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Identity Theft and the Case for a National Credit Report Freeze Law

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Identity Theft and the Case for a National Credit Report Freeze Law

I. INTRODUCTION

The statistics tell the story. The personal data of over forty-five million consumers was compromised in 2005 alone. From mid-2006 to 2007, approximately fifteen million Americans fell victim to identity theft due to the misuse of compromised data, a fifty percent increase since 2003. The final chapter of the story is not yet written, but the statistics suggest an unhappy ending for many consumers. Awareness of the threat of identity theft is one aspect of the problem. Only about eleven percent of identity theft victims were aware that their personal information had been compromised prior to their information being used to commit identity theft. Another aspect of the problem is that injured credit due to identity theft is difficult to remedy and extremely costly to consumers and industry. Annually, consumers lose $5 billion to identity theft while businesses and financial institutions lose $48 billion.

Federal legislation such as the Fair Credit Reporting Act...
(FCRA) and the Fair and Accurate Credit Transaction Act (FACTA) fail to provide adequate defensive protection for consumers.\(^9\) A national credit freeze law, in conjunction with stricter security breach notification requirements, would offer superior consumer protection.\(^10\) Although notification of a data breach is helpful in preventing identity theft, credit freeze legislation provides consumers with greater security.\(^11\) When a consumer chooses to have her credit frozen, consumer reporting agencies are blocked from issuing copies of a consumer’s credit report.\(^12\) Freezing one’s credit prevents one of the most onerous and pervasive forms of identity theft: new account fraud.\(^13\) Criminals use stolen personal data to open new credit accounts and apply for home and auto loans.\(^14\) A credit freeze would thwart these thieves because few lenders will issue credit without viewing an individual’s credit score first.\(^15\)

Although credit freezes would provide consumers with preventative protection from identity theft, credit freezes also can be problematic.\(^16\) One issue is the process of unfreezing or “thawing” the credit freeze, more specifically, the speed with which it occurs when consumers wish to apply for new lines of credit for large purchases such as automobiles or special mortgage rates.\(^17\) A thaw is necessary in these situations because in order for a new line of credit to be issued the creditor requires a copy of the consumer’s credit report; if a credit freeze was placed on the consumer’s report, the creditor would be unable to access the consumer’s credit report.\(^18\) State statutes range from requiring

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9. See infra notes 34-88 and accompanying text.
10. See infra Part VI.
11. See infra note 33 and accompanying text.
13. See id. at 102-110.
14. See id.
15. See generally Zaidi, supra note 8, at 107 (noting that few lenders are willing to issue credit without viewing an individual’s credit score first; a credit freeze, which prevents access to an individual’s credit score, would deter identity thieves from opening new lines of credit).
16. See infra notes 145-186 and accompanying text.
17. See infra notes 171-172, 182 and accompanying text.
18. Honeywell, supra note 2, at 302-03.
credit bureaus to allow consumers to thaw their credit histories within fifteen minutes to allowing credit bureaus as long as three days to unfreeze a consumer’s credit report.\(^\text{19}\) A waiting period can prove problematic if the consumer needs credit before the freeze can be lifted.

National credit freeze legislation is needed to provide uniform, consistent law with which to prevent identity theft and protect consumers.\(^\text{20}\) Part II provides background on consumer reports, consumer reporting agencies, data breaches and credit freezes.\(^\text{21}\) Part III discusses current federal law, which does not address credit freezes, and how it falls short of providing adequate consumer protection.\(^\text{22}\) Part IV describes current state law and why it is insufficient in protecting consumers.\(^\text{23}\) Part V explains why one federal standard for credit freezes, in conjunction with stricter data breach notification requirements, would be preferable to the current protection.\(^\text{24}\) Part VI discusses previously proposed federal credit freeze legislation and what the content of federal legislation should be.\(^\text{25}\) Finally, Part VII will briefly conclude.\(^\text{26}\)

II. BACKGROUND

A. Credit Reports and Consumer Reporting Agencies (CRAs)

A credit report, or a consumer report, is any form of communication of any information, by a CRA, that discusses the consumer’s credit history, general reputation, character, manner of living, or personal characteristics in anticipation that the data will be used in order to determine the consumer’s eligibility for credit,

\(^\text{19}\) Compare Utah Code Ann. § 13-45-202(2)(b)(ii) (West 2007) (requiring a consumer reporting agency to remove a credit freeze within 15 minutes after receiving a consumer’s request by phone or electronically), with Md. Code Ann., Com. Law § 14-1212.1(e)(2)(i) (West 2007) (requiring that a consumer reporting agency remove the freeze within three business days after receiving a request for removal).

\(^\text{20}\) See infra notes 197-251 and accompanying text.

\(^\text{21}\) See infra Part II.

\(^\text{22}\) See infra Part III.

\(^\text{23}\) See infra Part IV.

\(^\text{24}\) See infra Part V.

\(^\text{25}\) See infra Part VI.

\(^\text{26}\) See infra Part VII.
insurance, employment, or other legitimate business purposes.\textsuperscript{27} CRAs include credit bureaus, such as Equifax, Experian, and TransUnion, as well as other specialized agencies that collect and compile information about a consumer's creditworthiness from financial institutions, public records, or other available sources.\textsuperscript{28} National CRAs compile consumer data and then sell it to creditors, insurers, employers, and other businesses that evaluate the information to determine whether credit or insurance should be granted, the individual should be hired, or property should be rented to the individual.\textsuperscript{29}

\textbf{B. Data Breaches and Credit Freezes}

Data breaches occur when a consumer's personal data is lost, stolen by, or mistakenly sold to a third party which plans to use that information to commit identity theft.\textsuperscript{30} Identity thieves are able to access consumers' Social Security numbers, home addresses, mother's maiden names, and other pertinent information.\textsuperscript{31} They are also able to use this information to apply for new lines of credit.\textsuperscript{32} Plans to use stolen information, however, are usually thwarted because most creditors request and examine the consumer's report before extending credit.\textsuperscript{33}

A credit freeze is a consumer protection tool that allows consumers to prohibit others from accessing their credit report information by freezing their accounts. Credit freezes prevent CRAs from issuing a consumer's report to those who do not have a current credit relationship with the consumer.\textsuperscript{34} With a majority of creditors, lack of access to an individual's credit report in turn

\textsuperscript{28.} Zaidi, \textit{supra} note 8, at 109.
\textsuperscript{31.} See generally id. (discussing the type of information used from data breaches).
\textsuperscript{32.} See generally id. (discussing how identity thieves use stolen information).
\textsuperscript{34.} See Zaidi, \textit{supra} note 8, at 107.
prevents new lines of credit from being opened in the individual's name. By preventing new accounts from being opened, consumers are then protected from the most pervasive form of identity theft.

III. CURRENT FEDERAL LAW

Current federal law addressing the use and protection of private consumer information includes the Fair Credit Reporting Act (FCRA), the Fair and Accurate Credit Transactions Act (FACTA), the Identity Theft and Assumption Deterrence Act of 1998 (ITADA), and the Gramm-Leach Bliley Act (GLBA). Although these laws provide some consumer protection, they fall short of providing sufficient data breach notification and identity theft protection.

A. The Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act

1. Protections Provided by the FCRA and the FACTA

The FCRA was enacted in 1970 in response to growing problems with the questionable practices of CRAs in the 1960s. It was the first federal law to regulate the use and disclosure of personal information and was enacted to limit access to private consumer information to those with legitimate needs for it, to prevent its misuse, and to "maintain procedures to ensure 'maximum possible accuracy'" of consumer reports. Prior to the passage of the FCRA, individuals had no right to view their credit files or the ability to contest mistakes in their credit records. The FCRA requires that all CRAs disclose to consumers the information contained in the consumer’s file, the sources from

40. Id. at 360.
41. Id. at 359-60.
which the information was procured, and a record of all inquiries made for the consumer’s report during the preceding year. The FCRA limits CRAs from furnishing credit reports to individuals other than upon:

the written instructions of the consumer to whom it relates. To a person which it has reason to believe (A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished . . . or (B) intends to use the information for employment purposes; or (C) intends to use the information in connection with the underwriting of insurance involving the consumer; or (D) intends to use the information in connection with a determination of the consumer’s eligibility for a license or other benefit granted by a governmental instrumentality . . . or (E) intends to use the information, as a potential investor or servicer, or current insurer in connection with a valuation of . . . an existing credit obligation; or (F) otherwise has a legitimate business need for the information.

The FCRA also created a framework to address the accuracy of disputed reports and the subsequent investigation and remedying of these disputes, providing a maximum forty-five day period in which the disputed information must be verified; if the information is found to be incorrect, then it is removed from the consumer’s file.

In 2003, the FACTA amended the FCRA to specifically address identity theft. The FACTA allows individuals to procure “a free credit report once a year from each of the three major CRAs: Equifax, Trans Union, and Experian.” The FACTA also

43. § 1681b(a).
44. See § 1681i(a)(1)(A)-(B).
45. See Hoofnagle & Solove, supra note 39, at 366.
46. Id.
provides that "[u]pon the direct request of a consumer . . . who asserts a good faith suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency . . . shall include a fraud alert in the file of that consumer."47 These alerts warn retailers that additional caution should be exercised in granting credit to an individual with a fraud alert.48 Under the FACTA, victims of identity theft may: (1) obtain copies, from creditors, of documentation associated with the possibly fraudulent transactions, (2) stop fraudulent information from appearing on their credit files, and (3) prevent creditors from reporting fraudulent information to CRAs.49 The FACTA also places affirmative obligations on businesses to protect consumer information by mandating that personal data be disposed of in a safe manner.50

2. Problems with the FCRA and the FACTA

The FCRA and the FACTA both provide backward-looking protection and do not offer any effective defensive measures to help prevent individuals from becoming victims of identity theft. One weakness of the FCRA is that the definition of "consumer report" may unduly narrow the scope of FCRA coverage.51 Under the FCRA, the classification of a consumer report depends on how the report is used.52 Literally read, the FCRA is inapplicable when consumer information is used for purposes beyond those enumerated in the FCRA.53 Thus, a criminal using credit information for fraudulent purposes does not technically fall under the FCRA because fraud is not an

47. § 1681c-1(a)(1).
51. See § 1681a.
52. See id.
authorized purpose.\textsuperscript{54}

The narrow definition of "consumer report" and the problems associated with it have allowed commercial data brokers to avoid regulation under the FCRA.\textsuperscript{55} Commercial data brokerage is an emerging industry that compiles and sells consumer data for marketing purposes to government law enforcement agencies, private investigators, creditors, and employers.\textsuperscript{56} Since commercial data brokers collect information for purposes other than those enumerated in the FCRA, it may be argued that they are not acting as a CRA and that the information they compile is not a consumer report.\textsuperscript{57}

Data brokers, in the absence of statutory regulation, have adopted the Individual Reference Services Group (IRSG) Principles.\textsuperscript{58} Under the IRSG Principles, companies are allowed "to sell nonpublic personal information 'without restriction' to 'qualified subscribers.'"\textsuperscript{59} Having a valid purpose for obtaining the information is the only requirement of a "qualified subscriber."\textsuperscript{60} The IRSG Principles were "carefully drafted in order to provide maximum flexibility to commercial data brokers" and provide no actual protection for individuals.\textsuperscript{61}

The FACTA, which amended the FCRA in 2003, also does little to protect individuals against identity theft.\textsuperscript{62} The FACTA only allows consumers "who have a good faith suspicion that they have been or are about to become victims of fraud or related crimes such as identity theft [to] place an initial 90 day fraud alert on their credit files."\textsuperscript{63} This provision is ineffective in protecting consumers for two reasons. First, in order for consumers to suspect that they are victims of identity theft, they must first be aware that their personal information has been stolen. Only

\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Id. at 371-72.
\textsuperscript{57} Id. at 365.
\textsuperscript{58} Id.
\textsuperscript{59} Hoofnagle & Solove, supra note 39, at 365.
\textsuperscript{60} Id.
\textsuperscript{61} Id. at 366.
\textsuperscript{62} See id.
eleven percent of identity theft victims in a 2003 survey, however, were aware that their data had been breached before it was misused to carry out identity theft. Second, “fraud alerts” do not prevent new credit from being issued nor do they prevent access to an individual’s credit report. The “alert” can often be “as simple as a mere entry in the ‘100-word statement’ box in credit files that’s made available to consumers who disagree with an entry made in their credit file.” Retailers are still able to extend credit despite a “fraud alert” and clever identity thieves can continue to commit identity theft even with an alert in place because the alert does not block a credit report from being issued. Creditors are only informed that the consumer has been the victim of fraud or has the potential to be the victim of fraud. If creditors are not diligent in confirming information or if identity thieves are convincing, a fraud alert provides little protection for consumers against new account fraud.

B. The Identity Theft and Assumption Deterrence Act (ITADA)

1. Protections Provided by the ITADA

ITADA addresses the problem of identity theft in two ways. ITADA first strengthens the criminal laws concerning identity theft, making the act of obtaining information with the intent to commit fraud a crime rather than requiring the actual use of the information to constitute a crime. Secondly, the ITADA focuses on consumer education and a centralized consumer complaint service. The ITADA instructs the Federal Trade

64. Dugas, supra note 6.
66. Id.
67. Id.
Commission (FTC) to develop procedures to log identity theft victim complaints and refer them to the appropriate agencies as well as to provide identity theft victims with educational materials. The FTC developed the consumer education booklet, *Identity Theft: When Bad Things Happen to Your Good Name*, which provides consumers with information on how to protect their personal information, minimize their risk of identity theft, handle their identity theft claims, and access other federal and state consumer resources.

2. Problems with the ITADA

Information compiled from the FTC's Identity Theft Data Clearinghouse (Clearinghouse) revealed three major issues that the ITADA failed to address. The first is that identity theft is unavoidable because although there are measures that consumers can take to minimize their risk of identity theft, there is no way to completely avoid it. For example, the Clearinghouse revealed that one out of eight victims that made a complaint to the FTC was victimized by someone they knew personally or through business connections. The second major issue is that the ITADA does nothing to facilitate the detection of identity theft. The FTC received numerous reports that identity theft victims were not aware that they had been victimized until four or more years after the first fraudulent transaction. The third issue is that the ITADA does not stop identity theft. The only deterrent ITADA

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71. Id.
73. Id. The FTC's Identity Theft Data Clearinghouse (Clearinghouse) was created after the passage of the ITADA. See id. It was a compilation of the data received by the FTC from consumers who had been victims of identity theft. The Clearinghouse was made available to law enforcement agencies nationwide to aide their own investigations of identity theft. Id.
74. Id.
75. *ITPA, supra* note 70.
76. See id.
77. Id.
78. Id.
provides is greater criminal sanctions for the collection of information in anticipation of its use for fraudulent purposes.\textsuperscript{79}

C. The Gramm Leach Bliley Act (GLBA)

1. Protections Provided by the GLBA

GLBA places “an affirmative and continuing obligation” on financial institutions “to respect the privacy of its customers and to protect the security and confidentiality of those customers’ nonpublic personal information.”\textsuperscript{80} The GLBA requires that appropriate standards be established and applied to financial institutions relating to safeguards to: “(1)\textsuperscript{81} insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.”\textsuperscript{82} Financial institutions are limited in disclosing nonpublic personal information to nonaffiliated third parties but are permitted to make disclosures to affiliated entities.\textsuperscript{82}

An Interagency Guidance\textsuperscript{83} was also issued to interpret and supplement the data security guidelines put in place by the GLBA.\textsuperscript{84} The Interagency Guidance “called on banks to develop” incident response programs that they would use to “react to data security breaches.”\textsuperscript{85} The Guidance provided that an incident response program must include: “(1) an assessment of the nature

\textsuperscript{79} Id. (prior to the ITADA, the act of collecting information in anticipation of fraudulent use did not become criminal until the information was actually used).


\textsuperscript{81} Id. § 6801(b)(1)-(3).


\textsuperscript{83} See generally Robert A. Anthony, Interpretive Rules, Policy Statements, Guidelines, Manuals, and the Like – Should Federal Agencies Use Them to Bind the Public? 41 DUKE L. J. 1311, 1311-15 (1992) (explaining that an Interagency Guidance is a guideline issued by a regulatory agency which interprets a statute and offers recommendations as to how a statute should be applied and enforced).


\textsuperscript{85} Id. at 90.
and scope of the incident; (2) prompt notice of an incident to the bank’s primary federal regulator; (3) notice to the appropriate law enforcement authorities; (4) steps to contain and control the incident . . . (5) [and] notifying customers when warranted.”

While the Interagency Guidance generally requires notices to be given to customers if a data security breach occurs, the bank may avoid giving notice if it determines that the breach is unlikely to result in the abuse of the customer’s information.

2. Problems with the GLBA

The scope of the GLBA is significantly limited because it only applies to financial institutions, not other creditors, and it also only applies to “nonpublic personal information.” The GLBA affords no protection to consumers whose data has been mistakenly sold or lost by CRAs, schools, retailers, and other non-financial entities. Many of the massive data breaches in past years have been from non-financial entities such as Hallmark Cards, whose website had an error that put the personal information of thousands of customers in jeopardy, or the University of California at Berkeley, where a computer containing the personal information of 10,000 graduate students was stolen. Additionally, although an “opt out” mechanism is required to be provided to customers concerning information transfers to unaffiliated parties, such a mechanism is subject to numerous exceptions that can allow for a customer who has opted out to have her information shared with non-affiliates.

86. Id.
87. Id.
89. See generally id. (stating that the GLBA only applies to financial institutions).
90. Draper, supra note 69, at 688.
IV. CURRENT STATE LAW

A. Overview of Current State Law

Although the FCRA and FACTA do not provide for credit freezes, forty-one states have adopted credit freeze laws. Among those forty-one states only Arkansas, Kansas, Mississippi, South Dakota, and Washington restrict credit freezes to victims of identity theft. A majority of states provide identity theft victims with credit freezes at no cost while charging non-identity theft consumers fees for placing the freeze, lifting the freeze temporarily for all creditors, lifting the freeze for a specific creditor, and removing the freeze permanently. These fees range from as little as $3 to as much as $20, with additional variations depending on which action the consumer wishes to take. Several state laws prohibit a charge for at least the first credit freeze. A small minority of states require a fee whether the individual is a victim of identity theft or not. All states offering credit freeze protection provide for thawing of the freeze; some states require credit bureaus to thaw consumers’ credit files within fifteen minutes of receiving a request. In most states, however, thawing credit freezes can usually take three to five days. Below is a chart that highlights the major provisions of each state law:

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93. Id. Washington will open credit freezes to all consumers in September 2008. See id.
94. See id.
95. Id.
96. Id. These states include Colorado, Indiana, Kansas, New Jersey, New York, and South Dakota. See id.
97. Consumers Union, supra note 92. Arkansas, Connecticut, Mississippi, and Utah are states that require a fee regardless of identity theft victim status. See id.
99. Id.
101. CAL. CIV. CODE §§ 1785.10-1785.9.5 (West 2003); LA. REV. STAT. ANN. § 9:3571.1 (2005); NEV. REV. STAT. §§ 598C.2-12 (2005); N.C. GEN. STAT. ANN. § 75-
### States with Credit Freeze Laws that Apply ONLY to Identity Theft Victims

<table>
<thead>
<tr>
<th>State</th>
<th>Fee to Freeze</th>
<th>Fee to Lift Temporarily</th>
<th>Fee to Lift Temporarily to Specific Creditors</th>
<th>Fee to Remove Permanently</th>
<th>Length of Freeze</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
<td>Permanent until removal</td>
</tr>
<tr>
<td>Kansas</td>
<td>No fee</td>
<td>No fee</td>
<td>n/a</td>
<td>No fee</td>
<td>Permanent until removal</td>
</tr>
<tr>
<td>Mississippi (w/ valid police report, investigative report or complaint filed with law enforcement)</td>
<td>$10</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>Permanent until removal</td>
</tr>
<tr>
<td>South Dakota (w/ valid police report)</td>
<td>No fee</td>
<td>No fee</td>
<td>n/a</td>
<td>No fee</td>
<td>Expires after 7 years from date of freeze</td>
</tr>
<tr>
<td>Washington (until 9/1/08)</td>
<td>Currently no fee for victims or seniors.</td>
<td>$10 after 9/1/08</td>
<td>n/a</td>
<td>$10</td>
<td>Permanent until removal</td>
</tr>
</tbody>
</table>

### States with Credit Freeze Laws that Apply to ALL Consumers

<table>
<thead>
<tr>
<th>State</th>
<th>Fee for ID TheftVictims?</th>
<th>Fee to Freezefor other Consumers</th>
<th>Fee to LiftTemporarily</th>
<th>Fee to LiftTemporarily toSpecificCreditor</th>
<th>Fee to RemovePermanently</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>$0</td>
<td>$10</td>
<td>$10</td>
<td>$12</td>
<td>$10</td>
</tr>
<tr>
<td>Louisiana</td>
<td>$0 and no fee for 62 years +</td>
<td>$10</td>
<td>$8</td>
<td>n/a</td>
<td>$0</td>
</tr>
<tr>
<td>Nevada</td>
<td>$0 w/ a police report</td>
<td>$15</td>
<td>$18</td>
<td>$20</td>
<td>$18</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$0 w/ valid report or complaint w/ law enf. agency</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
</tr>
<tr>
<td>Connecticut</td>
<td>n/a</td>
<td>$10</td>
<td>$10</td>
<td>$12</td>
<td>$10</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$0</td>
<td>$0</td>
<td>$5</td>
<td>n/a</td>
<td>$5</td>
</tr>
<tr>
<td>New York</td>
<td>$0</td>
<td>$0 for the first, $5 for a second</td>
<td>$5</td>
<td>n/a</td>
<td>$5</td>
</tr>
<tr>
<td>Maine</td>
<td>$0 w/ a police report</td>
<td>$10</td>
<td>$10</td>
<td>$12</td>
<td>$10 to have PIN reissued</td>
</tr>
<tr>
<td>Colorado</td>
<td>n/a</td>
<td>No fee for first freeze - $10 for second</td>
<td>$10</td>
<td>$12</td>
<td>$10</td>
</tr>
<tr>
<td>Florida</td>
<td>$0 and no fee for 65 years +</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
</tr>
<tr>
<td>Vermont</td>
<td>$0</td>
<td>$10</td>
<td>$5</td>
<td>n/a</td>
<td>$5</td>
</tr>
<tr>
<td>Kentucky*</td>
<td>$0 w/ police report</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10 to have PIN reissued</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$0</td>
<td>$5</td>
<td>$5</td>
<td>n/a</td>
<td>$5</td>
</tr>
<tr>
<td>Delaware</td>
<td>$0</td>
<td>$20</td>
<td>No fee</td>
<td>n/a</td>
<td>No fee</td>
</tr>
<tr>
<td>State</td>
<td>Fee</td>
<td>Fee</td>
<td>Fee</td>
<td>Fee</td>
<td>Fee</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----</td>
<td>-----</td>
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<td>-----</td>
</tr>
<tr>
<td>Indiana</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$0 w/ police report, investigative report, or complaint to law enf. agency</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>$0</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$0 and no fee for 65 years +</td>
<td>$0</td>
<td>$10</td>
<td>$10</td>
<td>$10</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$0 or no fee for 65 years +</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>$0 for individual w/ evidence satisfactory to the CRAs that individual made report to a law enf. agency</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
</tr>
<tr>
<td>Hawaii</td>
<td>$0</td>
<td>$5</td>
<td>$5</td>
<td>n/a</td>
<td>$5</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>$0</td>
<td>$10</td>
<td>No fee</td>
<td>n/a</td>
<td>No fee</td>
</tr>
<tr>
<td>Montana</td>
<td>$0</td>
<td>$3</td>
<td>$3</td>
<td></td>
<td>$5 to have PIN reissued</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$0 w/ copy of police or investigative report and no fee for 65 years +</td>
<td>$10</td>
<td>$5</td>
<td>n/a</td>
<td>$5</td>
</tr>
<tr>
<td>North Dakota</td>
<td>$0 w/ valid copy of a police report or police case number or complaint to law enf. agency</td>
<td>$5</td>
<td>$5</td>
<td>n/a</td>
<td>$0</td>
</tr>
<tr>
<td>Wyoming</td>
<td>$0</td>
<td>$10</td>
<td>$10</td>
<td>n/a</td>
<td>$10</td>
</tr>
</tbody>
</table>
West Virginia | $0 and no fee for 65 years + | $10 | $10 | n/a | $10  
Illinois | $0 | $15 | $0 | n/a | $0  
Nebraska* | $0 | $10 | $10 | $12 | $10  
Texas | $0 | $10 | $10 | n/a | $10  
Oregon | $0 | $10 | $10 | n/a | $10  
Maryland | $0 w/report of alleged identity fraud or w/identity theft passport | $5 | $5 | n/a | $5  
Tennessee | $0 | $7.50 | $0 | n/a | $5  
Massachusetts | $0 | $5 | $5 | n/a | $5  
Utah | “Reasonable fees” will be able to temporarily lift or “thaw” the freeze w/n 15 minutes of electronic request |  

* All of the above state credit freeze laws provide that the freeze will remain permanent until removed by the consumer, except for those states indicated by the * asterisk which provide that freezes will automatically expire after 7 years unless renewed.

** States are in descending order from those that passed credit freeze laws first to those which have passed legislation that comes into effect within the next year.

On average, the freezing fee for non-identity theft consumers is $8.61, but a majority of states have followed California’s lead, charging $10 to freeze one’s account. Where available, the fee to temporarily lift a freeze for one specific creditor is generally higher, while the fees to lift a freeze temporarily or remove it completely is the same price or lower than the price to initiate a freeze.

103. Id.
B. Insufficiency of Current State Law – Not All Consumers are Protected

There are several inconsistencies between the different state laws, rendering them insufficient to provide adequate consumer protection. Some states restrict credit freezes to those who have been victims of identity theft. Credit freeze laws that are restricted to identity theft victims are not significantly stronger than the FCRA and the FACTA.

There is also varying flexibility in the removal of credit freezes. Some state laws provide for temporary removal of freezes to a specific creditor while others only allow for permanent removal. This could cause disparities between consumers’ ability to apply for special financing promotions or finance large purchases. Although almost all states allow consumers to lift freezes temporarily, only a handful offer a temporary thaw to a specific creditor. Provisions providing for creditor-specific temporary thaws are preferable because across-the-board temporary lifts leave the consumer vulnerable to attack during the thaw period.

There are also varying fee structures in place in the different states. Many states have followed California’s fee structure. The cost of freezing credit and to remove the freeze completely is $10, while the cost of temporarily lifting the freeze is $12. The same $10 cost has been adopted in a majority of states,

104. State Chart, supra note 100-01 and accompanying chart.
107. See supra note 100-01 and accompanying charts.
109. See infra notes 160-66 and accompanying text.
110. See supra note 100-01 and accompanying chart.
111. See infra notes 224-29 and accompanying text.
112. See supra note 100-01 and accompanying chart.
113. See supra note 70.
114. Consumers Union, supra note 92.
but some states have implemented a higher fee for credit freeze services.\textsuperscript{115} For some citizens this cost might prove prohibitive or prevent consumers from applying for new lines of credit in order to avoid the fees associated with temporary freeze removal.\textsuperscript{116} Additionally, some states prohibit fees from being charged to victims of identity theft and senior citizens.\textsuperscript{117} Absent this no-fee provision, some senior citizens and identity theft victims may not be provided adequate protection due to their inability to pay the fee amounts.\textsuperscript{118}

Moreover, state data breach notification laws vary significantly.\textsuperscript{119} Each state defines relevant terms such as breach and personal information differently, which affects whether notice to consumers is required.\textsuperscript{120} The scope of each state law is also different; for example, Georgia and Maine laws only apply to information brokers, while Nevada’s and Vermont’s statutes apply more broadly to data collectors.\textsuperscript{121} Since different entities are treated differently under each state statute, consumers of some states are more likely to be at risk for identity theft if their state statute has a narrow scope concerning which entities are controlled by the data breach notification law.\textsuperscript{122} The variations in state laws also cause problems with compliance for banks and other institutions.\textsuperscript{123} Large data breaches might affect consumers across different states – financial institutions could face different and even conflicting state requirements.\textsuperscript{124}

\begin{thebibliography}{99}
\bibitem{116} See infra notes 224-28 and accompanying text.
\bibitem{118} See infra notes 217-22 and accompanying text.
\bibitem{120} See id. at 140-47.
\bibitem{122} See Practising Law Inst., supra note 119, at 141, 147.
\bibitem{123} See id. at 147.
\bibitem{124} Kini & Shreve, supra note 84, at 97.
\end{thebibliography}
notification also changes from state to state.\textsuperscript{125} State credit freeze and data notification laws provide inconsistent protection for consumers on a national level.\textsuperscript{126}

V. Why a Federal Standard is Necessary and Associated Concerns

A federal standard is necessary because current federal law does not provide sufficient identity theft protection to consumers.\textsuperscript{127} A federal standard would provide a uniform, base-level of protection for consumers nationwide.\textsuperscript{128}

A. Credit Freezes Would Remedy the Current, Insufficient Federal Protection

Credit freezes prevent identity theft and are therefore superior to solutions that focus on restoring credit to its original status after identity theft has occurred.\textsuperscript{129} Credit consultants and fraud investigators believe that credit freezes are the best protection against the messiest form of identity theft: new account fraud.\textsuperscript{130}

A credit freeze allows consumers to completely block any new accounts from being created in their name.\textsuperscript{131} All state credit freeze laws provide for a default expiration period of at least seven years, and, under most laws, credit freezes remain in place for the seven-year or longer time period until an individual requests that the freeze be removed.\textsuperscript{132} Although consumers may place a fraud alert on their accounts under the FACTA, this alert lasts only ninety days for all individuals and up to seven years for identity

\begin{itemize}
\item \textsuperscript{125} Id.
\item \textsuperscript{126} See supra notes 92-125 and accompanying text.
\item \textsuperscript{127} See supra notes 51-68, 73-79, 88-90 and accompanying text.
\item \textsuperscript{128} See infra notes 213-39 and accompanying text.
\item \textsuperscript{129} See Zaidi, supra note 8, at 124.
\item \textsuperscript{131} See supra note 34 and accompanying text.
\item \textsuperscript{132} Consumers Union, supra note 92.
\end{itemize}
Theft victims. Therefore, individuals who wish to preemptively protect their credit would be required to request a new fraud alert every three months. Additionally, although CRAs maintain that a fraud alert placed at one agency automatically places an alert with the other major reporting agencies, this is oftentimes not the case. Theoretically, a consumer that wished to place constant fraud alerts on her account would have to request credit reports twelve times a year. This could prove unduly burdensome for individuals, especially when fraud alerts only warn retailers to use extra caution but do not actually block any activity on an individual’s account.

Credit freezes would address the ITADA’s failure to account for the fact that identity theft is unavoidable, undetectable, and unstoppable. A credit freeze would prevent identity thieves from using a consumer’s identity to open new accounts. The fact that a consumer would not be aware of this attempt would be less relevant because the consumer’s credit report would be protected by the credit freeze. The freeze would essentially block identity thieves from stealing a consumer’s identity.

Credit freezes would also address the limitations of the GLBA. Although the GLBA only applies to financial institutions, a credit freeze would apply to any entity that was attempting to obtain a copy of a consumer’s credit report. The

134. See id.
135. See id.
136. See id.
137. Hoofnagle & Solove, supra note 39, at 364.
139. See ITPA, supra note 70.
140. See id.
141. See id.
142. See infra notes 143-45 and accompanying text; see also supra notes 88-91 and accompanying text. Consumers are not required to be given data breach notification under the GLBA when the data breach occurs in a non-financial institution. Id. A credit freeze would greatly mitigate the threat of data breaches because identity thieves would be prevented from using the stolen data to open new accounts because copies of the consumer’s credit report would be blocked for being issued. Id.
143. See, e.g., The Consumer Identity Protection and Security Act, S. 806, 110th
scope of protection of a credit freeze would not be limited to the opening of new bank accounts, but instead could be used when applying for products such as new credit cards, cellular phone plans, and car loans. A credit freeze would mitigate the harm that a data breach could potentially cause because that information could not be used to open new lines of credit without a copy of the consumer's credit report.

B. The Challenges and Competing Interests of a Federal Standard

The Consumer Data Industry Association (CDIA), which represents the interest of the three largest credit bureaus, has vigorously campaigned against the enactment of state credit freeze laws. The CDIA argues that credit freezes can be expensive for credit bureaus when state law mandates only a nominal fee for credit freeze services and that they remain unused by a majority of consumers. Lobbyists for the CDIA maintain that protections under federal law are more than adequate to protect identity theft victims.

If a consumer's credit is frozen, credit bureaus are unable to sell that consumer's credit report to the various pre-screening and spam mail companies, which cut into a large portion of credit bureau profits. Lobbyists for the CDIA argue that there are "significant, significant protections available to consumers under the Fair Credit Reporting Act and under state laws." The CDIA argues that the FACTA meets the needs of victims of identity theft and that time will show that there is no need for additional


144. See Weston, supra note 12.
145. See id.
146. Achohido & Swartz, supra note 130.
147. Id.
148. Id.
149. Id.
Although the fraud alert under the FCRA and the FACTA may allow consumers to stop identity theft prior to major damage, the fraud alert system requires an extreme amount of diligence and time on the part of the consumer.\textsuperscript{152} Another industry affected by credit freezes is the credit monitoring service industry.\textsuperscript{153} Credit monitoring services like ID Watchdog and LifeLock charge consumers a fee each month to place and renew fraud alerts on consumer credit reports, request credit reports from credit bureaus, and remove consumers from pre-approved credit card and spam mail lists.\textsuperscript{154} Additionally some services, like LifeLock, guarantee their services and help to navigate consumers through the repair process if their identities are stolen.\textsuperscript{155} Consumers are able to perform all of these actions for themselves for free, but the convenience of having a credit monitoring service may justify the monthly fee for some consumers.\textsuperscript{156} Credit monitoring services would stand to lose significant business, or become obsolete, if credit freezes were mandated because credit freezes would allow consumers to freeze their credit and then forget about it.\textsuperscript{157} A credit freeze does not require consumers to check back periodically because it is a secure way of blocking new account identity theft.\textsuperscript{158} If consumers were provided with a hassle-free, simple way to stop identity theft, then these credit monitoring services would no longer be needed.\textsuperscript{159} Retail industries that rely on instant credit decisions, such as automobile dealerships, also contest the passage of credit freeze laws.\textsuperscript{160} “The credit and retail industries fear interruption in the

\begin{itemize}
\item \textsuperscript{151} Id.
\item \textsuperscript{152} LifeLock, http://www.lifelock.com (last visited Nov. 26, 2007).
\item \textsuperscript{153} See infra notes 154-58 and accompanying text.
\item \textsuperscript{154} See generally, LifeLock, supra note 152 (describing the difficulties and time investment of personal credit monitoring).
\item \textsuperscript{155} Id.
\item \textsuperscript{157} See supra notes 154-57 and accompanying text.
\item \textsuperscript{158} Achohido & Swartz, supra note 130.
\item \textsuperscript{159} See id.
\end{itemize}
The retail industry, however, has been lobbying Congress for years to make declaring personal bankruptcy more difficult. If frozen accounts need to be thawed before an extension of credit, this could reduce the number of consumers that default. The delay and process in removing the credit freeze would provide consumers with time to consider the purchase thoroughly. Additionally, a handful of states require credit bureaus to thaw an individual's credit within fifteen minutes of that individual requesting that her credit be unfrozen. A waiting period of fifteen minutes would not drastically reduce the availability of instant credit that retailers are so anxious to protect.

Businesses in general are also concerned about the increase in costs of compliance with new privacy laws. Several industry groups including the Financial Service Coordinating Council argue that additional "regulation would be duplicative, overly burdensome, and unnecessary." Those in the mortgage industry are also concerned that federal credit freeze legislation could frustrate business and pose an economic health risk to the mortgage industry. These industries' fears, however, would be addressed if a uniform, national credit freeze law was put into place. The national law could contain a quick thaw provision that would reduce the thawing period to that of fifteen minutes. Even a thawing period as long as an hour would not prohibitively

162. See id.
163. See id.
164. See id.
165. Krebs, supra note 98.
166. Block, supra note 160.
168. Id. The Financial Service Coordinating Council includes the American Bankers Association, American Council of Life Insurers, the American Insurance Association, and the Securities Industry Association. Id.
169. Id. at 43.
170. See id.
171. See infra notes 172-73 and accompanying text.
172. See infra notes 223-32 and accompanying text.
lengthen the time it takes to complete a transaction.\footnote{173}

Additionally, some state credit freeze laws exempt from the freeze businesses that have a pre-existing business relationship with a consumer.\footnote{174} Opponents of credit freeze laws argue that this exemption gives bank or financial institutions, which have preexisting relationships, an unfair competitive advantage.\footnote{175} Affiliates of the institution would also be exempt from the freeze and able to access the consumer's credit file.\footnote{176} Competing institutions would not have this opportunity.\footnote{177} A national credit freeze law could provide uniformity of these exemptions and additionally prevent exempted creditors from accessing the consumer's credit file for purposes that were not directly related to the current credit relationship.\footnote{178}

Opponents of credit freezes argue that credit freezes are not necessary because a majority of consumers in states where credit freezes are available do not take advantage of credit freeze protection.\footnote{179} Other factors, however, may potentially explain the minimal use of credit freezes; first, consumers may not be aware of a credit report freeze option.\footnote{180} A national credit freeze campaign, similar to the free credit report campaign, could make consumers aware that this form of protection is available.\footnote{181} Second, individuals might avoid credit freezes to keep their credit reports accessible in case they apply for new lines of credit.\footnote{182} If quick thaw provisions were available nationwide, consumers would be able to enjoy the protection of a credit freeze while being able to quickly thaw their credit if they wished to apply for new credit.\footnote{183} Finally, consumers may not be aware that credit freezes do not

\footnote{173}{See id.}
\footnote{174}{Booncharoen, supra note 167, at 43.}
\footnote{175}{Id. at 38.}
\footnote{176}{See id.}
\footnote{177}{See id.}
\footnote{178}{See infra notes 212-36 and accompanying text.}
\footnote{179}{Achohido & Swartz, supra note 130.}
\footnote{180}{Id.}
\footnote{181}{See generally Fair Credit Reporting Act, 15 U.S.C.A. § 1681 (West 2000 & Supp. 2007) (the free credit report requirement in this statute was followed by a campaign).}
\footnote{182}{Achohido & Swartz, supra note 130.}
\footnote{183}{Id.}
prevent the use of current lines of credit. In other words, consumers may misinterpret a credit freeze as a complete freeze of credit rather than just freezing the release of a credit report on the consumer. In addition to raising awareness of credit freezes, a national campaign might also offer education about credit freezes to remedy this misperception. Although there are issues associated with credit freezes, these can be addressed and remedied.

C. Credit Bureaus Offering Credit Freezes for All Consumers Does Not Negate the Need for National Credit Report Legislation

In 2007, the three major credit bureaus began to offer security freezes to all consumers. Although credit freezes are now available to all consumers, this does not remedy the problem of uniformity. Each consumer is subject to the law of the state in which she resides. For those consumers who do not live in a state with a credit freeze law, they are subject to the credit bureau’s voluntary security freeze provisions. Only those who reside in states with security freeze legislation are provided with minimum time periods in which the consumer’s credit report must be frozen or thawed. Those consumers whose states do not have credit freeze laws are subject to the time periods set by the credit bureaus. The fee to place, lift, and remove a credit report freeze

184. Id.
185. Id.
188. Id.
190. Equifax, http://www.equifax.com/cs/Satellite?c=EFX_ContentRoot&cid=1165203975981&pagename=5-1/5-1_Layout (last visited Nov. 26, 2007) (demonstrating that the credit freeze is limited only to Equifax).
191. Id.
192. Id.
has been set at $10 by the credit bureaus.\footnote{193} This fee and the availability of credit freezes could easily be subject to change.\footnote{194}

VI. CONTENT OF FEDERAL CREDIT FREEZE LEGISLATION

A national credit freeze law would provide uniformity as well as superior consumer protection nationwide.\footnote{195} Previously proposed national credit freeze legislation serves as an important framework for determining what features federal legislation should include.\footnote{196}

A. Federal Credit Freeze Rights

1. Previously Proposed Rights

There are two major credit freeze bills that have been proposed that include some of the necessary characteristics of federal credit freeze legislation.\footnote{197} The first bill, the “Consumer Identity Protection and Security Act” (S.806) was introduced on March 7, 2007 by Senator Mark Pryor (D-Ark.).\footnote{198} S.806 required CRAs to place credit freezes on a consumer’s credit report within three days of receiving a request as well as temporarily lifting a freeze for a specific creditor upon request of the consumer within one business day.\footnote{199} S.806 set a maximum fee of $15 for credit freeze services except for those who have suffered from identity theft, those who had received notice that their data had been breached, those who were over the age of 65, or active or ready reserve military personnel and their spouses.\footnote{200} S.806 did not


\footnote{194} See supra notes 185-91 and accompanying text.

\footnote{195} See supra notes 101-18, 127-45 and accompanying text.

\footnote{196} See infra notes 199-212 and accompanying text.

\footnote{197} See id.

\footnote{198} The Consumer Identity Protection and Security Act, S. 806, 110th Cong. (2007).

\footnote{199} Id. § 2(d)(1).

\footnote{200} Id. § 2(h)(1)-(2).
propose to preempt existing state credit freeze laws.\textsuperscript{201} S.806 has been referred to the Committee on Banking, Housing and Urban Affairs but has not yet been scheduled for debate.\textsuperscript{202}

The second bill, the “Identity Theft Protection Act” (H.R. 3316) was proposed on August 2, 2007 to amend the FCRA by House Financial Subcommittee Chairman Carolyn Maloney (D-N.Y.) and Ranking Minority Member Paul Gillmor (R-Ohio).\textsuperscript{203} H.R. 3316 focused on creating a centralized procedure for consumers to obtain, lift temporarily, or remove a security freeze.\textsuperscript{204} Additionally, H.R. 3316 would create a central source where consumers could communicate with all three of the major credit bureaus.\textsuperscript{205} H.R. 3316 differs from S.806 in that it requires a freeze to be removed or temporarily lifted within fifteen minutes of the request if made by telephone or a secure electronic method.\textsuperscript{206} The fee structure of H.R. 3316 is also somewhat different from S.806.\textsuperscript{207} They both provide that fees may not be charged to identity theft victims.\textsuperscript{208} H.R. 3316, however, does not include senior citizens and active military personnel within its exemptions.\textsuperscript{209} H.R. 3316 also provides a lower maximum fee of $10 in order to place the credit freeze and to maintain the freeze per year and does not allow a charge to be assessed for removing or temporarily lifting the freeze.\textsuperscript{210} H.R. 3316 was introduced and referred to the House Committee on Financial Services but has not yet been scheduled for debate.\textsuperscript{211}

\textsuperscript{201} Id.
\textsuperscript{203} Donald G. Aplin, Sen. Pryor Introduces Credit Security Freeze, Phone Record Protection, No-Call Fees Bills, BANKING REPORT, Mar. 12, 2007, at 458.
\textsuperscript{204} Identity Theft Protection Act, H.R. 3316, 110th Cong. § 605c(a)(2)(A) (2007).
\textsuperscript{205} Donald G. Aplin, Bipartisan ‘File Freeze’ Bill Introduced by House Financial Subcommittee Leaders, BANKING REPORT, Aug. 6, 2007, at 213.
\textsuperscript{206} H.R. 3316, § 605c(e)(2)(A).
\textsuperscript{207} The Consumer Identity Protection and Security Act, S. 806, 110th Cong. (2007); H.R. 3316.
\textsuperscript{208} H.R. 3316, § 605c(g)(2)(A); S.806, § 2(h)(1).
\textsuperscript{209} H.R. 3316, § 605c(g)(2).
\textsuperscript{210} H.R. 3316, § 605c(g)(2)(A).
2. Rights To Be Included in Federal Credit Freeze Legislation

Federal credit freeze legislation is necessary in order to offer consumers an efficient and encompassing catch-all method of identity theft protection.\textsuperscript{212} The first feature that should be incorporated in federal credit freeze legislation is the availability of credit freezes to all consumers, not just those who have had their identity stolen.\textsuperscript{213} If non-identity theft victims are not given the ability to freeze their credit, then any preventative protection credit freezes can offer would be lost.\textsuperscript{214} Current federal legislation, namely the FCRA and the FACTA, do not provide adequate protection to prevent identity theft from occurring; credit freezes fill the gap if so those who have not suffered from identity theft are still able to procure adequate credit protection.\textsuperscript{215}

The second feature to include in national legislation is a reasonable fee structure that allows consumers to freeze their credit without undue financial burdens.\textsuperscript{216} H.R. 3316 provides for a uniform fee of $10 for placing and maintaining a credit freeze while eliminating fees for temporarily lifting or removing credit freezes.\textsuperscript{217} This fee structure should be included in federal legislation because it provides CRAs with income for maintaining credit freezes but does not require consumers to pay to remove or temporarily lift a freeze.\textsuperscript{218} By making temporary removal a free option, consumers are less likely to be deterred from applying for new lines of credit than they would be if there was a fee charged.\textsuperscript{219} Both H.R. 3316 and S.806 should be followed in that identity theft victims are provided with credit freezes free of charge.\textsuperscript{220} It would be reasonable to ask non-identity theft victims to pay a nominal

\textsuperscript{212} See infra Part VII.
\textsuperscript{213} See generally INFO. POLICY INST., CREDIT FILE FREEZE: POSITION PAPER (2005), http://www.infopolicy.org/publications/freeze_final.pdf (indicating that credit freezes should be open to all consumers).
\textsuperscript{214} See supra notes 62-68 and accompanying text.
\textsuperscript{215} See supra notes 51-68, 131-37 and accompanying text.
\textsuperscript{216} See INFO. POLICY INST., supra note 213, at 4.
\textsuperscript{217} Identity Theft Protection Act, H.R. 3316, 110th Cong. § 605c(g)(2)(A) (2007).
\textsuperscript{218} See INFO. POLICY INST., supra note 213, at 4.
\textsuperscript{219} See supra notes 119-25.
\textsuperscript{220} The Consumer Identity Protection and Security Act, S.806, 110th Cong. (2007); H.R. 3316.
fee for preventive protection of their credit. It would, however, be unreasonable to ask identity theft victims to pay a fee to protect themselves from future injury when identity theft can result from data breaches that are not the fault of the consumer.221

The third important feature for a national law is the ability of a consumer to lift a freeze temporarily, upon request, for a specific creditor.222 This feature would allow consumers to continue to make large purchases or to open new lines of credit without relinquishing the protection of a credit freeze.223 Currently, several states do not allow for temporary removal of a freeze and those that do often provide for a higher fee for this action.224 If a higher fee is charged to lift a credit freeze for a specific creditor, then a consumer might be deterred from using that action and instead choose to lift the freeze temporarily to all creditors or to remove the freeze permanently.225 A higher fee could expose consumers to the same threats they would face if their credit was not frozen.226 If the option to lift a freeze for a specific creditor is the same price as lifting a freeze temporarily or removing it completely, then consumers will not be deterred from choosing the more protective action.227

The fourth feature that should be included in national legislation is a quick thaw provision that would allow a consumer to thaw her credit quickly and easily.228 H.R. 3316 provides for a fifteen-minute thaw period after the CRA has received a telephone or secure electronic request.229 This is necessary in order to address the issues that the creditors and the retail industry have discussed in their opposition to credit freezes.230 If a consumer's

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221. See generally supra notes 2, 217-21 and accompanying text (discussing the necessary characteristics of national credit freeze legislation in order to provide adequate consumer protection).

222. See infra notes 224-28 and accompanying text.

223. Achohido & Swartz, supra note 130.


225. See supra notes 223-24 and accompanying text.

226. See supra note 225 and accompanying text.

227. See supra notes 222-26 and accompanying text.

228. See infra notes 230-32 and accompanying text.


credit report could be unfrozen within fifteen minutes, this would not deter or prevent consumers from financing large purchases or taking advantage of financing promotions.\textsuperscript{231}

It is unlikely that states would support federal preemption if a national credit freeze law was not as strong or stronger than the current law of the state.\textsuperscript{232} Federal credit freeze legislation should follow H.R. 3316 and S.806 in excluding language which would preempt more protective state laws.\textsuperscript{233} A national credit freeze law would also provide uniformity across the board, making it easier to promote the features and costs of a credit freeze to consumers.\textsuperscript{234} Current federal legislation does not provide adequate consumer protection against identity theft and the differences between state credit freeze laws leaves some consumers insufficiently protected.\textsuperscript{235} A federal credit freeze law would provide a uniform, base level of consumer protection on a national level.\textsuperscript{236} Congress has begun the process of addressing national credit freeze legislation.\textsuperscript{237} Now, in order to ensure the effectiveness of the legislation, it needs to make sure that the legislation, in its final form, contains the most attractive features of current credit freeze law.\textsuperscript{238}

\subsection*{B. Federal Data Breach Notification Requirements}

A necessary complement to credit freeze rights is stricter data breach notification standards.\textsuperscript{239} If consumers are unaware that their personal data is at risk they have no reason to request a credit freeze; strict federal standards are necessary to allow consumers to fully utilize credit freezes.\textsuperscript{240}

Currently, no federal data breach notification legislation

\begin{itemize}
\item[231.] Achohido & Swartz, \textit{supra} note 130.
\item[232.] Id.
\item[233.] See \textit{supra} note 233 and accompanying text.
\item[234.] See \textit{supra} notes 213-34 and accompanying text.
\item[235.] See \textit{supra} notes 51-68, 73-79, 87-90, 104-27 and accompanying text.
\item[236.] See \textit{supra} notes 213-35 and accompanying text.
\item[238.] See \textit{infra} notes 213-35 and accompanying text.
\item[239.] See \textit{infra} note 241 and accompanying text.
\item[240.] See \textit{supra} notes 5-6 and accompanying text.
\end{itemize}
The FTC has implemented de facto national data security standards for companies that fall under the FTC Act. This has resulted in several high profile settlements with companies that experienced large data breaches such as ChoicePoint and BJ's Wholesale Club, Inc. The FTC's de facto authority, however, is not sufficient to provide an adequate framework for federal data breach notification standards. The FTC has not enumerated specific requirements that must be followed when entities have suffered from data security breaches.

Numerous bills have been proposed in Congress; thus far, none have been passed. The Personal Data Privacy and Security Act of 2007 (S.495), introduced by Senator Patrick Leahy, was scheduled for debate on May 23, 2007 but has not yet been voted on by Congress. S.495, however, does not provide for sufficiently strict data breach notification standards. The timeliness of notification requirement only requires that notifications be made without unreasonable delay, defining reasonable delay as "any time necessary to determine the scope of the security breach, prevent further disclosures, and restore the reasonable integrity of the data system[]." This section would allow affected businesses too much flexibility in investigating the breach and finding a resolution. A necessary element of federal data breach notification is the speed of notification. The longer that affected entities are able to delay providing notification, the greater the risk of identity theft.

242. Id.
243. Id.
244. Id.
245. Id.
246. Id.
248. See infra notes 250-51 and accompanying text.
250. See infra note 252 and accompanying text.
251. Faulkner, supra note 30, at 1110.
A federal data breach notification law should apply to both financial institutions and non-financial entities that own or license personal information on consumers. A federal law should also apply to all types of consumer data and should include a broad definition of what is included within personal identifying information. All of these entities should be required to promptly notify all of their affected customers of any possible and actual data leaks. Notification should be required regardless of whether only a handful or 100,000 consumers are affected. A federal law should also restrict an entity’s ability to disclose information to its own affiliates while providing consumers with the option to opt out of information being shared with affiliated third parties.

VII. CONCLUSION

Federal legislation such as the FCRA and the FACTA fail to provide adequate defensive protection for consumers. A national credit freeze law, in conjunction with stricter security breach notification requirements, is a necessary protective measure that must be made so consumers can protect their credit. Although credit freezes can be problematic, specific legislative efforts can provide adequate solutions. National credit freeze legislation that is available to all consumers and includes a quick thaw provision, specific creditor thaw, and reasonable fee structure will provide consumers with superior and uniform identity theft protection.

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252. See supra notes 87-88 and accompanying text.
253. See generally Faulkner, supra note 30, at 1105-15 (describing the current state schemes on data breach notification).
254. Id.
255. Id.
256. See supra note 90 and accompanying text.
257. See supra notes 24-78 and accompanying text.
258. See supra notes 198-252 and accompanying text.
259. See id.