

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

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the recordkeeping and disclosure requirements of Regulation E, which implements the Electronic Fund Transfer Act (EFTA).¹ The Federal Reserve is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies regulations, such as Regulation E, as “required information collections.”²

The EFTA and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services debiting or crediting a consumer’s account. The disclosures required by the EFTA and Regulation E are triggered by certain specified events. The disclosures inform consumers about the terms of the electronic fund transfer service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors. To ease institutions’ burden and cost of complying with the disclosure requirements of Regulation E (particularly for small entities), the Board publishes model forms and disclosure clauses.

The Board’s Regulation E applies to all financial institutions, not just state member banks (SMBs). In addition, certain provisions in Regulation E apply to entities that are not financial institutions, including those that act as service providers or automated teller machine (ATM) operators, as well as merchants and other payees that engage in electronic check conversion (ECK) transactions, the electronic collection of returned item fees, or preauthorized transfers. The Federal Reserve accounts for the paperwork burden associated with Regulation E only for the financial institutions it supervises³ and that meet the criteria set forth in the regulation. Other federal agencies account for the paperwork burden imposed on the entities for which they have regulatory enforcement authority. The annual burden is estimated to be 59,902 hours for 1,205 Federal Reserve-supervised institutions that are deemed “respondents” for purposes of the Paperwork Reduction Act.

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 State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations, organizations operating under section 25 or 25(a) of the Federal Reserve Act.

Additional information about the paperwork burden associated with EFTA and Regulation E, including statutory and regulatory history, a description of the recordkeeping and disclosure requirements, and how the estimated total annual burden was calculated, is discussed below.

Background and Justification

The EFTA and Regulation E require that institutions provide consumers of EFT services information about their rights, responsibilities, and liabilities as well as the costs of the services. EFT services include ATM transfers, debit card transactions, telephone bill payment, point-of-sale transfers, fund transfers initiated through the Internet, and direct deposits to or withdrawals of funds from a consumer's account that are electronically initiated. The act does not exempt small institutions, but it authorizes the Board 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 in May 1996 to institutions with assets of \$100 million or less. An institution with assets of \$100 million or less that provides EFT services other than preauthorized transfers must, however, comply with the regulation for those other services.

In January 2006,⁴ the Board finalized a rule to clarify the responsibilities of parties involved in ECK transactions. Under the rule, merchants and other payees that convert payments by check into EFTs must provide a notice to consumers to obtain consumer authorization for the EFT. The final rule also clarified the disclosure obligations of ATM operators with respect to fees imposed by the ATM operator on a consumer. The mandatory compliance date of the rule was January 1, 2007.

In August 2006,⁵ payroll card accounts became subject to Regulation E. The Board's rule granted flexibility to financial institutions that must provide account transaction information to payroll card users. Under the rule, institutions are not required to provide regular periodic statements to consumers if the institution makes account transaction information available by telephone, electronically, and, upon the consumer's request, in writing. The rule became effective on July 1, 2007.

On December 1, 2006,⁶ the Board issued a final rule regarding consumer authorization requirements when a person, such as a merchant, seeks to electronically collect a fee for checks or other items returned unpaid. The mandatory compliance date of the rule was January 1, 2007; however, certain provisions relating to the content of notices provided to consumers at point-of-sale had a delayed compliance date of January 1, 2008.

⁴ 71 FR 1638 (Jan. 10, 2006).

⁵ 71 FR 51437 (Aug. 30, 2006).

⁶ 71 FR 69430 (Dec. 1, 2006).

On July 5, 2007,⁷ the Board eliminated the requirement to provide a receipt to consumers at point-of-sale (POS) and other electronic terminals for transactions of \$15 or less, effective August 6, 2007.

In November 2007,⁸ the Board published a final rulemaking that amended Regulation E to address the delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Disclosures required to be in writing under Regulation E may be provided to the consumer in electronic form, subject to compliance with the consent and other requirements of the E-Sign Act.⁹

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.

Electronic Communication

A consumer may agree to receive from a financial institution in electronic form any disclosure that Regulation E requires be provided in writing, subject to the consent and other requirements of the E-Sign Act, so long as the disclosure complies with the regulation in all other respects. In this memorandum, any reference to a mandatory written disclosure does not exclude the possibility that the consumer may agree to receive the disclosure in electronic form.

Initial Disclosures and Change-In-Terms (Sections 205.7(b), 205.8(a), and 205.18(c)(1))

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 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. Initial disclosures include: information about the consumer's liability for unauthorized transfers; the types of transfers available and any limitations on the frequency and dollar amount of transfers; any fees imposed by the financial institutions for EFTs or the right to make EFTs; 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.

⁷ 72 FR 36589 (July 5, 2007)

⁸ 72 FR 63452 (Nov. 9, 2007)

⁹ Section 205.17 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board deleted § 205.17 from Regulation E and the accompanying sections of the staff commentary, reserving that section for future use.

A change-in-terms notice is required if the change would result in increased liability for the consumer, increased fees, fewer types of available EFTs, or stricter limitations on the frequency or dollar amounts of transfers. A change-in-terms notice must be mailed or delivered to the consumer at least 21 days before the effective date of the change in term or condition.

A financial institution's initial disclosures, if applicable for payroll card accounts for which the financial institution will not be providing regular written periodic statements, must disclose: a telephone number that the consumer may call to obtain the account balance; the means by which the consumer can obtain an electronic account history, such as the address of an Internet web site; and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 205.7(b)(6)), including a telephone number to call to request a history. In addition, the disclosures must include an error resolution notice substantially similar to the notice contained in paragraph A-7 (a) in appendix A.

Terminal Receipts (Sections 205.9(a))

An institution offering an EFT service must provide a receipt each time a consumer initiates an EFT of more than \$15 at an electronic terminal (for example, an ATM). Terminal receipts can 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, burden associated with this requirement is negligible.

Periodic Statements (Section 205.9(b) and 205.18(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: transaction information for EFTs occurring during the statement period; fees assessed during the statement period for EFTs, the right to make transfers, or account maintenance; opening and closing balances; the address and telephone number for error inquiries; and a telephone number for verification of preauthorized transfers to the consumer's account if the institution uses that option. Institutions are required to send a periodic statement for each monthly cycle in which an EFT has occurred and at least quarterly if no transfer has occurred. Modified requirements apply to passbook and certain other types of accounts. Also, as an alternative to providing periodic statements for payroll card accounts, a financial institution may make account transaction information available to the consumer by telephone, electronically, and upon the consumer's request, in writing.¹⁰

¹⁰ 12 CFR § 205.18(b).

Because periodic statements required under Regulation E are typically included with monthly checking and savings account statements provided under Regulation DD, the burden associated with this requirement for SMBs is accounted for in the estimate of the paperwork burden associated with Regulation DD, and is therefore not accounted for in the Regulation E burden estimate.¹¹ The burden associated with this requirement for financial institutions that are not subject to Regulation DD is addressed in the Estimate of Respondent Burden section of this memorandum.

Preauthorized Transfers (Section 205.10)

A preauthorized transfer is an EFT authorized in advance to recur at substantially regular intervals. Preauthorized transfers from a consumer's account may only be authorized by a writing signed or similarly authenticated by the consumer.

For preauthorized transfers *to* the consumer's account, the institution must provide oral or written notice of the transfer (positive notice) or that the transfer did not occur (negative notice). In lieu of providing positive or negative notice, the institution may, and typically does, provide a readily available telephone number that the consumer can call to verify receipt of the deposit. If positive notice is provided to the consumer by the payor, as in most cases, the financial institution need not provide notice. Therefore, the burden of this requirement is negligible.

For preauthorized transfers *from* the consumer's account, if a payment will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, either the institution or the payee must provide written notice to the consumer of the amount and date of the transfer. Alternatively, the institution or the payee may give the consumer the option of receiving notice only when a transfer falls outside a specified range or only when a transfer differs from the most recent transfer by more than an agreed-upon amount. Because in the vast majority of instances the payee, rather than the bank, satisfies this obligation, the burden on banks is negligible.

Error resolution notice and written confirmation (Sections 205.8(b) and 205.11)

Institutions must notify consumers about their rights and responsibilities in connection with errors involving EFTs 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. Error resolution rights summaries are typically included with monthly checking and savings account statements provided under Regulation DD, therefore the Regulation E burden associated with this requirement for SMBs is accounted for in the estimate of the paperwork burden under Regulation DD.

¹¹ 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.

When a consumer provides notice of an error, the institution must investigate and determine whether an error occurred.¹² Generally, if the institution is unable to complete its investigation of the error within ten business days, it may take up to 45 calendar days provided it provisionally credits the disputed amount to the consumer's account within the ten business days, notifies the consumer, orally or in writing, of the provisional crediting, and gives the consumer full use of the funds during the investigation. The institution must correct the error, if any, report the results to the consumer, and notify the consumer that the provisional credit 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. For payroll card accounts where the financial institution provides alternative disclosures to regular periodic statements, the timing requirements for the error resolution procedures are modified.¹³

Disclosures at ATMs (Section 205.16(c))

An ATM operator that imposes a fee on a consumer for initiating an EFT or balance inquiry must: a) post a notice on or at the ATM that a fee will or may be imposed for EFT services or for a balance inquiry, and b) provide screen or paper notice that an ATM fee will be imposed and the amount of the fee before the consumer is committed to paying the fee. Because these disclosures are machine-generated and involvement by an employee of the institution is minimal, for purposes of the PRA, burden associated with this requirement is negligible.

Disclosures Related to ECK Transactions and Collecting Returned Item Fees Electronically (Sections 205.3(a) and (b)(2))

A merchant or other payee who initiates an ECK transaction must provide a notice that the transaction will or may be processed as an EFT. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction. Through December 31, 2009, the merchant or other payee must also provide notice to the consumer that when a check is used to initiate an EFT, funds may be debited from the consumer's account as soon as the same day payment is received, and as applicable, that the consumer's check will not be returned by the financial institution holding the consumer's account.

¹² A consumer's potential liability for an unauthorized transfer depends on when the consumer notifies the financial institution of the loss or theft of an access device or of the unauthorized transfer. See 12 CFR § 205.6. These benchmarks are modified for financial institutions providing alternative disclosures to periodic statements for payroll card accounts. See 12 CFR § 205.18(c).

¹³ 12 CFR § 205.18(c)

A person initiating an EFT to collect a fee for the return of an EFT or a check that is unpaid must provide notice to the consumer stating that the person may electronically collect the fee and the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then an explanation of how the fee will be determined must be provided instead. For returned item fees that may be collected electronically in connection with a point-of-sale transaction, the notice must be posted in a prominent and conspicuous location. A copy of the notice must be provided to the consumer at the time of the transaction or mailed to the consumer's address as soon as reasonably practicable after the person initiates the EFT to collect the fee.

Time Schedule for Information Collection

Information collection pursuant to Regulation E is triggered by specific events, and disclosures must be provided to consumers within the time periods established by the law and regulation. There is no reporting form associated with the requirements of Regulation E; disclosures pertaining to a particular transaction or consumer account are not publicly available.

Sensitive Questions

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

Consultation Outside the Agency

On October 15, 2008, the Federal Reserve published a notice in the *Federal Register* (73 FR 61126) requesting public comment for 60 days on this information collection. The comment period for this notice expires on December 15, 2008. The comment period for this notice expired on December 15, 2008. The Federal Reserve did not receive any comments. On December 23, 2008, the Federal Reserve published a final notice in the *Federal Register* (73 FR 78799).

Legal Status

The Board's Legal Division has determined that the Electronic Fund Transfer Act (15 U.S.C. § 1693 *et seq*), Title IX of the Consumer Credit Protection Act, authorizes the Federal Reserve 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.

Estimate of Respondent Burden

The current total annual burden for this information collection is estimated to be 59,902 hours for the 1,205 Federal Reserve-supervised institutions¹⁴ to which Regulation E applies, as shown in the table below. This burden represents less than 1.4 percent of total Federal Reserve paperwork burden. The total number of respondents includes all institutions that have EFTs other than preauthorized transfers.¹⁵

The burden for the initial disclosures, change in terms notices, and error resolution rules requirements applies to all 1,205 Regulation E respondents. For the periodic disclosure requirements, the burden for SMBs is accounted for in the estimate under Regulation DD. However, there are 327 Regulation E respondents¹⁶ that are not included in the Regulation DD burden estimate and are accounted for under Regulation E for the periodic disclosure requirements, as shown in the table below.

Moreover, no burden for receipts or disclosures related to preauthorized transfers is shown below because that burden is believed to be negligible. Receipts provided at electronic terminals are handled entirely by machine. For preauthorized transfers to a consumer's account, banks ordinarily provide a readily available telephone number that the consumer can call to verify receipt of the deposit. Finally, for preauthorized transfers from a consumer's account, the payee, rather than the bank, ordinarily discloses amounts to be transferred to the consumer.

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.

<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average Response time</i>	<i>Estimated annual burden hours</i>
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¹⁴ The number of Federal Reserve-supervised respondents was obtained from numbers published in the Board of Governors of the Federal Reserve System 94th Annual Report 2007: 878 State member banks, 258 Branches & agencies of foreign banks, 2 Commercial lending companies, and 67 Edge and agreement corporations.

¹⁵ In previous burden estimates, Federal Reserve staff estimated that approximately 25 percent of institutions with assets less than \$100 million provided preauthorized transfers only and therefore were excluded from the respondent count under the small institution exemption from Regulation E. However, Federal Reserve staff believes that all Federal Reserve-supervised institutions now offer at least a debit card; therefore, there would be no Federal Reserve-supervised institutions that would qualify for the small institution exemption under Regulation E, so all Federal Reserve-supervised institutions are included.

¹⁶ The 327 Federal Reserve-supervised Regulation E respondents that are not SMBs are comprised of: 258 Branches & agencies of foreign banks, 2 Commercial lending companies, and 67 Edge and agreement corporations. Federal Reserve staff believes that these respondents do not typically provide periodic statements under Regulation DD.

Initial disclosures (205.7(b)) & (205.18(c)(1))	1,205	250	1.5 minutes	7,531
Change-in-terms (205.8(a))	1,205	340	1 minute	6,828
Periodic statements (205.9(b))	327	12	7 hours	27,468
Error resolution (205.11)	1,205	30	30 minutes	<u>18,075</u>
<i>Total</i>				59,902

The total cost to the public is estimated to be \$3,693,020.¹⁷

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.

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.¹⁸ 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, of which there are approximately 17,200 including Federal Reserve-supervised institutions, would be approximately 490,611 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. In addition, other persons subject to Regulation E, such as retailers and ATM operators who are not themselves depository institutions potentially are affected by this collection of information, and thus are also respondents for purposes of the PRA.

¹⁷ 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.

¹⁸ 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.