



Credit Union Central of Canada

Government Relations Department

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Susan Gardiner,
Government of Canada Co-Chair
Identity Theft Working Group
Consumer Measures Committee
C/O Office of Consumer Affairs
235 Queen Street
Ottawa, Ontario, Canada

Randy Hopkins,
Government of Ontario Co-Chair
Identity Theft Working Group
Consumer Measures Committee
C/O Office of Consumer Affairs
235 Queen Street
Ottawa, Ontario K1A 0H5

Dear Ms. Gardiner and Mr. Hopkins:

Credit Union Central of Canada (Canadian Central) is writing to provide comments on proposals contained in the recent consultation paper issued by the Consumer Measures Committee in regard to Identity Theft¹.

Canadian Central is the national trade association for credit unions in Canada outside of Quebec. Through their ownership of Canadian Central, the provincial credit union Centrals are able to provide their direct credit union members national services that include the last tier of system liquidity, participation in the clearing and settlement of payment items through the Canadian Payments Association, participation in the INTERAC debit network and government relations.

¹ Consumer Measures Committee. *Working Together to Prevent Identity Theft*. (July, 2005).

The Canadian Central family of credit unions numbers 534, with over 1,800 locations. Together, they serve 4.8 million members, and employ over 20,000 people. Altogether, these 534 credit unions serve 951 communities across Canada. In 330 smaller towns, credit unions are the only financial institution. Assets of the 534 credit unions total approximately \$82 billion.

The credit union system recognizes that rapid technological change has created many more opportunities for identity theft and credit unions are dedicated to ensuring that necessary measures are taken to protect the identities of our members. The credit union system is also committed to working in a cooperative way with provincial governments, the Federal Government, consumers and other stakeholders in their efforts to prevent identity theft.

It is with this in mind that we outline our comments and concerns regarding the ten proposals set out in the consultation paper.

First of all we would like to make three broad comments about the general approach found in the consultation paper:

1. The macro-level statistics presented in the consultation document outlining the nature and the extent of identity theft do not effectively clarify the “hot spots” for identity theft. This is a concern because it is crucial to have such micro-level data to properly target legislative and regulatory proposals to deal appropriately with the problem.² Without more finely granulated data it is possible that future regulatory measures will be too broadly gauged and unnecessarily impose costs on stakeholders which are at lower risk for identity theft.
2. The apparent lack of detailed micro-level data on identity theft appears to contribute to the fact the consultation paper treats all credit grantors (regulated financial institutions, credit card companies, retail credit grantors, car dealerships, furniture stores) as equivalent. However, regulated financial institutions such as credit unions and chartered banks face a higher level of regulatory scrutiny and conduct their lending business in a far different manner than those of non-regulated credit grantors. It is difficult to imagine how an effective regulatory response can be developed on such a broad, yet possibly flawed, assumption.
3. The consultation paper appropriately observes that:

² The Federal Government’s recent “Smart Regulation” initiative has set out as one of its leading principles the view that all regulatory initiatives should be supported by the appropriate level of information and evidence as the basis for effective decision making and gauging any regulatory response. See: Government of Canada, *Background and Overview of Smart Regulation*. (2005).

“[C]onsumer behaviour can put individuals at risk of identity theft when, for example, people fail to protect their PIN, provide more information than necessary, or make online payments on insecure websites”.

Despite this observation, almost all of the regulatory proposals set out in the paper fail to address the issue of consumer responsibility for preventing identity theft yet every proposal will entail a greater burden (financial and regulatory) on organizations and financial institutions³. However, Canadian Central is concerned that if rules are established that lack incentives for consumers to protect their identity, governments risk creating a moral hazard whereby consumers are less vigilant about protecting their identity because there is less likelihood the consumer will be held responsible for their lack of vigilance. Canadian Central is of the view that a careful balance must be struck that recognizes that institutional responsibility for identity theft should be limited to situations in which the consumer has taken at least the basic steps to protect their identity from theft.

Comments and recommendations in regard to specific proposals are outlined below in the order they appear in the consultation paper. These comments and recommendations represent areas of concern that were raised by credit union system representatives in response to the consultation paper.

Re: Option I: Truncate (partially blank out) payment card numbers

Persons that accept payment cards (including credit cards and debit cards) for the transaction of business must not print the expiry date or more than the last five digits of the card number on any receipt generated electronically at the point of sale or transaction.

The industry is currently moving in this direction and this proposal might be explored further by the CMC in consultation with industry stakeholders. Although the implementation of such an option may have an impact on the incidence of identity theft there will be costs associated with retrofitting merchant equipment. Some of this expense might be recouped by long term savings associated with fraud losses.

If this option is to be pursued it should only be done in a phased in manner and in cooperation with the industry stakeholders. There should be no exemptions to truncation on debit card transactions. If debit card terminal technology that truncates numbers on electronically generated receipts is available then merchants should be required to use that technology. Allowing exemptions in this area may merely generate non-compliance.

The financial institution (FI) providing the merchant service should be responsible for the costs of updating the technology and retrofitting merchant equipment.

³ . We recognize that a number of proposals aim to give consumers tools to deal with identity theft *after* it occurs.

In regard to ultimate responsibility for losses in relation this proposal, Canadian Central is of the view that if the source of the loss can be traced, the negligent party (merchant, consumer, or FI) should be responsible for costs. Of course, we recognize that every situation is different and it may be difficult or impossible to trace the source of the loss.

Re: Option II – Verify the identity of persons and organizations accessing credit reports

Credit bureaus must take reasonable steps to authenticate the people and organizations that are accessing credit reports.

This option appears to mostly impact credit bureaus and it is our understanding that credit bureaus have systems in place to verify that only bona fide financial institutions can access credit reports. Of course, financial institutions must also be responsible for administering access at the individual employee level (i.e. distribution and use of branch passwords).

Re: Option III – Do not disclose social insurance numbers (SINs) on credit reports or use them as a unique identifier for consumers

Where it is appropriate for financial institutions to collect SINs, they should keep the numbers confidential. In particular, consumer reporting agencies and financial institutions should not use a SIN as a unique identifier for consumers, or disclose the consumer's SIN on a credit report.

Although the situation may vary across the country, in many instances, credit unions already advise members that disclosing their SIN is optional. For example, in Saskatchewan, the standard account opening agreement used by Saskatchewan credit unions, and all lending documents, indicate that the SIN is not required for credit matching purposes. If a member/customer chooses not to disclose their SIN, the credit union will advise that some products (e.g. RRSPs) may not be available to that member because government regulations requiring the reporting of a SIN are part of the administration of the product (e.g. the issuance of a T5).

Canadian Central cannot support the use of a truncated SIN as a unique identifier since this would require a banking system change, to add another data field in which to store this number. Furthermore, all financial institutions, retail credit grantors, credit bureaus etc., would have to agree on the same format, and it is doubtful that this could occur.

Re: Option IV – Allow consumers to place freezes on their credit reports

Upon a consumer's request, credit bureaus must place a freeze on the consumer's credit report free of charge. If a freeze is in place, the credit bureau would not be permitted to release the credit report to a third party without prior express authorization from the consumer. Authorization may be obtained by contacting the consumer at a predetermined telephone number or street address.

Canadian Central recognizes that the benefit of this proposal lies in the fact it provides a tool with which consumers can take an active role in protecting their personal information. However, consumers would have to understand the use of this option could slow down credit approvals.

Canadian Central is also concerned that this option could prove administratively burdensome and time consuming for credit grantors and opens up the possibility for abuse by people with poor credit. It would be important to have measures in place to ensure that the person placing the freeze is in fact the person whose information it is.

Re: Option V – Require organizations that store personal information to notify individuals and credit bureaus in cases of security breaches.

When the security of personal information held by an organization is breached the organization must contact the individuals whose personal information has been compromised as well as relevant credit bureaus as soon as reasonably possible.

This proposal is a cause for concern because it does not define a “security breach” or indicate what constitutes “compromised” information. This lack of clarity makes the proposal difficult to properly assess. For example, there may be instances where there appears to be evidence that someone has possibly attempted to illegally access a database, however, no evidence that the attempt has compromised the security of personal information. How is an institution to proceed in such a situation?

If reasonable and workable definitions of these terms can be developed it will also be necessary to develop an approach to notifying customers that will provide them with the information required to protect themselves (e.g. contact names, checklists etc).

Re: Option VI – Require credit bureaus to place fraud alerts on consumer's credit reports in cases of security breaches or upon the request of an identity theft victim. Creditors that receive a report with such an alert on them must not advance credit to the individual named in the report unless steps are taken to verify the identity of the credit applicant.

It is our understanding that such practices are already in place today although less regulated credit grantors may not be using credit bureau reports as effectively as they should.

Re: Option VII – Require credit lenders to disclose details of fraudulent debts to victims.

Upon request, credit lenders must provide identity theft victims with details regarding the fraudulent debt that was incurred in their name.

It is unclear how this proposal will assist in *preventing* identity theft, as it will only occur after the fact.

Re: Option VIII – Upon proof of identity theft, require credit bureaus to block information about fraudulent debts appearing on a consumer’s credit report. Under certain circumstances may deny or rescind a block as long as the borrower is notified.

If fraudulent debts are not the consumer’s debts then they should not appear on their credit report. That said, there needs to be a system in place for obtaining proof of identity theft and hence rules as to what comprises clear evidence of identity theft.

Re: Option IX – Make organizations liable for damages for failing to comply with any new rules designed to prevent identity theft when they are brought into force.

Currently, regulated financial institutions face market pressures to deal effectively with identity theft and the prospect of financial loss (through write-offs or damage to the institution’s reputation) if they do not. Creating a civil right of action to enable “victims” of identity theft to sue organizations for a possible lack of vigilance could create a litigious environment that would be costly for consumers and financial institutions. Although such a framework exists in the United States, it does not appear to have reduced the rate of identity theft.

Re: Option X – Organizations must make plain language information readily available to inform victims of their rights.

A standardized checklist would be helpful outlining steps to be taken in the event of identity theft. This checklist could be used by both credit grantors and consumers. Such information should be provided at no cost to the consumer.

We thank you for this opportunity to provide comments on your recent consultation paper. Please feel free to contact Rob Martin, Senior Policy Advisor in the Government Relations Department at Credit Union Central of Canada (613-238-6747 ext. 327) if you have any further questions.

Sincerely

Hugh Scott
Director, Government Relations
Credit Union Central of Canada