

Supporting Statement
Privacy of Consumer Financial Information Rule
16 CFR 313
(OMB Control No. 3084-0121)

(1) & (2) Necessity for and Use of the Information Collection

The Gramm-Leach-Bliley Act (“GLB Act” or the “Act”), Pub. L. No.106-102, 113 Stat. 1338 (November 12, 1999), permits banks to affiliate with firms engaged in insurance, securities, and other financial activities. Title V, Subtitle A of the GLB Act (“Subtitle A”) provides certain privacy protections to consumers. The Federal Trade Commission (“FTC” or “Commission”) was charged with prescribing rules as necessary to implement the provisions of Subtitle A as to those entities over which the Commission has enforcement jurisdiction.¹ Accordingly, the Commission promulgated the Privacy of Consumer Financial Information Rule (hereinafter, “GLB Privacy Rule” or “Rule”).

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)² transferred rulemaking authority to the Consumer Financial Protection Bureau (“CFPB”) for most provisions of Subtitle A of Title V of the GLB Act, with respect to financial institutions described in Section 504 of the GLB Act. Pursuant to the GLB Act, the FTC retains rulemaking authority for its GLB Privacy Rule, 16 CFR § 313, only for motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (hereafter, “motor vehicle dealers”). The CFPB implemented its own regulations to enforce the Dodd-Frank provisions, including Privacy of Consumer Financial Information (Regulation P), 12 CFR § 1016. The FTC shares enforcement authority with the CFPB for certain non-motor vehicle dealer financial institutions subject to Regulation P.

On December 4, 2015, Congress amended the GLB Act as part of the Fixing America’s Surface Transportation Act (“FAST Act”). This amendment, titled Eliminate Privacy Notice Confusion (FAST Act, Public Law 114094, section 75001) added new GLB Act section 503(f). This subsection provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. Section 503(f) requires that to qualify for this exception, a financial institution must not share nonpublic personal information about customers except as described in certain statutory exceptions, under which sharing does not trigger a customer’s statutory right to opt out of the sharing. In addition, section 503(f)(2) requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice the customer received.

As mandated by the GLB Act, the Rule implements consumer disclosure requirements that are subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35

¹ 15 U.S.C. §§ 6804, 6805. Other agencies were also required to issue rules with respect to those entities over which they have enforcement jurisdiction. For example, the Bureau of Consumer Financial Protection issued Privacy of Consumer Financial Information (Regulation P), 12 CFR § 1016, which applies to depository institutions and many non-depository institutions. *See* 76 Fed. Reg. 79,028 (Dec. 21, 2011).

² Public Law 111–203, 124 Stat. 1376 (2010).

(“PRA”).³ The required disclosures are: (1) initial notice of the financial institution’s privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer’s non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer’s right to opt out of information sharing with such parties; (3) annual notice of the institution’s privacy policy to any continuing customer unless the financial institution meets an exception for providing the annual notice; and (4) notice of changes in the institution’s practices on information sharing. The Rule does not include recordkeeping requirements.

The Rule’s requirements are designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the covered financial institutions with which they conduct business. The privacy policies must state: (a) the categories of nonpublic personal information the financial institution collects; (b) the categories of nonpublic personal information the financial institution discloses; (c) the categories of affiliates and nonaffiliated third parties to whom the financial institution discloses such information; and (d) the financial institution’s policies and practices with respect to protecting the confidentiality, security, and integrity of the information. In certain situations, consumers will also be informed of the means by which they can opt out of financial institution sharing of their nonpublic personal information with nonaffiliated third parties.

(3) Information Technology

The Rule gives explicit examples of electronic options that financial institutions may use to transmit the privacy and opt-out notices required by the Rule. *See, e.g.*, 16 CFR § 313.9(b), (c), (e). The FTC, together with the other federal financial agencies, adopted a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under each agency’s GLB privacy rules. *See* 74 Fed. Reg. 62,890 (Dec. 1, 2009). To assist entities in using the model privacy form, the agencies also provide an “Online Form Builder” that an entity can download and use to develop and print customized versions of a model consumer privacy notice. The Online Form Builder is available with several options. Easy-to-follow instructions for the form builder will guide an institution to select the version of the model form that fits its practices, such as whether the institution provides an opt-out for consumers. The tool can be found at https://www.federalreserve.gov/bankinfo/reg/privacy_notice_instructions.pdf.

These electronic options help minimize the burden and cost of the Rule’s information collection requirements for financial institutions subject to the Rule, and are consistent with the objectives of the Government Paperwork Elimination Act. *See* Pub. L. 105-277, Div. C, Title XVII, 112 Stat. 2681, 2681-749, *reprinted in* 44 U.S.C. § 3504 note.

(4) Efforts to Identify Duplication

Any inconsistent state notice requirement would be preempted by federal law unless it provides greater protection. 15 U.S.C. § 6807. Further, the Rule provides, as required under 15 U.S.C. § 6803(c)(4), that the financial institution’s initial and annual notices may include any

³ Under the PRA, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. “Collection of information” means agency request or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. § 3502(3); 5 CFR § 1320.3(c).

disclosures required under Section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(d)(2)(A)(iii), thereby incorporating, but not duplicating, a pre-existing disclosure obligation to consumers.

(5) Efforts to Minimize Small Organization Burden

The Commission drafted the Rule to minimize compliance burden to the extent feasible. The Rule's notice requirements are expressly mandated by the GLB Act. The Rule implements these requirements by providing guidance on the contents of such notices while affording small businesses (and all other regulated businesses) some flexibility in choosing the means to disseminate such notices. For example, the required notices may, depending upon the circumstances, be disclosed by hand-delivery, conventional, or electronic mail. 16 CFR § 313.9(b)(1).

The Rule also gives regulated parties clear guidance on the contents of the required notices. This guidance, staff believes, will help eliminate much of the administrative and legal costs that might be incurred by businesses seeking to determine what must be included in a notice in order to comply with the Rule. Finally, as also noted above, the agencies developed an "Online Form Builder" to further ease the burden on regulated parties, which financial institutions can download and use to develop and print customized versions of a model consumer privacy notice.

(6) Consequences of Conducting Collection Less Frequently

While the Rule allows some flexibility in the means of disseminating the required notices, the frequency of "collection" is set by the statutory language of the GLB Act. *See* Sections 502(a)-(b), 503(a) of the GLB Act.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The collection of information in the Rule is consistent with all applicable guidelines contained in 5 CFR § 1320.5(d)(2).

(8) Public Comments/Consultation Outside the Agency

The FTC sought public comment on its request to OMB for a three-year extension of the current PRA clearance for the information collection aspects of the Rule, as required by 5 CFR § 1320.8(d). *See* 85 Fed. Reg. 23961 (Apr. 30, 2020). No comments were received. The FTC is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rule.

In addition, the Commission is conducting a rulemaking proceeding to, among other things, modify the Rule's definitions of "financial institution" and "federal functional regulator," and to update the Rule's annual customer privacy notice requirement. *See* 84 FR 13150 (Apr. 4, 2019). The proposed changes are necessary to conform the Rule to the current requirements of the GLBA, as amended by the Dodd-Frank and FAST Acts, and will clarify which financial institutions are covered by the Commission's Rule and their annual customer privacy notice obligations under the Rule. The Commission has determined that the proposed amendments do

not modify or add to information collection requirements that were previously approved by OMB, but has nonetheless solicited public comment on the proposed changes and any potential impact on the information collection burden associated with the Rule.

(9) Payments or Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

The requirements for which the Commission seeks renewed OMB clearance do not involve disclosure of confidential respondent or customer information but, rather, the disclosure of financial institutions' practices regarding collection and sharing of consumer and customer nonpublic personal information. These disclosures are necessary to safeguard consumer privacy and enhance consumers' understanding of what nonpublic personal information covered entities may share with other institutions.

(12) Estimated Annual Hours Burden

Estimated annual hours burden: 1,345,350 annual hours.

Estimated annual cost burden: \$30,363,151.

For PRA purposes, the FTC and CFPB share enforcement authority for those non-depository institutions subject to the CFPB's Regulation P. The CFPB assumes all burden for depository institutions with more than \$10 billion in assets as well as their affiliates, for which CFPB has primary enforcement authority with respect to regulation P. The FTC assumes all burden for motor vehicle dealers subject to the Rule.

I. Financial Institutions

FTC staff estimate that approximately 29,500 non-motor vehicle dealer financial institutions are subject to joint FTC and CFPB jurisdiction. *See* 83 FR 65642 (Dec. 21, 2018); CFPB Supporting Statement, OMB Control No. 3170-0010, Regulation P, 12 CFR 1016 (Dec. 21, 2018). FTC staff further estimates that this number consists of approximately 29,000 established entities and 500 new entrants annually during the renewal period.

A. Established financial institutions:

Under the Rule, covered financial institutions must provide an initial notice of their privacy policies and practices to new customers and annual privacy notices to customers thereafter.⁴ To comply with these disclosure requirements, covered entities must also expend time to review and update their privacy policies and procedures.

For established entities, staff believes that the model privacy form and the Online Form Builder reduce the time associated with providing required initial and annual notices.

⁴ 16 CFR 313.4 (initial notices); 16 CFR 313.5 (annual notices).

Furthermore, under Section 503(f), businesses who have not changed their privacy notice since the last notice sent and who do not share information with non-affiliated third parties outside of certain statutory exceptions are not required to issue annual notices to their customers. Staff estimates that at least 80% of businesses covered by the Rule will, accordingly, not be required to issue annual notices. Finally, staff estimates that no more than 1% of the estimated 29,000 established-entity respondents would make additional changes to privacy policies at any time other than the occasion of the annual notice.

Accordingly, FTC staff estimates annual burden for established entities as follows:

Burden hours and labor costs for established financial institutions (Table IA):

Activity	Hours per respondent	Approx. number of respondents ⁵	Approx. total annual hrs.	FTC portion	Hourly wage and labor category ⁶	Approx. total labor costs
Reviewing GLB Act-implementing policies and practices.	4	29,000	116,000	58,000	\$38.55 Professional/Technical	\$2,235,900
Disseminating initial notices to new customers	15	29,000	435,000	217,500	\$17.19 Clerical	\$3,738,825
Disseminating annual disclosure to pre-existing customers.	15	4,060	60,900	30,450	\$17.19 Clerical	\$523,436
	5	4,060	20,300	10,150	\$38.55 Professional/Technical	\$391,283
Changes to privacy policies and related disclosures.	7	290	2,030	1,015	\$17.19 Clerical	\$17,448
	3	290	870	435		\$7,478
Totals:			635,100	317,550		\$6,914,370

B. New entrant financial institutions:

New entrant financial institutions subject to the Rule must provide initial disclosure notices to their consumers, including taking the time to develop implementing policies and procedures and create disclosure documents to effectuate the Rule’s disclosure requirements.

⁵ The estimate of respondents which are required to disseminate annual notices is based on the following assumptions: (1) 29,000 established respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 20% (4,060) of whom have made changes to their policies and share nonpublic information outside of the statutory exceptions, and therefore are required to provide annual notices under GLB Act 503(f); (3) and no more than 1% (290) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (4) such changes will occur no more often than once per year.

⁶ Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on median wages for Financial Examiners and for Office and Administrative Support, corresponding to professional/technical time (e.g., compliance evaluation and planning, designing and producing notices, reviewing and updating information systems), and clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing) respectively. See BLS Occupational Employment and Wages, May 2018, Table 1 at <http://www.bls.gov/news.release/pdf/ocwage.pdf>.

FTC staff believes that the usage of the model privacy form and the Online Form Builder automate much of the work associated with creating the disclosure documents for new entrants. Staff's estimates of annual burden for established entities is as follows:

Burden hours and labor costs for new entrant financial institutions (Table IB):

Activity	Hours per respondent	Approx. number of respondent	Approx. total annual hrs.	FTC portion	Hourly wage and labor category ⁷	Approx. total labor costs
Reviewing internal policies and developing GLB Act-implementing instructions. ⁸	20	500	10,000	5,000	\$38.55 Professional/ Technical	\$192,750
Creating disclosure document or electronic disclosure (including initial, annual, and opt-out disclosures).	1	500	500	250	\$17.19 Clerical	\$4,298
	2	500	1,000	500	\$38.55 Professional/ Technical	\$19,275
Disseminating initial disclosure (including opt-out notices).	15	500	7,500	3,750	\$17.19 Clerical	\$64,463
	10	500	5,000	2,500	\$38.55 Professional/ Technical	\$96,375
Totals			240,000	12,000		\$377,161

II. Motor Vehicle Dealers

FTC has sole authority over motor vehicle dealers subject to the Rule. Staff estimates that approximately 44,000 auto dealers are subject to the Rule's requirements, consisting of 42,000 established dealers and 2,000 new entrants during the renewal period.

A. Established motor vehicle dealers:

Staff believes that the usage of the model privacy form and the availability of the form builder simplify and automate much of the work associated with creating the disclosure documents for motor vehicle dealers. FTC staff provides the following burden estimates for established motor vehicle dealers:

⁷ Staff calculated labor costs by applying appropriate hourly cost figures to burden hours, as described in footnote 6 above.

⁸ Reviewing instructions includes all efforts performed by or for the respondent to: determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of documents and/or electronic disclosures).

**Burden hours and labor costs for established motor vehicle dealers
(Table IIA):**

Activity	Hours per respondent	Approx. No. of Respondents ⁹	Approx. total annual hrs.	Hourly wage and labor category ¹⁰	Approx. total labor costs
Reviewing GLB Act-implementing policies and practices.	4	42,000	168,000	\$38.55 Professional/Technical	\$6,476,000
Disseminating initial notices to new customers.	15	42,000	630,000	\$17.19 Clerical	\$10,829,700
Disseminating annual disclosure.	15	5,880	88,200	\$17.19 Clerical	\$1,516,158
	5	5,880	29,400	\$38.55 Professional/Technical	\$1,133,370
Changes to privacy policies and related disclosures.	7	420	2,940	\$17.19 Clerical	\$50,539
	3	420	1,260	\$38.55 Professional/Technical	\$48,573
Totals:			919,800		\$20,054,340

B. New entrant motor vehicle dealer entrants:

FTC staff provides the following burden estimates for established new entrant vehicle dealers:

⁹ For this estimate, Commission staff relies on industry estimates based on census data and information from the National Automobile Dealers Association and National Independent Automobile Dealers Association.

¹⁰ Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. See BLS Occupational Employment and Wages, May 2018, Table 1 at <http://www.bls.gov/news.release/pdf/ocwage.pdf>.

**Burden hours and labor costs for new entrant motor vehicle dealers
(Table IIB):**

Activity	Hours per respondent	Approx. number of respondents	Approx. total annual hrs.	Hourly wage and labor category	Approx. total labor costs
Reviewing internal policies and developing GLB Act-implementing instructions.	20	2,000	40,000	\$38.55 Professional/ Technical	\$1,542,000
Creating disclosure document or electronic disclosure (including initial, annual, and opt-out disclosures).	1	2,000	2,000	\$17.19 Clerical	\$34,380
	2	2,000	4,000	\$38.55 Professional/ Technical	\$154,200
Disseminating initial disclosure (including opt-out notices).	15	2,000	30,000	\$17.19 Clerical	\$515,700
	10	2,000	20,000	\$38.55 Professional/ Technical	\$771,000
Totals:			96,000		\$3,017,280

(13) Estimated Capital/Other Non-Labor Costs Burden

Staff believes that capital or other non-labor costs associated with the information collection requirements are minimal. Staff anticipates that covered entities are already equipped to provide written notices (*e.g.*, computers with word processing programs, copying machines, mailing capabilities). In addition, staff anticipates that entities that offer consumers the choice to receive notices via electronic format will already have an online presence to support this option. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

(14) Estimate of Cost to Federal Government

Over the course of the three-year clearance period sought, enforcing and administering GLB Privacy Rule will require the cumulative expenditure per year of approximately five attorney/investigator work years (approximately \$72,000 per employee) for a total of \$360,000 in labor costs. In addition, staff estimates that associated travel costs, clerical, and other support services will total approximately \$20,000 per year. Thus, the annualized approximate cost to the Commission is \$380,000.

(15) Program Changes or Adjustments

There are no program changes. The differences in burden estimates from the prior clearance reflect updates in the estimated number of financial institutions and motor vehicle dealers subject to the Rule.

As part of this renewal, the FTC has revised its Information Collection List to better reflect

the organization and information burden of the Rule. As explained in Section 12, the FTC estimates burden under the Rule separately for (a) motor vehicle dealers that are solely subject to FTC authority and (b) non-motor vehicle dealer financial institutions for which the FTC and CFPB share enforcement authority. To reflect this estimation method, the FTC has revised the Information Collection List to list separate burden estimates for these categories of entities. Accordingly, the revised Information Collection list includes the following Information Collections:

Established Financial Institutions: (1) Review of GLBA-implementing policies and practices; (2) Dissemination of initial notices to new customers; (3) Dissemination of annual disclosure; and (4) Changes to privacy policies & related disclosures.

Established Motor Vehicle Dealers: (1) Review of GLBA-implementing policies and practices; (2) Dissemination of initial notices to new customers; (3) Dissemination of annual disclosure; and (4) Changes to privacy policies & related disclosures.

New Entrant Financial Institutions: (1) Review of internal policies in developing GLBA-implementing instructions; (2) Creation of disclosure documents; and (3) Dissemination of initial disclosures.

New Entrant Motor Vehicle Dealers: (1) Review of internal policies in developing GLBA-implementing instructions; (2) Creation of disclosure documents; and (3) Dissemination of initial disclosures.

(16) Statistical Use of Information

There are no plans to publish information associated with the Rule's requirements for statistical use.

(17) Display of Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to Certification

The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exemption to these certification requirements.