

appropriate investigation, reasonably concludes that misuse of the information is unlikely to occur and takes appropriate steps to safeguard the interests of affected members, including by monitoring affected members' accounts for unusual or suspicious activity. NCUA invites comment on whether this is the appropriate standard for triggering member notice. For commenters who believe that this standard is inappropriate, NCUA requests that these commenters state specifically their reasoning and offer alternative thresholds for triggering member notice.

- The proposed Guidance defines sensitive member information as a social security number, a personal identification number (PIN), password, or an account number in conjunction with a personal identifier. Sensitive member information would also include any combination of components of member information that would allow someone to log onto or access another person's account, such as user name and password. NCUA requests comment on which, if any, additional types of information should be included in this definition, such as mother's maiden name or driver's license number.

- NCUA invites comment on the potential burden associated with the member notice provisions. For example, what is the anticipated burden that may arise from the questions posed by those members who receive the notices? Should NCUA consider how the burden may vary depending upon the size and complexity of the credit union?

- As part of the response program, NCUA describes certain corrective measures that a credit union should take once an incident of unauthorized access occurs. One such measure is to "secure accounts." Is the discussion of securing accounts sufficiently clear to enable credit unions to know what is expected of them when instances of unauthorized access occur? To what extent would contracts between credit unions and service providers need to be modified, if at all, to comply with expectations of the proposed rule and proposed Guidance? How much burden, if any, will the proposed Guidance impose on service providers?

- NCUA also invites comment on whether the proposed standard should be modified to apply to other extraordinary circumstances that compel a credit union to conclude that unauthorized access to information, other than sensitive member information, likely will result in substantial harm or inconvenience to the affected members.

- The proposed Guidance includes examples of circumstances in which member notice would be expected and those when it would not. Please comment on whether the examples in the proposed Guidance should be modified or supplemented and provide your rationale.

III. Regulatory Procedures

Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA has determined that the proposed rule is covered under the Paperwork Reduction Act and is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for approval as a revision of OMB control number 3133-0033, which is the control number currently associated with the collection of information under Part 748 requiring a written security program.

The proposed amendment would require federally insured credit unions to review their existing written security programs to ensure they are designed to respond to incidents of unauthorized access to or use of member information in certain circumstances. To meet this requirement, NCUA expects federally insured credit unions will: (1) Develop notices to members, (2) determine which members should receive the notices and send the notices to members, and (3) ensure that their contracts with their service providers conform to the procedures they develop. The NCUA Board estimates it will take an average of 20 hours for a credit union to comply with the incident response element. The Board also estimates that credit unions will require 24 hours per incident (three business days) to determine which members should receive the notice and notify the members. For the purposes of this analysis, it is estimated that two percent of credit unions will experience an incident of unauthorized access to member information on an annual basis, resulting in member notification.³

³ This estimate is based upon NCUA's experience and data involving banks gathered by the FDIC that indicates slightly less than one percent of those institutions experienced some form of unauthorized access to customer information during any 12 month period. However, NCUA assumes that other incidents of unauthorized access to customer or

Thus, the burden associated with this collection of information may be summarized as follows:

Number of Respondents: 9,528.

Estimated Time per Response:

Developing notices: 20 hrs × 9,528 = 190,560 hours.

Notifying members: 24 × 210 = 5,040 hours.

Estimated Total Annual Burden: 195,600 hours.

However, the burden estimate does not include time for credit unions to adjust their contracts with service providers, if needed; nor for service providers to disclose information pursuant to the proposed Guidance.

The Paperwork Reduction Act and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on:

(1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments submitted to OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) requires an agency to publish an initial regulatory flexibility analysis whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule unless it is determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board cannot at this time determine whether the proposed rule would have significant economic impact on a substantial number of small entities. Therefore, pursuant to subsections 603(b) and (c) of the RFA, the Board provides the following initial regulatory flexibility analysis.

A. Reasons for Proposed Rule

The NCUA is requesting comment on a proposed amendment to Part 748 of its regulations and guidelines for credit unions in the form of Appendix B.

member information may have occurred but were not reported.