



**Written Testimony of Mike Litt
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**Continuation of Hearing entitled "Examining the Equifax Data
Breach"**

**Before the Financial Services Committee
United States House of Representatives**

**The Honorable Jeb Hensarling, Chairman
The Honorable Maxine Waters, Ranking Member**

October 25, 2017

Chairman Hensarling, Ranking Member Waters, and Members of the Committee:

Thank you for the opportunity to testify on the best steps forward with the Equifax breach. I am the national consumer advocate for the U.S. Public Interest Research Group (U.S. PIRG). We are an independent non-profit group that promotes consumer rights. I work on identity theft prevention, among other consumer issues. In 2015, I wrote a report called, "Why You Should Get Security Freezes Before Your Information is Stolen."¹

In my testimony today, I will outline how the products and services offered by Equifax after its data breach are failing to fully protect consumers. I will also discuss why consumers need credit freezes at all the big three credit bureaus and what type of legislation we need to facilitate more consumers getting those freezes.

I. Why Consumers Need Freezes at All the Big Three Credit Bureaus

The Equifax breach is bad in many ways and has raised a lot of troubling questions. The question I'd like to focus on is why Equifax still has not provided or even clearly explained to consumers what they need to fully protect themselves.

There are different types of ID theft that can be committed depending on the type of information that has been stolen.

When credit card numbers are stolen, as they were for about 209,000 consumers in the Equifax breach², an ID thief can rack up debt on existing credit card accounts.

When full names, birthdates and social security numbers are stolen, like they were for over 145 million Americans in the Equifax breach,³ a few different types of ID theft can be committed, including new account fraud, tax refund fraud and medical services fraud.

Of all the possible types of ID theft out there, once your information has been stolen, there is only one kind that can be stopped before it happens. And that's where somebody opens a new credit account in your name - again, known as new account fraud - and racks up a ton of debt. The only way to prevent that is by getting credit freezes, also known as security freezes, at all three big national credit bureaus.

Credit freezes block potential creditors like a credit card company, cell phone store, or lender from viewing your credit report, which shows your credit history. And if they can't see that, they're just

¹ Ed Mierzwinski and Mike Litt, U.S. PIRG, *Why You Should Get Credit Freezes Before Your Information is Stolen*, October 2015.

² Equifax, *Equifax Announces Cybersecurity Incident Involving Consumer Information*, accessed at <https://www.equifaxsecurity2017.com/2017/09/07/equifax-announces-cybersecurity-incident-involving-consumer-information/>, 23 October 2017.

³ Stacy Cowley, "2.5 Million More People Potentially Exposed in Equifax Breach," *The New York Times*, 2 October 2017.

not going open an account.⁴ That's how you shut the door on identity thieves opening accounts in your name. And because creditors run checks with any one or a combination of the credit bureaus, you need to block access to your reports with all three bureaus. When you want to apply for credit, a loan, or insurance (or jobs that run credit checks), you can simply lift the freeze or temporarily "thaw" your report.

Disappointingly, Equifax has not adequately explained the need to block access to your credit report with all three credit bureaus.

II. The Limitations of Equifax's TrustedID Premier Product

Equifax is offering a free product called TrustedID Premier, made up of five different services for one year, to anyone, whether their info was lost or not.⁵ This package falls short of protecting consumers. Here's what they are offering and what the limitations of each are:

1. Copy of your Equifax Credit Report.

Looking at your credit report is a good idea because you can spot unauthorized credit accounts in your name. It's a good idea to check your credit report at all three bureaus, not just at Equifax. You can request free copies of your credit report at all three bureaus at annualcreditreport.com, the official website authorized by the government for requesting these free reports.^{6 7}

2. 3 Bureau Credit File Monitoring

TrustedID Premier includes credit monitoring at all three bureaus. Equifax should make it clear that monitoring only detects changes to your credit report. It does not detect fraudulent use of existing credit cards or any other type of fraudulent activity. And it does not actually prevent any kind of ID theft at all.

At best, monitoring will alert you to an ID thief opening an account in your name after they have already tried or successfully done so.

Due to huge marketing pushes by credit monitoring services and poor education by companies and other organizations after their data breaches, most consumers have not understood what they're getting with credit monitoring or that freezes are their only option for preventing any kind of ID theft.

⁴ We are unaware of any firm that opens new accounts without a credit report or credit score.

⁵ Equifax, *Equifax Announces Cybersecurity Incident Involving Consumer Information*, accessed at <https://www.equifaxsecurity2017.com/2017/09/07/equifax-announces-cybersecurity-incident-involving-consumer-information/>, 23 October 2017.

⁶ The ability to request a free annual credit report from each of the three big credit bureaus comes from the Fair and Accurate Credit Transactions Act of 2003 (FACTA). This act amended the Fair Credit Reporting Act (FCRA), in order "to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes." See 108th Congress, *Fair and Accurate Credit Transactions Act of 2003*, 4 December 2003.

⁷ The FTC has a page that explains how to access free credit reports by phone or regular mail too. See Federal Trade Commission, *Free Credit Reports*, accessed at <https://www.consumer.ftc.gov/articles/0155-free-credit-reports>, 23 October 2017.

They often also do not understand that “free trials” for subscription monitoring products quickly result in \$10-20/month bills. The Consumer Financial Protection Bureau in January took action against deceptive practices in the marketing of such products by both Equifax and Transunion.⁸

If you freeze your credit reports at all three credit bureaus and request a free copy of your credit report through annualcreditreport.com every 3-4 months, you don't really need credit monitoring. However, for consumers who don't get credit freezes, free monitoring of reports at all three credit bureaus should be available indefinitely, not just one year. The information that was stolen, including social security numbers and birthdates, does not have a shelf life.

3. Equifax Credit Report Lock

TrustedID Premier includes something similar to a credit freeze, something Equifax calls a “credit report lock,” but only for Equifax reports. The next section of this written testimony discusses concerns with locks in more detail.

Free freezes are not part of the TrustedID Premier product, but after public pressure, Equifax temporarily waived the fee for getting credit freezes through next January, but only for Equifax reports. The fee should be waived indefinitely, and free freezes should be offered for reports with all three credit bureaus.

Equifax is also reimbursing consumers who paid for a freeze for their Equifax report since September 7th. But Equifax should reimburse consumers who paid for freezes with the other bureaus too, not just with Equifax.

Identity thieves could still try to open credit accounts with companies that use the other two credit bureaus for credit checks. Therefore, a freeze or “lock” with only one bureau is incomplete protection.

4. Social Security Number Monitoring

Equifax advertises this services as searching “suspicious websites for your Social Security number.”⁹ This service wouldn't hurt, but again, the only fraud that can actually be prevented once someone has your Social Security number is new account identity fraud. And the only way to prevent that is through credit freezes. You're best off getting credit freezes with all three bureaus.

5. \$1M Identity Theft Insurance

This is a feature that reimburses you for costs incurred from identity theft. It's worth noting that you might already have some sort of insurance or equivalent protection from fraud resulting from ID theft that is extended to you voluntarily by your employer, your insurance company (as a rider on your existing homeowner's or renter's insurance), or your credit card issuer (as a perk), etc. It's also important to point out that ID theft insurance, whether offered free or as part of a service that you're paying for always has limitations, exclusions, and requirements and usually only covers incidental

⁸ Consumer Financial Protection Bureau, *CFPB Orders TransUnion and Equifax to Pay for Deceiving Consumers in Marketing Credit Scores and Credit Products*, 3 January 2017.

⁹ Equifax, *About TrustedID Premier*, accessed at <https://www.equifaxsecurity2017.com/what-can-i-do/#about-trustedid-premier>, 23 October 2017.

expenses to clear ID theft problems up such as postage and notary fees. It doesn't usually reimburse you for money that's been stolen from you, and if it claims to cover attorney's fees, remember that such coverage is usually extremely limited.¹⁰

III. Why there are Concerns with Credit Locks

There are several concerns with the more recently announced free lifetime lock on Equifax credit reports that is scheduled to be available as an app by the end of next January.¹¹ (The currently available lock is accessed by logging into an account via a web browser.)

From what we can tell, locks and freezes function similarly in that they block potential creditors like a bank or a lender from viewing your credit report.

The one difference we know of with Equifax's lock is that it does not block employment checks the way freezes do.¹² This difference does not raise concerns about fraud because ID thieves can't use employment checks to open accounts in your name. However, Experian's lock does not block access to employment checks or checks by insurance companies the way freezes do.¹³ This could potentially leave consumers vulnerable to insurance fraud. TransUnion has not provided enough information to determine any functional differences.¹⁴

1. There are Questions about Whether We'll Have to Give Up Our Rights with the Equifax Lock

Equifax's offer of its TrustedID Premier product after the breach came with strings attached – specifically signing away your rights to a day in court in the future. Signing up for the product required agreeing to “terms of use” that included an arbitration clause that potentially gave up your right to sue Equifax and join class action lawsuits over the breach.¹⁵

Due to public outcry, Equifax removed the arbitration language from its free TrustedID Premier product.

¹⁰ Susan Grant, Director of Consumer Protection and Privacy, Consumer Federation, personal communication, 17 September 2015.

¹¹ While its website does not provide details about the new lifetime lock available next January, Richard Smith, the former CEO of Equifax said during Congressional hearings that it would be available as an app. See House Financial Services Committee, “Hearing entitled, ‘Examining the Equifax Data Breach,’” 5 October 2017.

¹² Equifax, *About TrustedID Premier*, accessed at <https://www.equifaxsecurity2017.com/what-can-i-do/#about-trustedid-premier>, 23 October 2017.

¹³ Experian's webpage about its lock product, Experian CreditLock, outlines who your credit report is and isn't accessible to when it is locked. It says that when locked, Experian credit reports are still accessible to, “potential employers or insurance companies during the application process.” See Experian, *Experian CreditLock*, accessed at <https://www.experian.com/consumer-products/creditlock.html>, 23 October 2017.

¹⁴ TransUnion's webpages about its lock service do not appear to include details about who it does and doesn't block access to. See TransUnion, *Credit Lock Plus – Equifax and TransUnion*, accessed at <https://www.transunion.com/product/credit-lock>, 23 October 2017 and TransUnion, *TrueIdentity Free Identity Protection*, accessed at <https://www.transunion.com/product/trueidentity-free-identity-protection>, 23 October 2017.

¹⁵ Ron Lieber, “How to Protect Yourself After the Equifax Breach,” *The New York Times*, updated 16 October 2017.

However, it still has an arbitration clause for other products on their website.

It's also unclear whether signing up for the free lifetime lock with Equifax available at the end of next January will require consumers to sign an agreement with an arbitration clause.¹⁶

2. We Already Have to Give Up Our Rights with the TransUnion and Experian Locks

TransUnion, which currently offers an unlimited free lock as part of its TrueIdentity product does require signing an agreement with an arbitration clause.¹⁷

Experian does not offer a free lock and, according to the New York Times, has no interest in offering one.¹⁸ But it does offer it as part of its paid credit monitoring services. Signing up for these services does require signing an arbitration agreement.¹⁹

3. There are Also Concerns about Privacy and Access with Making the Lock Available as an App

An app could collect data on users and send it back to Equifax and/or its vendors. Further, no one knows what "terms and conditions" or "privacy policy" will apply to users of the Equifax app. What additional information will the firm collect and what limits will be placed on its use? Will the terms be changeable at any time?

Apps require users to have smartphones with internet access. Freezes can be placed and lifted on web browsers and over the phone. It is unclear if Equifax's lifetime free lock will also be available on web browsers and over the phone.²⁰ TransUnion does not allow for locks to be placed over the phone.²¹

4. A Lock with One Bureau but Not the Others Leaves Consumers Vulnerable to Identity Theft

Aside from the numerous concerns above, getting a lock with Equifax but not the other two big bureaus is like locking your front door but leaving your garage and back doors wide open. Equifax is being negligent by not even telling consumers that they need to block access to their credit reports with all three bureaus.

¹⁶ Ibid.

¹⁷ TrueIdentity, *Legal Information*, accessed at

<https://membership.trueidentity.com/tucm/support.page?panel=terms>, 23 October 2017.

¹⁸ Ron Lieber, "Equifax Calls for Free Credit Locks. Experian's Reply? Nope," *The New York Times*, 4 October 2017.

¹⁹ Experian, *Terms & Conditions*, accessed at https://usa.experian.com/#/registration?offer=at_eiwpt102&br=exp, 23 October 2017.

²⁰ A brief description of the free lifetime lock on Equifax's General FAQs webpage says that, "...consumers will be able to use their smartphone or computer to lock and unlock their Equifax credit file directly and quickly." However, during a Congressional hearing, Equifax's former CEO, Richard Smith, said the difference with the lifetime lock over the current lock is that it will be an app on an iPhone. See Equifax, *FAQs*, accessed at <https://www.equifaxsecurity2017.com/frequently-asked-questions/>, 23 October 2017 and House Energy & Commerce Committee, "Oversight of the Equifax Data Breach," 3 October 2017.

²¹ TransUnion's webpage about its free lock does not include information for getting a lock by phone. When I called TransUnion on October 19th, a representative told me that it was not possible to get a lock by the phone. See TransUnion, *TrueIdentity Free Identity Protection*, accessed at <https://www.transunion.com/product/trueidentity-free-identity-protection>, 23 October 2017.

The bottom line is that the best way to block access to credit reports is with freezes because they are a consumer right by law and not conditional on terms set by the credit bureaus.

IV. What We Need in Credit Freeze Legislation

Consumers should have the right, by law, to control access to our credit reports and protect ourselves from new account ID theft for free.

Equifax and the other credit bureaus fought for years against our right to freeze our credit reports in the first place and then demanded fees to do so.²²

In fact, PIRG worked on the first security freeze law in California and then promoted it nationwide, state by state. We wrote a model data breach notice and security freeze law with Consumers Union/Consumer Reports and promoted it with many state AARP chapters.²³ Between 2005 and 2009 a version was passed by nearly every state, forcing the credit bureaus to eventually provide the freeze everywhere.

All 50 states and DC now have their own laws that determine the maximum amount that the credit bureaus can charge for credit freezes, temporary lifts or “thaws,” and permanent removals.²⁴

Residents in only four states (Indiana, Maine, North Carolina and South Carolina) have access to free credit freezes and free thaws/temporary lifts. Residents in four other states (Colorado, Maryland, New Jersey and New York) have free freezes but charge for thaws. Three states (Delaware, Tennessee, Virginia) charge for freezes but provide free thaws.²⁵

Approximately 158 million consumers between 18-65 in 42 states and DC must pay a fee to get credit freezes. If all consumers in those states between 18-65 choose to freeze their reports, that would cost them an estimated \$4.1 billion, under current laws.²⁶ (Even if you account for Equifax’s temporary waiving of fees to freeze Equifax reports until the end of next January, it would still cost consumer over \$2 billion dollars.)

We are not customers of the credit bureaus. We did not give them permission to collect and sell our info, and in the case of Equifax, to lose it. And now we have to pay to protect ourselves? We have to pay to control access to our own information?

²² Here is an example of opposition to freeze legislation by the credit bureaus. Page 9 shows opposition to the first credit freeze law. See California Senate Judiciary Committee, *Bill Analysis SB 168*, accessed at <https://leginfo.ca.gov/faces/billAnalysisClient.xhtml>, 23 October 2017.

²³ U.S. Public Interest Research Group and Consumers Union, *The Clean Credit and Identity Theft Protection Act: Model State Laws*, November 2005.

²⁴ U.S. PIRG, *Credit Freezes By State*, accessed at <http://bit.ly/pirgfreezemap>, 23 October 2017.

²⁵ Only identity theft victims get freezes and thaws/lifts for free in every state. Some fees are waived, reduced, or even increased by some bureaus in some states for certain categories of consumers, including active duty servicemembers, victims of domestic violence, and minors. *Ibid.*

²⁶ *Ibid.*

The best way to protect consumers would be to freeze everyone's credit reports by default.²⁷ But making them free to all who take the step to opt in to get freezes would be a big win for consumers and an important first step with real benefits consumers deserve right now.

V. Federal Legislation Should Set a Floor, not a Ceiling for Security and Privacy Protections.

We support federal legislation that sets free freezes for all Americans as the floor. We also support legislation that requires freezes to be placed within 15 minutes of an online or phone request, as is already the law in at least 10 states and DC.²⁸

States should be allowed to continue finding even better ways to give consumers control over their credit reports. For example, a bill has been introduced in Massachusetts that not only makes the freeze free but also sets the freeze as the default on reports at all three credit bureaus.²⁹

My testimony has focused on the need for free freeze legislation. But it's important that any federal legislation on other important issues about security and data also set the floor and not the ceiling on what states can do to better protect consumers.

For example, seven states and DC currently have data breach notification laws that require breach notification regardless of a risk assessment.³⁰ Twenty-six other states require notification of breaches that pose potential harms beyond narrow financial risks.³¹ Several states, such as Massachusetts, also have comprehensive data security requirements. In past Congresses, bills that offer narrow breach notification and data security requirements have broadly preempted any broader state actions on privacy, breach notification, or data security.

Federal legislation should not preempt or replace existing stronger state laws.

VI: The Equifax Breach Serves Notice of the Need for Further Credit Reporting Reforms

As discussed in much more detail today by Chi Chi Wu of the National Consumer Law Center, we also strongly support HR3755, the Comprehensive Consumer Credit Reporting Reform Act proposed by ranking member Maxine Waters and other members.³² PIRG has worked with the committee since 1989

²⁷ Because credit freezes are the only way to prevent new account ID theft, the best public policy is for everyone's credit reports to be automatically frozen until consumers give consent to lift the freezes on their reports for credit checks.

²⁸ Transunion, *State Bill of Rights*, accessed at <https://www.transunion.com/docs/rev/personal/StateBillOfRights.pdf>, 23 October 2017.

²⁹ Attorney General Maura Healy, "Following Equifax Hack, AG Healey and Legislators Announce Data Breach Bill to Better Protect Massachusetts Residents", 25 September 2017.

³⁰ See Testimony of Laura Moy before the House Financial Services Committee regarding Financial Data Security in the Age of Computer Hackers, 14 May 2015, available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=399020>.

³¹ Ibid.

³² *H.R.3755 - Comprehensive Consumer Credit Reporting Reform Act of 2017*, accessed at <https://www.congress.gov/bill/115th-congress/house-bill/3755%20U.S>, 23 October 2017.

in its oversight of the Big 3 credit bureaus or “consumer reporting agencies” (CRAs) and the Fair Credit Reporting Act (FCRA). While the transfer of FCRA responsibilities to the Consumer Bureau in 2011 has jump-started the Big 3’s compliance efforts, as Ms. Wu notes, HR3755 will make additional improvements to the law necessary to hold the CRAs accountable to consumers.

We also strongly oppose two bills that were the subject of a committee hearing on the date that the Equifax breach was disclosed to consumers.³³ HR2359 (Rep. Loudermilk), the “FCRA Liability Harmonization Act” would wrongly eliminate all punitive damages and cap other damages when consumer reporting agencies break the law, eliminating a strong incentive to comply with the law. A discussion draft from Rep. Royce of the committee known as the “Facilitating Access to Credit Act,” would exempt consumer reporting agency (and certain other firms’) credit monitoring and other “educational” products from the Credit Repair Organizations Act, replacing strong protections against deceptive promises with a weak regulatory scheme.

Conclusion

One of the data breaches featured in our freeze report two years ago was where Experian, a different credit bureau, lost data including social security numbers and birthdates for 15 million T-Mobile customers.³⁴

The national discourse didn’t change after that breach, and necessary laws were not passed. But the national discourse is changing this time and hopefully will be accompanied by action.

The only kind of ID theft that can be stopped before it happens once personal information has been stolen is new account ID theft. And the only way to prevent that is by blocking access to your credit reports at all three big national credit bureaus. It’s time for consumers to have the right by law to protect themselves and control access to their own reports with credit freezes for free.

Thank you for your attention on this important issue and for the opportunity to present my testimony.

³³ House Financial Services Committee, “Hearing entitled, ‘Legislative Proposals for a More Efficient Federal Financial Regulatory Regime,’” 7 September 2017.

³⁴ Ed Mierzwinski and Mike Litt, U.S. PIRG, *Why You Should Get Credit Freezes Before Your Information is Stolen*, October 2015.