Credit

Consumers should be able to institute freezes in an efficient manner, but it is even more important that consumers be able to quickly and easily *lift* the freeze, or “thaw” their credit file, so that the rightful owner of that file has ready access to credit. Consumers should have the flexibility to lift the freeze in as simple but secure a way as possible. Many of the current state laws either require or allow the use of a Personal Identification Number (“PIN”) to thaw the file. We believe that the PIN system is a good start, but is potentially problematic. As an initial matter, we understand that the PINs are assigned by the credit reporting agencies, not chosen by the customers and we would suggest that the consumer have the opportunity to choose or change the PIN. We believe this would make it more likely that the consumer would remember the PIN.

The main problem with a PIN based system however, is that there is often a gap in time between when consumers freeze their file and the next time they seek credit. By the time a consumer wishes to seek credit, he or she has often lost or forgotten their PIN, or indeed forgotten that they have even instituted the freeze. When this occurs, we believe that backup systems must be in place to allow consumers to easily lift the credit freeze. For example, the consumer could call a toll-free number to answer additional security questions; or the consumer could provide the credit file user additional documentation to allow the file to be thawed. This may require some additional steps to be taken at the time the customer institutes the freeze (*e.g.*, in setting up the security questions), but we believe it would provide a crucial benefit to the consumer in the long run. We believe current technologies make such back up systems feasible, and that with the prevalence of online commerce, backup systems such as these are currently in use in many other settings.

In response to specific questions contained in the Topics for Comment:

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?

We believe it is sensible to allow consumers a centralized point of contact to both institute and to thaw credit freezes, to avoid the need to contact each CRA separately. The goal should be to ensure that freezes are placed only on appropriate accounts in the first place, not to impose additional administrative burdens on the consumer to institute or lift that freeze.

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?

Consumers must be allowed to temporarily lift the credit freeze for a given period. While we agree that flexibility is important, we believe that limiting the “thaw” to certain parties has potential pitfalls. For example, automobile and truck dealers often work with multiple lenders to provide vehicle financing, each of whom often makes an independent credit inquiry, and consumers often are not aware of the identities of all of those lenders prior to the time of purchase at the dealership. As a result, even a consumer who has planned ahead by lifting the freeze as to a particular dealership or financing source in advance of a vehicle purchase may be prevented from the optimal financing terms or otherwise unduly frustrated by this limitation.

In allowing temporary lifts of the freeze for a certain time period, it may be sensible to place an outer limit on the effective time period for the lift (*e.g.*, no more than two weeks) so that consumers do not unintentionally forget to “un-thaw.” It may also be sensible to place a minimum time period the lift must remain effective (*e.g.*, no less than 2 hours), so as to prevent possible duplication of effort and unnecessary administrative costs for the users and the CRAs.

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?

We believe that once a consumer has provided his or her PIN or otherwise adequately verified their identity, the consumer should be able to instantly thaw their files. In the context of a vehicle financing and delivery transaction, which can be lengthy, we see no public policy justification for unnecessarily requiring an additional amount of time. Consumers should not be punished for instituting a freeze, and that if the process to thaw the file is too cumbersome, it will unduly discourage the use of credit freezes.

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

In addition to the access issues described above, we also believe that fees associated with lifting a freeze hinder the effectiveness of the process and that separate fees to lift a freeze should not be required.

Conclusion

NADA appreciates the opportunity to comment on this matter, and the Commission's consideration of our concerns. Please feel free to contact us if we can provide additional information that would be useful in your inquiry going forward.

Sincerely,

Bradley T. Miller
Associate Director, Legal and Regulatory Affairs