

Getting Serious About Identity Theft

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On Dec. 4, 2003 President Bush signed into law significant updates to the Fair Credit Reporting Act (FCRA) pertaining to the fight against identity theft. The new law provides for, among other things, a free credit report every year, and includes provisions to give consumers greater control over erroneous information in their credit report caused by identity theft. Many consumer groups, however, are unhappy with the law because it prevents the states from enacting even greater identity theft protections. A key point of contention is the preemption of stronger statewide financial privacy laws than are allowed by existing federal laws.

Financial institutions maintain a wealth of sensitive personal information about their customers, including spending habits and bill payment histories, bank account balances, employment histories, and credit scores. To prevent unwanted marketing solicitations, consumers have a right to expect a large measure of control over how this information is used and shared by financial institutions. A more serious concern is that identity thieves who gain access to personal information such as social security numbers can use this information to fraudulently open new accounts in an unsuspecting victim's name. But it's a mistake to believe that identity theft can be prevented by stronger financial privacy laws alone. The real enabler of identity theft is not information in the wrong hands, but the presumption that mere knowledge of a few items of personal information about an individual "proves" the identity of the person possessing that information.

It's not hard for an identity thief who knows your name, social security number, and perhaps a few other pieces of personal information about you to open a new credit card, for example, in your name. All they have to do is fill out an application. The creditor usually doesn't check to make sure that the person filling out the application is the same person whose name and social security number are provided. So the thief gets away with pretending to be you simply by knowing this information. The credit industry has recognized this problem, and has come up with the idea of a "fraud alert" that people can voluntarily place on their credit files. The idea is that when the creditor checks your credit file to see if you qualify for credit, the fraud alert is supposed to tell the creditor to contact you directly by telephone, or some other means, to verify that it's really you who has applied for the new account.

In the past, however, creditors often ignored these fraud alerts, resulting in successful identity thefts. One of the key provisions of the new FCRA law is that creditors who see a fraud alert are now required to have a "reasonable belief" that they know the true identity of the applicant before the account is opened, or credit granted. Generally, this means contacting the individual named in the application to verify that it is indeed that person who is making the application, and not an imposter. In fact, the law specifically allows consumers to designate a telephone number at which they can be contacted.

While the new law permits anyone to place a 90-day fraud alert on their credit report, credit bureaus could require proof of identity theft victim status before an "extended"

alert is granted. So although anyone could request that creditors contact them directly for verification when opening a new account in their name, after 90 days this capability could be restricted only to previous identity theft victims. But if the best protection against identity theft that is written into the law allows consumers to require that creditors contact them directly for verification before opening new accounts, this form of protection should be available to anyone, not just previous identity theft victims.

The new law is also a bit vague on what should happen when the creditor sees the fraud alert. Since a fraud alert is likely to be perceived by a creditor as indicating a greater chance of a fraudulent application, the creditor might possibly require an onerous personal appearance at the creditor's office, armed with all sorts of identity documentation. Or the creditor might freeze a victim's accounts without the victim's knowledge. Instead of relying fraud alerts to protect themselves, and possibly scare creditors into reacting in unforeseen ways, consumers should simply be able to request that they be personally contacted whenever someone attempts to open a new account in their name. Because identity theft mainly involves financial transactions, the financial services industry could play a larger role in helping their customers to do this.

Imagine being asked by your bank if you'd like to participate in the bank's identity theft prevention program. If you agree, your name and identifying information would become part of a list maintained by the financial services industry. Whenever you, or an imposter claiming to be you, attempt to open a new account somewhere, the creditor would identify the bank you have designated as your "trusted authenticator" from the list. Your bank would be notified electronically and asked to verify your identity. The bank would then contact you by a means of your choosing, such as a secure email or a (cell) phone call, and ask you to verify whether or not you are actually the person filing the new account application. Your response would be forwarded to the creditor, who would then grant or deny the application accordingly.

Participation would be voluntary on the part of consumers, just as fraud alerts are today. Incentives for creditors to authenticate new account applicants in this manner would be written into the law, just as the updated FCRA requires creditors to pay attention to fraud alerts. Of course, this assumes that banks have previously authenticated the identities of their customers, which they are supposed to do anyway. And it wouldn't interfere with the availability of "instant credit" any more than would today's fraud alerts. Newer technology could even make the process completely automated and faster.

Identity theft needs to be treated as a crime against individual consumers, and not simply as another type of financial loss that can be written off by businesses and passed along to consumers. Free credit reports and greater financial privacy are nice, but they don't prevent identity theft. It's time for the financial services community, perhaps in concert with the federal government, to undertake a serious effort to determine how best to verify the identities of persons unknown to them who seek to open new credit accounts, while at the same time protecting the privacy of those whose identities are verified.