

**Supporting Statement for the
Reporting, Recordkeeping, and Disclosure Provisions Associated with the
Guidance on Response Programs for Unauthorized Access to
Customer Information and Customer Notice
(FR 4100; OMB No. 7100-0309)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Reporting, Recordkeeping, and Disclosure Provisions Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice (FR 4100; OMB No. 7100-0309).¹ The FR 4100 is the Board's information collection associated with the *Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice* ("ID-Theft Guidance" or "Guidance"). The ID-Theft Guidance was published in the *Federal Register* in March 2005.²

The ID-Theft Guidance, which applies to financial institutions, was issued in response to developing trends in the theft and accompanying misuse of customer information. The Guidance includes certain voluntary reporting, recordkeeping, and disclosure provisions. With respect to entities supervised by the Board, the Guidance applies to state member banks, bank holding companies (BHCs), affiliates and certain non-banking subsidiaries of BHCs, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, savings and loan holding companies (SLHCs), and Edge and agreement corporations. The estimated total annual burden for the ID-Theft Guidance is 29,940 hours.

Background and Justification

On February 1, 2001, Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (OTS)³ (collectively, the agencies) published the *Interagency Guidelines Establishing Standards for Safeguarding Customer Information* (Security Guidelines),⁴ which were published to fulfill a requirement in section 501(b) of the Gramm-Leach-Bliley Act (GLBA) that requires the agencies to establish appropriate standards for financial institutions to develop and implement an information security program designed to protect their customers' information and a response program that specifies actions to be taken when the institution suspects or detects that unauthorized individuals have gained access to customer information systems. To address the need for additional interpretive guidance regarding section 501(b) of GLBA and the Security Guidelines, on March 29, 2005, the agencies adopted the ID-Theft Guidance. The ID-Theft Guidance sets forth guidelines for how

¹ There is no formal reporting form for this collection of information (the FR 4100 designation is for internal purposes only).

² See 70 FR 15736 (March 29, 2005).

³ The Dodd-Frank Wall Street Reform and Consumer Protection Act transferred the powers and duties of the OTS to the Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, and the Office of the Comptroller of the Currency, and the OTS was abolished.

⁴ See 66 FR 8615 (February 1, 2001).

financial institutions should provide notice to customers affected by unauthorized access to or use of customer information that could result in substantial harm or inconvenience to those customers and describes the suggested components of a response program for such incidents.

The ID-Theft Guidance states that an institution should notify affected customers as soon as possible when it becomes aware of unauthorized access to “sensitive customer information” if the institution determines that misuse of its information about a customer has occurred or is reasonably possible and should take appropriate steps to safeguard the interests of affected customers, including monitoring affected customers’ accounts for unusual or suspicious activity.

For the purposes of the ID-Theft Guidance, the agencies define sensitive customer information to mean a customer’s social security number, driver’s license number, account number, credit or debit card number, or a personal identification number or password, in conjunction with a personal identifier, such as the individual’s name, address, or telephone number. Sensitive customer information also includes any combination of components of customer information that would allow someone to log on to or access the customer’s account, such as user name and password.

The ID-Theft Guidance provides that a suggested component of a financial institution’s incident response program is notifying its appropriate regulatory authority upon becoming aware of an incident of unauthorized access to or use of sensitive customer information. The ID-Theft Guidance leaves the form and content of regulatory notice to the discretion of the subject financial institution. Reserve Banks use such notifications to monitor the institution’s implementation of the ID-Theft Guidance, and thus enhance the supervision of individual institutions. Further, information collected from notices permits improved monitoring of security and ID-theft related trends in the industry, and thus enhances the development of future supervisory guidance and, more generally, informs the Board’s cyber security program.

Description of Information Collection

Develop Response Program

The Security Guidelines require that every financial institution develop a response program to protect against and address reasonably foreseeable risks associated with internal and external threats to the security of customer information. The ID-Theft Guidance describes the suggested components of a response program, which include procedures for notifying customers about incidents of unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to the customer.

The ID-Theft Guidance also provides that a financial institution is expected to expeditiously implement its response program to address incidents of unauthorized access to customer information. A response program should contain policies and procedures that enable the financial institution to:

- Assess the situation to determine the nature and scope of the incident, and identify the information systems and types of customer information affected;

- Notify the institution's ARA and, in accordance with applicable regulations and guidance, file a Suspicious Activity Report (SAR; FR 2230; OMB No. 7100-0212) and notify appropriate law enforcement agencies;
- Take measures to contain and control the incident to prevent further unauthorized access to or misuse of customer information, including shutting down particular applications or third party connections, reconfiguring firewalls, changing computer access codes, and modifying physical access controls; and
- Notify customers when warranted.

Under the ID-Theft Guidance, where an incident of unauthorized access to customer information involves customer information systems maintained by an institution's service providers, it is suggested that the financial institution notify the institution's customers and regulator. However, an institution may authorize or contract with its service provider to notify the institution's customers or regulator on its behalf.

Incident Notification

The ID-Theft Guidance provides that a financial institution should notify each affected customer as soon as possible when it becomes aware of an incident of unauthorized access to sensitive customer information if the institution determines that misuse of its information about a customer has occurred or is reasonably possible.

Customer notice should be given in a clear and conspicuous manner. The notice should describe the incident in general terms and the type of customer information that was the subject of unauthorized access or use. It also should generally describe what the institution has done to protect the customers' information from further unauthorized access. In addition, it should include a telephone number that customers can call for further information and assistance. The notice also should remind customers of the need to remain vigilant over the next 12 to 24 months and to promptly report incidents of suspected identity theft to the institution. The notice should include the following additional items, when appropriate:

- A recommendation that the customer review account statements and immediately report any suspicious activity to the institution;
- A description of fraud alerts and an explanation of how the customer may place a fraud alert in the customer's consumer reports to put the customer's creditors on notice that the customer may be a victim of fraud;
- A recommendation that the customer periodically obtain credit reports from each nationwide credit reporting agency and have information relating to fraudulent transactions deleted;
- An explanation of how the customer may obtain a credit report free of charge; and
- Information about the availability of the Federal Trade Commission's (FTC's) online guidance regarding steps a consumer can take to protect against identity theft. The notice should encourage the customer to report any incidents of identity theft to the FTC and should provide the FTC's website address and toll-free telephone number that customers

may use to obtain the identity theft guidance and report suspected incidents of identity theft.⁵

The ID-Theft Guidance also encourages financial institutions to notify the nationwide consumer reporting agencies prior to sending notices to a large number of customers that include contact information for the reporting agencies

Respondent Panel

The FR 4100 respondents consist of the following Board-regulated financial institutions: state member banks, BHCs, affiliates and certain non-banking subsidiaries of BHCs, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, SLHCs, and Edge and agreement corporations.

Time Schedule for Information Collection

The ID-Theft Guidance provides that a financial institution is expected to expeditiously implement its response program to address incidents of unauthorized access to customer information. The guidance provides that a financial institution regulated by the Board should notify its designated Reserve Bank upon becoming aware of an incident of unauthorized access to sensitive customer information. It also provides that a financial institution should notify each affected customer of an incident of unauthorized access to sensitive customer information when the institution determines that misuse of such information has occurred or that misuse is reasonably possible.

Public Availability of Data

There is no data related to this information collection available to the public.

Legal Status

The FR 4100 is authorized by section 501(b) of the Gramm-Leach-Bliley Act,⁶ which requires the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency to establish appropriate standards for financial institutions to develop and implement an information security program designed to protect their customers' information and a response program to that specify actions to be taken when the institution suspects or detects that unauthorized individuals have gained access to customer information systems.

Because the provisions under the FR 4100 are contained in guidance, which is nonbinding, the provisions are voluntary.⁷

⁵ Currently, the FTC website for ID Theft information is www.consumer.ftc.gov/features/feature-0014-identity-theft. The institution may also refer customers to any materials developed pursuant to section 151(b) of the Fair and Accurate Credit Transactions Act (FACT Act), which are educational materials developed by the FTC to teach the public how to prevent identity theft.

⁶ 15 U.S.C. § 6801(b).

⁷ See SR 18-5 / CA 18-7: Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018).

The disclosure provisions of FR 4100 are not confidential. The records maintained under recordkeeping provisions of FR 4100 would be maintained at each banking organization, and the Freedom of Information Act (“FOIA”) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process. In addition, the information obtained by the Board under the FR 4100 may also be kept confidential under exemption 4 for the FOIA, which protects commercial or financial information obtained from a person that is privileged or confidential.⁸

Consultation Outside the Agency

Representatives from the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency responsible for the reporting, recordkeeping, and disclosure requirements associated with the ID-Theft Guidance have reviewed their respective information collections and agreed that no revisions to the collections are necessary at this time.

Public Comments

On October 14, 2020, the Board published an initial notice in the *Federal Register* (85 FR 65046) requesting public comment for 60 days on the extension, without revision, of the FR 4100. The comment period for this notice expires on December 14, 2020.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR 4100 is 29,940 hours. The Security Guidelines require financial institutions to develop and maintain a response program to address unauthorized access to customer information maintained by the institution or its service providers, and the ID-Theft Guidance sets forth the suggested components of such a program. Staff estimates that 1 new institution per year would take 24 hours on average to develop its response program. On a continuing basis, burden associated with maintenance of the response program is considered negligible. For each incident of unauthorized access to or use of customer information, the ID-Theft Guidance suggests that a financial institution prepare and send a notice to its federal regulator, affected customers, and service providers. The Board estimates that financial institutions⁹ will prepare and send 831 notifications per year, with an estimated 36 hours per incident.¹⁰ The reporting, recordkeeping, and disclosure requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

⁸ 5 U.S.C. § 552(b)(4).

⁹ Based on data from the Federal Reserve System Cyber Event Repository (CER) database, Supervision & Regulation staff determined that from 2017-2019, an average of 831 incident notifications were filed each year with the Federal Reserve System, affected customers, and service providers.

¹⁰ Per the March 29, 2005, *Federal Register* notice, the Board considers incident notification to be the responsibility of the financial institution. If the financial institution chooses to have a service provider disclose information on their behalf that burden is considered part of Incident Notification as shown in the burden table.

FR 4100	<i>Number of respondents</i> ¹¹	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Recordkeeping				
Develop response program	1	1	24	24
Reporting				
Incident notification – to the Board	831	1	9	7,479
Disclosure				
Incident notification – to customers and service providers	831	1	27	<u>22,437</u>
<i>Total</i>				29,940

The estimated total annual cost to the public for this collection of information is \$1,724,544.¹²

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The annual cost to the Federal Reserve System for processing this information collection is negligible.

¹¹ Of these respondents, 36 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets), <https://www.sba.gov/document/support--table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions. When promulgating the Guidance, the agencies determined not to exempt small institutions from the Guidance. However, the agencies noted that an institution's program will vary depending on the size and complexity of the institution and the nature and scope of its activities.

¹² Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$19, 45% Financial Managers at \$71, 15% Lawyers at \$69, and 10% Chief Executives at \$96). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2018*, published March 29, 2019, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.

