PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION ON "IDENTITY THEFT"

Before the

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM AND GOVERNMENT INFORMATION

of the

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

Washington, D.C.
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Mr. Chairman and members of the Committee: I am David Medine, Associate Director for Credit Practices, Bureau of Consumer Protection, Federal Trade Commission ("FTC" or "Commission"). I appreciate this opportunity to present the Commission's views on the important issue of identity theft.[(1)]

I. Introduction

A. Overview

Identity theft goes to the heart of personal privacy. It occurs when an individual appropriates another's name, address, Social Security number, or other identifying information to commit fraud. Identity thieves may use consumers' identifying information to open new credit card accounts, take out loans in the victim's name, or to steal funds from existing checking, savings, or investment accounts.[(2)] Certain perpetrators go so far as illegally obtaining professional licenses,[(3)] driver's licenses, and birth certificates,[(4)] and even committing other crimes under their assumed identities.[(5)] Others use the consumers' identifying information to submit fake medical bills to private insurers.[(6)] Identity thieves often have lenders send bills to an address different from that of the victim, to conceal their activities from the victim for a prolonged period of time.[(7)] In the interim, the perpetrators run up debt, in some cases tens of thousands of dollars, under their assumed identities.[(8)]

The Commission supports the Committee's efforts to address this growing problem. The FTC has also taken a proactive role in identifying consumer protection issues relating to the increased availability of personal identifying information, including identity theft.[(9)] I will discuss the FTC's actions and findings in four areas that relate to identity theft. First, I will discuss what the FTC has learned about how identity theft occurs and how it affects consumers. Second, I will address how the Identify Theft and Assumption Deterrence Act of 1997, if enacted, would provide relief to consumer victims of identity theft. Third, I will describe the FTC's efforts with respect to "individual reference services," also known as "look-up services." Individual reference services are computerized database services that are used to locate, identify, or verify the identity of individuals. These services increase the availability of personal identifying information about consumers. They are relevant to this discussion in that, while they confer societal benefits, they also have the potential to increase the incidence of identity theft if not adequately controlled. Finally, I will discuss certain steps consumers can take to avoid becoming victims of identity theft.

B. The Role of the FTC

The consumer protection mission of the FTC is to promote the efficient functioning of the marketplace by protecting consumers from unfair or deceptive acts or practices and increasing consumer choice by ensuring vigorous competition. The Commission undertakes this mission by enforcing the Federal Trade Commission Act ("FTCA"), which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.(10) With the exception of certain industries, the FTCA provides the Commission with broad law enforcement authority over entities engaged in or whose business affects commerce,(11) and with the authority to gather information about such entities.(12) The Commission also has responsibility under approximately thirty additional statutes governing specific industries and practices. Of particular relevance is the Commission's authority to enforce the Fair Credit Reporting Act, the Truth in Lending Act, and the Fair Credit Billing Act. The Fair Credit Reporting Act regulates credit reporting agencies, also known as credit bureaus or consumer reporting agencies, and establishes important protections for consumers with regard to the accuracy of their credit reports, or consumer reports, and the privacy of their sensitive financial information.(13) The Truth in Lending Act, amended by the Fair Credit Billing Act, provides for the correction of billing errors on credit accounts and limits consumer liability for unauthorized credit card use.(14) Because identity theft can result from the availability of sensitive identifying information from credit bureaus and can affect the accuracy of consumer credit reports and credit account records, examining the causes and consequences of identity theft and exploring potential solutions fall within the scope of the Commission's mandate.

II. Identity Theft

In an effort to learn more about identity theft, its growth, consequences, and possible responses, the Commission convened two public meetings. At an open forum held in August 1996, consumers who had been victims of this type of fraud, representatives of local police organizations and other federal law enforcement agencies, members of the credit industry, and consumer and privacy advocates discussed the impact of identity theft on industry and on consumer victims.(15) Subsequent press coverage helped to base of information about identity theft.

A. The Problem

Creditworthy consumers with high incomes appear to be the preferred prey of identity thieves.

identity theft.[34] Federal law limits a consumer's liability for credit card fraud to $50 per account in these situations,[35] and lenders often forgo even that amount.[36] Accordingly, financial institutions tend to be viewed as the primary victims of identity theft and their direct financial loss tends to be viewed as the only loss.[37] Such a measure of injury fails to reflect not only the loss of potential benefits described above but also the years of aggravation suffered by consumer victims.

It is often difficult for consumers to cleanse their credit reports of the perpetrators' bad acts.[38] The victims must go through the time-consuming process of (1) trying to prove to lenders and credit reporting agencies that they were in fact victimized by identity theft, and did not personally incur or authorize the perpetrators' charges; (2) having the erroneous information removed from their credit reports; and (3) preventing the perpetrators' future activities from further damaging their records.[39] Consumer victims may request that their credit bureau files be flagged with a fraud alert, to ensure that creditors take extra precautions to verify the legitimacy of any future credit applicant associated with the flagged file. However, such alerts do not necessarily prevent the fraud from resuming for three reasons: (1) they may not be displayed prominently enough to draw the creditors' attention; (2) they may not be picked up by credit-scoring or other automated credit application systems; and (3) creditors who see the alerts may not take sufficient precautions to verify an applicant's legitimacy.[40] Some consumer victims have such a difficult time cleaning up their credit histories that they resort to the expensive and time consuming effort of suing credit reporting agencies, banks, and lenders.[41]

Consumer victims who turn to law enforcement also report having difficulty obtaining help.[42] Criminal laws for the most part, including three sections of the United States Code that criminalize conduct integral to identity theft,[43] do not recognize wronged consumers as victims of identity theft. In addition, due to the nature of this type of fraud, consumers have little evidence to offer to law enforcement.[44] Creditors who can write off losses from identity theft, or pass them on to customers in the form of higher interest rates, fees, and costs, may not routinely pursue prosecution of identity thieves although they may be better situated than consumers to do so.[45] Even when creditors refer cases to law enforcement, consumer advocates and victims report that the cases that do not meet significant dollar thresholds (typically $50,000) fall through the cracks.[46]

Finally, identity theft poses indirect costs as well. To the extent identity theft leads to higher interest rates, fees, and costs for customers of financial institutions, all consumers are harmed.

III. The Identity Theft and Assumption Deterrence Act: Relief for Consumer Victims

One way to compensate consumer victims of identity theft for their undeserved hardship would be to recognize them as crime victims and to grant them rights of restitution. The legislation that Chairman Kyl introduced, S. 512, The Identity Theft and Assumption Deterrence Act of 1997, if enacted, would accomplish these important ends. It would define the crime of identity theft, recognize consumer victims as crime victims, and provide for restitution to consumer victims for incurred costs, including costs associated with clearing their credit history.[(47)] In addition, the United States Sentencing Commission would be able to enhance sentences when identity theft occurs. More efficient and comprehensive criminal prosecution of identity theft should serve as a deterrent for those engaged in the practice. The Commission supports these efforts to address this growing problem.[(48)]

IV. Individual Reference Services

In response to growing public and Congressional concern, the Commission recently conducted a specific examination of issues raised by individual reference services, including the extent to which these services make sensitive personal identifying information available and, thus, may increase the risk of identity theft. The Commission solicited public comment and held a Public Workshop in June 1997, which served as a forum for dialogue among suppliers of personal identifying information such as credit reporting agencies, the direct providers of look-up services, commercial users of the services, government representatives, and consumer and privacy advocates. The study culminated in a report from the Commission to Congress in December 1997. The report summarized what the Commission had learned about the individual reference services industry; examined the ben4(x)-10(a)4(m)-2(i)-2(ne)4(<)-3(o)10div-2(8d-2(i)-01)-2(f)3(c such information in the wrong hands can have severe repercussions, including identity theft.

assurance mechanism and are likely to influence virtually the entire individual reference services industry. First, signatories must undergo an annual compliance review by a professional third party such as an accounting firm, the results of which will be made public. Public examination of the results of compliance reviews and the possibility of liability for deception under the FTC Act and similar state statutes should create an incentive for compliance by signatories. Second, signatories that are information suppliers (e.g, the three national credit reporting agencies) are prohibited from selling non-public information to entities whose practices are inconsistent with the Principles. Therefore, non-signatories whose practices are inconsistent with the Principles likely will be unable to obtain non-public information easily for redissemination through their services. Thus, the IRSG Principles should substantially lessen the risk that information available through individual reference services will be used to commit identity theft, and they should address most consumer concerns about the privacy of their non-public information.[(60)]

C. Report Recommendations

The Commission ultimately concluded that the IRSG Principles address many of the concerns associated with the increased availability of non-public information through individual reference services -- including identity theft -- while preserving important benefits conferred by this industry. However, certain important issues remain unresolved. For example, the Principles fail to give consumers access to the public information maintained about them and disseminated by the look-up services. Accordingly, consumers will not be able to check for inaccuracies resulting from transcription or other errors occurring in the process of obtaining or compiling the public information by the look-up services. IRSG members have agreed to revisit this issue by June 1999, and to consider whether to conduct a study quantifying the extent of any such inaccuracies. The Commission has urged the IRSG to analyze whether the frequency of inaccuracies and the harm associated with them are such that consumer access to public record information or other safeguards are in fact unnecessary.[(61)]

In addition, the IRSG Principles do not place any restrictions on the availability of "public information," including data from public records (e.g, real estate, motor vehicle, and court records) and other publicly available information. In its report to Congress, the Commission encouraged public agencies to consider the potential consequences associated with the increasing accessibility of public records when formulating or reviewing their public records collection and dissemination practices. Finally, the Commission acknowledged and encouraged the ongoing efforts of many privacy advocates, consumer groups, government agencies, and the IRSG to educate the public about information privacy issues.[(62)]

V. Consumer Tips for Preventing Identity Theft

From our work in this area, the Commission has found that consumers can take certain steps to help protect their privacy, and thereby decrease the chances that they will fall prey to identity theft:

- Most importantly, consumers should guard their personal identifying information. Before divulging it, they should find out how it will be used and whether it will

Assumption Deterrence Act of 1997 should go a long way toward lessening the harm identity theft inflicts on innocent consumers.

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1. The views expressed in this statement represent the views of the Federal Trade Commission. My oral testimony and responses to questions you may have reflect my own views and are not necessarily the views of the Commission or any one Commissioner.

2. Beth Givens, The Privacy Rights Handbook 231-32 (1997).

3. Official Transcript of "FTC Consumer Identity Fraud Meeting," August 20, 1996 [hereinafter "ID Theft Transcript"] at 12-13. A copy of the transcript is available online at Federal Trade Commission, Conferences, Consumer Identity Fraud Meeting, (last modified Mar. 14, 1998) <http://www.ftc.gov/ftc/conferences.htm>.

4. See, e.g., FTC Report to Congress: Individual Reference Services

11. The Commission does not directly have criminal law enforcement authority. Further, certain entities, such as banks, savings and loan associations, and common carriers, as well as the business of insurance are wholly or partially exempt from Commission jurisdiction. *See* Section 5(a)(2) of the FTC Act, 15 U.S.C. § 45(a)(2) and the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

12. 15 U.S.C. § 46(a). However, the Commission's authority to conduct studies and prepare reports relating to the business of insurance is limited. According to 15 U.S.C. § 46: " The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Ra vieC 0 W n BT en602.7( )-1602.78(c)-8(e)-8(q)-12.14.2(an)8r(n)8(E)-14(n)8(er)-2(g)

30. McMenamin, supra note 16, at 256.

31. An Identity Crisis, An Identity Crisis, Chicago Tribune, Sept. 24, 1996, § C ("Your Money") at 7.

32. Are You a Target for Identity Theft?,

employment and criminal records, the Commission recommends that these rights of restitution be expanded to include but not be limited to the specified costs.

48. In the form initially provided to the Commission, the bill would direct the Secretary of the Treasury and the Chairman of the Federal Trade Commission to conduct a comprehensive study of the nature, extent, causes, and threat posed by identity theft. The Commission understands that the provision regarding

consumer report to $8, as adjusted annually by the Consumer Price Index.