

**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 Kyl, and members of the Subcommittee, I am Jodie Bernstein, Director of the Bureau of Consumer Protection, Federal Trade Commission ("FTC" or "Commission").⁽¹⁾ I appreciate the opportunity to present the Commission's views on the important issue of identity theft, and describe to you the Commission's achievements in implementing the Identity Theft and Assumption Deterrence Act.⁽²⁾

In my remarks today, I will discuss the growing phenomenon of identity theft, how the Commission has responded to identity theft, both in carrying out its duties under the 1998 Act and its general enforcement measures, and what we see as future challenges in eradicating identity theft.

I. Identity Theft: A Growing Problem

By now, many people have confronted, directly or through a third person, some form of identity theft: someone has used their name to open up a credit card account or someone has used their identifying information -- name, social security number, mother's maiden name, or other personal information -- to commit fraud or engage in other unlawful activities. Other common forms of identity theft include taking over an existing credit card account and making unauthorized charges on it (typically, the identity thief forestalls discovery by the victims by contacting the credit card issuer and changing the billing address on the aT1 1 T0 0 lhe

or "dumpster diving" through their trash to collect credit card offers or obtain identifying information such as account numbers or social security numbers. There are also far more sophisticated practices at hand. In a practice known as "skimming," identity thieves use computers to read and store the information encoded on the magnetic strip of an ATM or credit card when that card is inserted through either a specialized card reader or a legitimate payment mechanism (e.g., the card reader used to pay for gas at the pump in a gas station). Once stored, that information can be re-encoded onto any other card with a magnetic strip, instantly transforming a blank card into a machine-readable ATM or credit card identical to that of the victim.

The Internet has dramatically altered the potential impact of identity theft. Among other things, the Internet provides access to collections of identifying information gathered through both illicit and legal means. The global publication of identifying details that heretofore were available only to the few increases the potential misuse of that information. Similarly, the Internet expands exponentially the ability for a third party to

II. The Federal Trade Commission's Authority

A. Overview

The FTC's mission is to promote the efficient functioning of the marketplace by protecting consumers from unfair or deceptive acts or practices and increasing consumer choice by promoting vigorous competition. The Commission's primary legislative mandate is to enforce the Federal Trade Commission Act ("FTC Act"), which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁽⁹⁾

Assumption Deterrence Act. Following the passage of the Act, the Commission testified again, in April 1999, before the House Subcommittee on Telecommunications, Trade and Consumer Protection and the Subcommittee on Finance and Hazardous Materials of the Commerce Committee. This latest testimony focused on identity theft in the financial services industry.

C. The Identity Theft and Assumption Deterrence Act of 1998

The Identity Theft and Assumption Deterrence Act of 1998 ("Identity Theft Act" or "the Act") addresses identity theft in two significant ways. First, the Act strengthens the criminal laws governing identity theft. Specifically, the Act amends 18 U.S.C. § 1028 ("Fraud and related activity in connection with identification documents") to make it a federal crime to:

knowingly transfer[] or use[], without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.⁽¹⁷⁾

The second way in which the Act addresses the problem of identity theft is by focusing on consumers as victims.⁽¹⁸⁾ In particular, the Act requires the Federal Trade Commission to develop a centralized complaint and consumer education service for victims of identity theft. More specifically, the Act directs that the Commission establish procedures to: (1) log the receipt of complaints by victims of identity theft; (2) provide identity theft victims with informational materials; and (3) refer complaints to appropriate entities, including the major national consumer reporting agencies and law enforcement agencies.⁽¹⁹⁾

III. Current Efforts: the FTC's Consumer Assistance Program

In enacting the Identity Theft Act, Congress recognized that coordinated efforts are essential because identity theft victims often need assistance from both government agencies at the national and state or local level, and private businesses. Accordingly, the FTC's role under the Act is primarily one of managing information sharing among public

complaints received by other government agencies, such as the Social Security Administration. Consumers can also enter their own complaint information via the public user complaint form at www.consumer.gov/idtheft⁽²³⁾

Having designed and built the Clearinghouse database itself, the Commission is now developing the tools to extract and analyze the information it contains.⁽²⁴⁾ The information collected in the Clearinghouse will provide the Commission with a better understanding of how identity theft occurs. In particular, we will look at whether certain types of transactions or business practices lead to greater opportunities for the theft of a person's personal information or facilitate the misuse of that information once obtained. As we begin to identify trends and patterns in the occurrence of identity theft, we will share this information with our law enforcement partners so that they may better target their resources.⁽²⁵⁾

Moreover, the Identity Theft Data Clearinghouse is required to report to the Commission the information it receives from the public user complaint form.⁽²⁶⁾

effects of identity theft.

The FTC's most recent publication in this area is a booklet entitled: **Identity Theft: When Bad Things Happen to Your Good Name**⁽³⁰⁾ The 21-page booklet covers a wide range of

number of continuing practices that may contribute to the problem of identity theft.

Attorneys General to discuss implementing the consumer assistance provisions of the Identity Theft Act. In addition, FTC staff participates in the identity theft subcommittee of the Attorney General's Council on White Collar Crime, which has, among other things, developed guidance for law enforcement field offices on how best to assist identity theft victims. FTC staff also coordinates with staff from the Social Security Administration's Inspector General's Office on the handling of social security number misuse complaints, a leading source of identity theft problems.

Furthermore, almost half of the states have now enacted their own statutes specifically criminalizing identity theft. Others have passed, or are considering, further legislation to assist victims of identity theft,⁽³⁶⁾ including legislation specifically designed to help victims clear up their credit records.⁽³⁷⁾ The Commission is committed to working with states and local governments on this issue, and learning from their efforts.

7. While we have created a database to capture information from complaints to our new toll-free Identity Theft Hotline (discussed in greater detail below), our data are still too limited to allow us to draw any significant conclusions about the extent of identity theft.

8. The Fair Credit Billing Act, 15 U.S.C. § 1601 et seq and the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq.

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theft.

31. The www.consumer.gov site is a multi-agency "one-stop" website for consumer information. The FTC hosts the server and provides all technical maintenance for the site. It contains a wide array of consumer information and currently has links to information from 61 federal agencies. The consumer.gov project was awarded the Hammer Award in March 1999.

32. While the toll-free number has been operational since November 1999, we waited several months to make a major announcement in order to fully train the telephone counselors, and otherwise smooth out the data collection operations. Even without a formal announcement, the toll-free line has received an average of 400 calls per week.

33. Of course, it is important to the prevention of identity theft that creditors pay attention and follow-up with appropriate verification procedures wherever there are possible indicia of fraud. One Arlington, Virginia resident who called the FTC had been disturbed to find that her ATM card no longer worked. When she called her bank, she learned that someone using her name had reported her card lost, and asked that a replacement card be sent -- to Brooklyn, New York. The sudden change-of-address presumably should have raised a red flag, but, in fact, apparently triggered no further investigation. Such oversights, often committed out of an understandable desire to provide prompt customer service, do not appear to be uncommon.

34. Some identity theft victims face significant, non-credit-related problems as well. For example, in a small but troubling number of cases, consumers calling the FTC's toll-free number have reported that they themselves have been arrested because of something an identity thief did while using their name, or that they learned they had a criminal arrest or conviction on record because an identity thief used identification with their name rather than his or her own when arrested for committing some other crime. Needless to say, correcting legal arrest or conviction records can prove extremely difficult.

35. Another question potentially raised by the experiences of identity theft victims is whether the protections currently afforded by laws such as the Fair Credit Reporting Act and Fair Credit Billing Act are adequate for resolving the problems commonly faced by identity theft victims. Because the data the Commission has gathered in the short time its hotl Tc 0.009 Tw"c()-12(h)86taCt86taCt86 ahe tal arÎnU