

**Supporting Statement for the  
Recordkeeping and Disclosure Requirements in Connection with  
Regulation E (Electronic Fund Transfer Act)  
(OMB No. 7100-0200); (Docket No. R-1265)**

**Summary**

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to revise, without extension, the recordkeeping and disclosure requirements of Regulation E, which implements the Electronic Fund Transfer Act (EFTA).<sup>1</sup> The Board is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies reporting, recordkeeping, or disclosure requirements of a regulation as an information collection.<sup>2</sup>

On December 1, 2006, a notice of final rulemaking was published in the *Federal Register* effective January 1, 2007. The final rule clarifies that the requirement to obtain a consumer's authorization to initiate an electronic fund transfer to the consumer's account to collect a fee for an EFT or check that has been returned applies to any person that intends to collect the fee in that manner, and not to the account-holding financial institution. The final rule also provides guidance on the consumer notice requirements when a person initiates an electronic fund transfer to collect a returned item fee or engages in an electronic check conversion transaction. The amendments supersede corresponding provisions addressing these issues in the Board's final rule published January 10, 2006<sup>3</sup> and interim final rule published August 30, 2006.<sup>4</sup>

The EFTA and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. These mandatory disclosures are triggered by certain events specified in the EFTA and Regulation E. Although institutions are required to "retain evidence of compliance" for not less than two years from the date disclosures are required to be made or action is required to be taken, this requirement is not factored into the burden estimates mandated by the PRA because the regulation does not specify the types of records that must be retained. To ease institutions' burden and cost of complying with the disclosure requirements of Regulation E (particularly for small entities), the Federal Reserve publishes model forms and disclosure clauses.

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1 The EFTA was enacted in 1978 and is codified at 15 USC § 1693 *et seq.* Regulation E is located at 12 C.F.R. Part 205.

2 44 U.S.C. § 3501 *et seq.* The collection of information under Regulation E is assigned OMB No. 7100-0200 for purposes of the PRA.

3 The original September 2004 proposed rulemaking and the January 2006 final rulemaking were assigned Docket Nos. R-1234 and R-1247, respectively.

4 The August 2006 interim final rulemaking was assigned Docket No. R-1265. A press release was issued August 24, 2006

Regulation E applies to all financial institutions and merchants and payees that engage in ECK transactions.<sup>5</sup> The proposed annual burden for the one-time disclosure requirement that entities involved with payroll accounts must provide to payroll card account holders is 115 hours; therefore, the proposed total annual burden for the Regulation E requirements is 83,866 hours.

## **Background and Justification**

The EFTA and Regulation E require that institutions provide consumers of EFT services full and accurate information about their rights, responsibilities, and liabilities as well as the services' costs. EFT services include automated teller machines, telephone bill payment, point-of-sale transfers in retail stores, fund transfers initiated through the internet, and preauthorized transfers to or from a consumer's account. The act does not exempt small institutions, but it authorizes the Federal Reserve to modify certain requirements to ease compliance burdens for small institutions where consistent with the purposes of the law.

Using this authority, in 1982 the Board exempted from the requirements of the act preauthorized transfers to or from accounts at financial institutions with assets of \$25 million or less. The exemption was expanded to institutions with assets of \$100 million or less in May 1996. A small financial institution that provides EFT services besides preauthorized transfers must comply with the regulation for those other services.

On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E-Sign Act) was enacted to encourage the continued expansion of electronic commerce. 15 U.S.C. 7001 *et seq.* The E-Sign Act generally provides that electronic documents and signatures have the same validity as paper documents and written signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions; consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving certain information specified in the statute. The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require the Board to adopt implementing regulations.

Since March 2001, several issues have arisen relating to ECK transactions. Concerns have been raised about the uniformity and adequacy of some of the notices authorizing ECK transactions. Some in the industry would like the flexibility to obtain a consumer's authorization to process a transaction as an EFT or as a check. In April 2001, the Board issued an interim final rule setting forth the general rule that institutions may provide disclosures required under Regulation E electronically only if the institution complies with the requirements of the E-Sign Act.<sup>6</sup> The 2001 interim final rule also provides uniform standards for satisfying the timing and delivery requirements of Regulation E when electronic disclosures are used, to ensure that consumers have adequate opportunity to access and retain the information.

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<sup>5</sup> For the purpose of this supporting statement state member banks and uninsured state branches and agencies of foreign banks are referred to as "banks", collectively.

<sup>6</sup> 66 FR 17795 (April 4, 2001).

The 2001 rule was adopted as an interim rule to allow the public to present additional comments; compliance with the rule is optional. The Board is currently considering adjustments to the rule to provide financial institutions with additional flexibility. Financial institutions may continue to provide electronic disclosures under their existing policies and practices (in accordance with the E-Sign Act), or they may follow the interim rule until a permanent final rule is issued.<sup>7</sup>

In January 2006, the Board published a final rule<sup>8</sup> which addressed, among other things, how a payee can obtain a consumer's authorization to electronically collect fees for items returned due to insufficient or uncollected funds in the consumer's account. Authorization is obtained when notice is provided to the consumer stating that the fee will be collected by means of an EFT, along with a disclosure of the specific amount of the fee, and the consumer goes forward with the underlying transaction. The Board subsequently published an interim final rule<sup>9</sup> in August 2006 to clarify certain provisions in the January 2006 final rule. The August 2006 interim rule corrected an omission in the January 2006 final rule to provide that the requirement to obtain a consumer's authorization to electronically collect fees for items returned due to insufficient or uncollected funds in the consumer's account applies to the person initiating an EFT to collect the fee in this manner, and not to the consumer's account-holding financial institution.

## **Description of Information Collection**

The disclosure requirements associated with Regulation E are described below. No other federal law mandates these disclosures, although some states may have similar requirements. The frequency with which an institution must make Regulation E disclosures varies according to the level of EFT activity by a financial institution.

### *Disclosure Requirements*

#### **Electronic Communication (section 205.17)**

A financial institution and a consumer may agree to send by electronic communication any disclosure that Regulation E requires be provided in writing, so long as the disclosure complies with the regulation in all other respects. In this memorandum, therefore, any reference to a mandatory written disclosure does not exclude the possibility that an institution and consumer would agree to substitute an electronic communication for the writing. The term "electronic communication" is defined by Regulation E to mean a message transmitted electronically between a consumer and a financial institution in a format that allows the text to be displayed on equipment such as a personal computer.

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<sup>7</sup> The OMB supporting statements, including the burden estimates, for the Board's five consumer regulations affected by the E-Sign Act were submitted to the OMB in April 2001.

<sup>8</sup> 71 FR 1638 (January 10, 2006)

<sup>9</sup> 71 FR 51451 (August 30, 2006)

## **Payroll Card Issuers Initial Disclosures, Periodic Disclosures, and Error Resolution Rules (section 205.2(b)(2))**

This disclosure is required when one or more parties that meet the definition of “financial institution” are involved in offering payroll card accounts as defined in § 205.2(b)(2) – whether the financial institution is an employer, a depository institution, or other third party involved in holding the payroll card account or in the issuance of a payroll card. Such entities would be required to fully comply with Regulation E, and provide disclosure of basic terms, costs, and rights relating to electronic fund transfer services in connection with the payroll card account. The parties may contract among themselves to comply with the regulation by providing one set of disclosures. Certain information must be disclosed to consumers, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer’s potential liability for unauthorized transfers, and error resolution rights and procedures. The disclosures are standardized and machine-generated and do not substantively change from one individual account to another; thus, the average time for providing the disclosure to all consumers would be small.

### **Initial Disclosures and Change-in-Terms Notices (sections 205.7 and 205.8)**

Institutions that offer EFT services must provide written disclosures to a consumer who contracts for those services. The purpose of these disclosures is to provide consumers with full and accurate information about the terms of the EFT services offered at the time of the initial agreement, and subsequently in the event of changes in certain required disclosure terms. The required disclosures include information about the consumer's liability for unauthorized transfers, the type of transfers available, and any applicable restrictions and charges; a summary of the consumer's right to documentation of transfers and to stop payment of preauthorized transfers; and information on resolving errors on the account.

The initial disclosures must be provided when a consumer contracts for EFT services or before the first electronic transfer involving the account is made. A notice must be given when the institution makes changes related to increased liability for the consumer, increased fees, or limitations on the frequency or dollar amounts of transfers.

### **Transaction Disclosures (sections 205.9(a) and 205.10)**

An institution offering an EFT service must provide transaction disclosures each time a consumer initiates an electronic fund transfer at an electronic terminal (for example, an automated teller machine). Transaction disclosures provide documentation and proof of the transfer in the event of a later dispute. The terminal receipt, which must be provided at the time of the transfer, must include the amount, date, and type of transfer, as well as other information identifying the transaction. Because these disclosures are machine-generated and do not involve an employee of the institution, for purposes of the PRA no burden is associated with this requirement.

For preauthorized transfers *to* the consumer's account occurring at least once every 60 days, such as direct deposits, the institution must provide notice as to whether the transfer occurred, unless positive notice is provided by the payor. In lieu of sending a notice of deposit, the institution may provide a readily available telephone number that the consumer can call to verify receipt of the deposit. Therefore, the burden of this requirement is negligible.

For preauthorized transfers *from* the account, such as utility payments, either the institution or the payee must notify the consumer of payment variations. Because in the vast majority of instances the payee, rather than the bank, satisfies this obligation, the burden on banks is negligible.

### **Periodic Disclosures (section 205.9(b))**

The purpose of the periodic disclosure requirement is to ensure prompt and accurate documentation of consumers' use of EFT services. The disclosures must include a description of transactions occurring during the cycle period, charges assessed for activity and account maintenance, opening and closing balances, the address and telephone number for error inquiries, and a telephone number for verification of deposits if the institution uses that option. Modified requirements apply to passbook and certain other types of accounts. Because EFT periodic statements are typically included with monthly checking and savings account statements the burden associated with this requirement for state member banks is accounted for in the estimate of the paperwork burden associated with Regulation DD.<sup>10</sup> The burden associated with this requirement for all other financial institutions is addressed in the "Estimate of Respondent Burden" section of this memorandum.

### **Error Resolution Rules (sections 205.8(b) and 205.11)**

Institutions must notify consumers about their rights and responsibilities in connection with errors involving electronic funds transfers by providing either a complete statement of error resolution rights each year or a shorter error resolution rights summary on or with each periodic statement. The estimated paperwork burden associated with this summary is included in the estimate of the burden associated with the periodic statements required by Regulation DD.

When a consumer alleges an error, the following rules apply:

- If the institution determines that an error occurred, it must correct the error and may provide notification to the consumer orally or in writing.
- If the institution determines that an error did not occur, it must report its findings in writing to the consumer.

If the institution is unable to complete its investigation of the error within 10 business days,

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<sup>10</sup> Regulation DD (OMB No. 7100-0271) applies to all depository institutions, except credit unions, that offer deposit accounts to residents (including resident aliens) of any state as defined in section 230.2(r). Accounts held in an institution located in a state are covered, even if funds are transferred periodically to a location outside the United States. Accounts held in an institution located outside the United States are not covered, even if held by a U.S. resident.

it may take up to 45 days provided it recredits the disputed amount to the consumer's account within the ten business days and notifies the consumer, orally or in writing, of the recrediting. Upon resolution, the institution must notify the consumer that the recrediting has been made final or that it has been debited, depending on the institution's determination. A correction notice may be included in the periodic statement if it is clearly identified and the statement is mailed or delivered within the applicable time limit.

### *One-time Requirements*

#### **One-time Change for Initial Disclosures (section 205.7)**

This section of Regulation E provides that a financial institution is required provide notice to their accountholders that ECK transactions are a new type of transfer that can be made from a consumer's account. Currently, all respondents regulated by the Federal Reserve are required to provide a disclosure of basic terms, costs, and rights relating to EFT services under Regulation E. Therefore, financial institutions would make a one-time change to reprogram and update systems to include the new notice requirement relating to ECK transactions. The proposed revisions to Regulation E would provide institutions with model clauses for the initial disclosure requirement for ECK transactions (provided in Appendix A) that they may use to comply with the notice requirement.

#### **One-time Change for Merchants and Payees Disclosures (sections 205.3(a) and (b)(2))**

Merchants and payees that engage in ECK transactions must provide written disclosures to a consumer who contracts for those services. The purpose of these disclosures is to provide consumers with full and accurate information about the terms of the EFT services offered at the time of the initial agreement, and subsequently in the event of changes in certain required disclosure terms. The required disclosures include information about the consumer's liability for unauthorized transfers, the type of transfers available, and any applicable restrictions and charges; a summary of the consumer's right to documentation of transfers and to stop payment of preauthorized transfers; and information on resolving errors on the account.

The disclosures must be provided when a consumer contracts for EFT services or before the first electronic transfer involving the account is made. A notice must be given when the merchant or payee makes changes related to increased liability for the consumer, increased fees, or limitations on the frequency or dollar amounts of transfers.

#### **One-time Change to Disclosures at ATMs (section 205.16(c))**

This disclosure would be revised to explicitly clarify that ATM operators may disclose in all cases that a fee will be imposed, or in the alternative, disclose that a fee may be imposed on consumers initiating an EFT or a balance inquiry if there are circumstances under which some consumers would not be charged for such services. Before an ATM operator may impose an ATM fee on a consumer for initiating an electronic fund transfer or a balance inquiry, the ATM

operator must provide to the consumer notice, either on-screen or via paper receipt, that an ATM fee will be imposed and the amount of the fee, and the consumer must elect to continue the transaction or inquiry after receiving such notice.

### **Time Schedule for Information Collection**

Financial institutions are required to provide a revised initial disclosure to their accountholders reflecting that ECK transactions are a new type of transfer and can be made from a consumer's account. Merchants and payees that make ECK services available to consumers must obtain a consumer's authorization for the electronic transfer. Generally, a notice about authorizing an ECK transaction would have to be provided for each transaction. An institution that offers accounts accessible by electronic means must provide a written statement for each account to or from which EFTs can be made for each monthly cycle in which an EFT has occurred (or at least quarterly if no EFT has occurred). Institutions are required to provide consumers with either a complete statement of error resolution rights each year, or a shorter error resolution rights summary on each periodic statement. Entities involved with payroll accounts must also provide consumers with either a complete statement of error resolution rights each year, or a shorter error resolution rights summary on each periodic statement.

### **Legal Status**

The Board's Legal Division has determined that the Electronic Fund Transfer Act (15 USC § 1693 *et seq.*), Title IX of the Consumer Credit Protection Act, authorizes the Board to require the information collection. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. § 552 (b)(4), (6), and (8)). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer.

### **Consultation Outside the Agency**

On September 17, 2004, the Federal Reserve published a proposed rulemaking in the *Federal Register* (R-1234; 69 FR 55996) requesting public comment for 60 days on the proposal to revise, without extension, the recordkeeping and disclosure requirements of Regulation E. The Board received approximately 120 comment letters, nearly 50 of which specifically commented on the proposed revisions addressing payroll card accounts. In light of the comments, a final rule (R-1247; 71 FR 1473) was published on January 10, 2006. The Board subsequently published an interim final rule in August 2006 (71 FR 51437) to clarify certain provisions in the January 2006 final rule. The August 2006 interim rule corrected an omission in the January 2006 final rule. The Board received 14 comment letters on the August 2006 interim rule that were addressed in the December 1, 2006, final rule (71 FR 69430).

## **Sensitive Questions**

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

## **Estimate of Respondent Burden**

The current estimated total annual burden for this information collection is 83,866 hours, as shown in the table below. The table contains estimates of the burden for the 1,289 Federal Reserve-regulated institutions to which Regulation E applies. The total number of respondents includes all institutions that have electronic fund transfers other than preauthorized transfers.<sup>11</sup>

The Federal Reserve estimates that approximately 5 Regulation E respondents participate in payroll card programs. These institutions already have systems in place to comply with the Regulation E requirements for accounts generally. The Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to reprogram and update their systems to provide initial disclosures to payroll card account holders. The Federal Reserve also estimates that each respondent will take, on average, 7 hours to reprogram and update systems to provide periodic statements, or to provide account information by other means. Finally, the Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to develop error resolution procedures.

The burden for the initial disclosures and error resolution rules requirements is attributed to the 1,289 financial institutions that are Regulation E respondents. Because the burden of periodic disclosure requirements for state member banks is accounted for in the estimate of the burden associated with Regulation DD, to avoid double-counting the burden for periodic disclosure requirements is estimated only for the 315 financial institutions other than state member banks that are Regulation E respondents.

Moreover, no burden for transaction disclosures is shown below because that burden is believed to be negligible. Disclosures at electronic terminals are handled entirely by machine. Moreover, banks ordinarily meet the deposit verification disclosure requirement by providing consumers a telephone number. Finally, the payee, rather than the bank, ordinarily discloses amounts to be transferred from an account.

A financial institution and a consumer may agree to send by electronic communication any disclosure that this regulation requires be provided in writing. This may help to reduce the burden on a financial institution; however, at this time there is not enough information available to know how much the E-Sign Act has reduced burden.

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<sup>11</sup> The number of respondents was obtained from numbers published in the Board of Governors of the Federal Reserve System Annual Report. In previous burden estimates, Board staff estimated that approximately 25 percent of these institutions with assets less than \$100 million have preauthorized transfers only and therefore are excluded from the respondent count. However, Board staff now feels that all institutions offer at least a debit card, which is covered by the periodic disclosure requirement; therefore, the 25 percent exemption no longer exists.



For purposes of the PRA no paperwork burden is associated with the recordkeeping requirement of Regulation E. Section 205.13(b) requires, “any person subject to the act and this part to retain evidence of compliance ... for a period of not less than two years from the date the disclosures are required to be made or action is required to be taken,” but does not specify the kind of records that must be retained. This burden represents 1.8 percent of total Federal Reserve paperwork burden.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
<u>Payroll card issuers disclosures</u>				
Initial disclosure	5	1	8 hours	40
Periodic disclosure	5	1	7 hours	35
Error resolution rules	5	1	8 hours	40
<u>Financial institutions disclosures</u>				
Initial terms	1,289	250	1.5 minutes	8,056
Change in terms	1,289	340	1 minute	7,012
Periodic disclosure	341	12	7 hours	28,644
Error resolution rules	1,289	30	30 minutes	19,335
<u>One-time changes</u>				
Initial disclosures				
Merchants & payees disclosures <sup>10</sup>	1,289	1	8 hours	10,312
ATM signage disclosure	10	1	8 hours	80
	1,289	1	8 hours	<u>10,312</u>
<i>total</i>				83,866

The total cost to the public is estimated to be \$5,673,535.<sup>12</sup>

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<sup>12</sup> Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% - Clerical @ \$25, 45% - Managerial or Technical @ \$55, 15% - Senior Management @ \$100, and 10% - Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.

## **Financial Industry Burden Averages**

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.<sup>13</sup> They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions subject to Regulation E, including Federal Reserve-supervised institutions, would be approximately 1,252,684 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, such as retailers, finance companies, mortgage bankers, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

## **Estimate of Cost to the Federal Reserve System**

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

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<sup>13</sup> Appendix B – Federal Enforcement Agencies – of Regulation E lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Securities and Exchange Commission, and Federal Trade Commission.