

**Supporting Statement for Information Collection
Provisions of Regulation E
(Electronic Fund Transfer Act)
12 CFR 205
(OMB Control Number: 3084-0085)**

1. Necessity for Collecting and Retaining the Information

The Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. 1693 *et seq.*, requires accurate disclosure of the costs, terms and rights relating to electronic fund transfer (“EFT”) services to consumers. Entities offering EFT services must provide consumers with full and accurate information regarding consumers' rights and responsibilities in connection with EFT services. These disclosures are intended to protect the rights of consumers using EFT services, such as automated teller machine (“ATM”) transfers, telephone bill-payment services, point-of-sale transfers at retail establishments, electronic check conversion, payroll cards, and preauthorized transfers from or to a consumer's account. The EFTA also establishes error resolution procedures and limits consumer liability for unauthorized transfers in connection with EFT services.

The Federal Reserve Board (“FRB”) promulgated Regulation E to implement the EFTA, as required by the statute. The Federal Trade Commission (“FTC” or “Commission”) enforces the EFTA as to all entities providing EFT services except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions). The EFTA also contains a private right of action with a one-year statute of limitations for aggrieved consumers.

Recordkeeping

Section 205.13(c) of Regulation E requires entities subject to the EFTA to retain for two years evidence of compliance with the regulation. Regulation E also provides that any entity subject to the EFTA that is notified by the FTC (or other administrative agency) that it is being investigated or is the subject of an enforcement proceeding, or that has been notified of a private or criminal action being filed, shall retain evidence of compliance until final disposition of the matter, or such earlier time as allowed by a court or agency order. The recordkeeping requirement insures that records that might contain evidence of violations of the EFTA remain available to the FTC and other agencies, as well as to private litigants.

Disclosure

The vast majority of Regulation E's disclosure requirements are statutorily mandated by the EFTA. *See, e.g.*, consumer liability for unauthorized use, 12 CFR 205.6, 15 U.S.C. 1693g; initial disclosures, 12 CFR 205.7, 15 U.S.C. 1693c(a); change in terms, 12 CFR 205.8, 15 U.S.C. 1693c(b); receipts at electronic terminals, 12 CFR 205.9(a), 15 U.S.C. 1693d(a); periodic statements, 12 CFR 205.9(b), 15 U.S.C. 1693c; preauthorized transfers, 12 CFR 205.10, 15 U.S.C. 1693e; and error resolution, 12 CFR 205.11, 15 U.S.C. 1693f.

The FRB has issued model forms and clauses that can be used to comply with the written disclosure requirements of the EFTA and Regulation E. *See* Appendix A to Regulation E. Correct use of these model forms and clauses protects entities from liability for the respective requirements under the EFTA and Regulation E. *Id.*

2. Use of the Information

The FTC, other agencies, and private litigants use the records to ascertain whether accurate and complete disclosures of EFT services and other required actions (for example, error resolution and limitation of consumer liability for unauthorized transfers) have been provided. This information provides the primary evidence of law violations in EFTA enforcement actions brought by the FTC. Without the Regulation E recordkeeping requirement, the FTC's ability to enforce the EFTA would be significantly impaired.

Consumers rely on the disclosures required by the EFTA and Regulation E to facilitate informed EFT decisionmaking. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of the transactions offered. Also, without the special error resolution and limitation of consumer liability provisions, consumers would be unable to detect and correct errors in their EFT transactions and fraudulent transfers. These disclosures and provisions are necessary for the FTC and private litigants to enforce the EFTA and Regulation E.

3. Consideration of the Use of Improved Information Technology

The FRB has issued final rules to establish uniform standards for using electronic communication to deliver disclosures required under Regulation E, within the context of the Electronic Signatures in Global and National Commerce Act (“ESIGN”), 15 U.S.C. 7001 *et seq.* 72 FR 63,452 (Nov. 9, 2007). These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN, which became effective on Oct. 1, 2000. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act (“GPEA”), Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504, note. ESIGN and GPEA serve to reduce businesses’ compliance burden related to federal requirements, including Regulation E, by enabling businesses to utilize more efficient electronic media for disclosures and compliance.

Regulation E also permits entities to retain records on microfilm, microfiche, magnetic tape or other methods capable of accurately retaining and reproducing information. Business entities need only retain evidence demonstrating that their procedures reasonably ensure the consumer's receipt of required disclosures and documentation; the entity need not retain records of the actual disclosures and documentation given to each consumer. Section 205.13(b)-1 of the FRB Official Staff Commentary on Regulation E.

In addition, due to the nature of electronic fund transfers, most entities that utilize such transfers and are covered by the EFTA use computer support and various electronic means to facilitate generation of the mandated disclosures, thereby limiting burden.

4. Efforts to Identify Duplication/Availability of Similar Information

The recordkeeping requirement of Regulation E preserves the information an affected entity uses in making disclosures and other required actions regarding EFT services. The entity is the only source of this information. No other federal law mandates its retention. State laws do not duplicate these requirements, although some states may have other rules applicable to EFT services.

Similarly, covered entities are the only source of the information contained in the disclosures required by the EFTA and Regulation E. No other federal law mandates these disclosures. State laws do not duplicate these requirements, although some states may have other rules applicable to EFT services.

5. Efforts to Minimize Burdens on Small Businesses

The Regulation E recordkeeping and disclosure requirements are imposed on financial institutions and entities offering EFT services. The recordkeeping requirement is mandated by Regulation E. The disclosure requirements are mandated by the EFTA and/or Regulation E. As previously noted, the FTC's role in this area is limited to enforcement; the EFTA vested rulemaking authority in the FRB.

Most EFT entities today utilize some degree of computerization in their businesses, which further assists in facilitating compliance with these requirements. Moreover, as discussed above, entities need not retain every disclosure form provided to consumers if they retain evidence demonstrating procedures that reasonably ensure the consumer's receipt of required disclosures and records. Further, financial institutions no longer must make a receipt available at the time a consumer initiates an EFT of \$15 or less at an electronic terminal. *See* 72 FR 36,589 (July 5, 2007). EFTA also exempts entities that have \$100 million or less in assets from the requirements for preauthorized transfers. Additionally, as noted above, Regulation E provides model forms and clauses that may be used in compliance with its requirements; correct use of these forms and clauses insulates a financial entity from liability for the respective requirements.

6. Consequences of Conducting Collection Less Frequently

The current record retention period of two years supports the one-year statute of limitations for private actions, and the FTC's (and other administrative agencies') need for sufficient time to bring enforcement actions regarding EFT transactions. If the retention period were shortened, consumers who sue under the EFTA, and the administrative agencies that enforce the EFTA, might find that the records needed to prove EFTA violations no longer exist.

As noted, the current disclosure requirements are needed to foster informed EFT decisionmaking and to identify errors and unauthorized transfers. Without these requirements, consumers would not have access to this critical information, their right to sue under the EFTA would be undermined, and the FTC and other administrative agencies charged with enforcing the EFTA could not fulfill their mandates.

7. Circumstances Requiring Collection Inconsistent with Guidelines

Regulation E's recordkeeping and disclosure requirements are consistent with the guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

Before Regulation E was adopted and prior to each amendment, the FRB published the regulation for public comment in the Federal Register, giving the public the opportunity to comment on the recordkeeping and disclosure requirements associated with the rule.

More recently, the FTC sought public comment in connection with its latest PRA clearance request for these regulations, in accordance with 5 CFR 1320.8(d). *See* 73 FR 70,347 (Nov. 20, 2008). No comments were received. Consistent with 5 CFR 1320.12(c), the FTC is again seeking public comment contemporaneously with this submission.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature.

The required recordkeeping and disclosures also contain private financial information about consumers who use EFT services that is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* Such records may also constitute confidential customer lists. Any of these records provided to the FTC would be covered by the protections of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. 46(f) and 57b-2, by Section 4.10 of the Commission's Rules of Practice, 16 CFR 4.10, and by the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

12. Estimated Hours Burden: 3,731,343 hours

Recordkeeping

Staff estimates that Regulation E's recordkeeping requirements affect 600,000 firms offering EFT services to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 600,000 hours.

Disclosure

Regulation E applies to financial institutions (including certain retailers and various payees engaged in electronic commerce), service providers, various federal and state agencies offering EFTs, and others. Below is staff's best estimate of burden applicable to this very broad spectrum of covered entities.

Regulation E: Disclosures – Burden Hours

Disclosures ¹	----- Setup/Monitoring -----			----- Transaction-related-----			
	Respondents	Average Burden per Respondent (hours)	Total Setup/Monitoring Burden (hours)	Number of Transactions	Average Burden per Transaction (minutes)	Total Transaction Burden (hours)	Total Burden (hours)
Initial terms	100,000	.5	50,000	1,000,000	.02	333	50,333
Change in terms	25,000	.5	12,500	33,000,000	.02	11,000	23,500
Periodic statements	100,000	.5	50,000	1,200,000,000	.02	400,000	450,000
Error resolution	100,000	.5	50,000	1,000,000	5	83,333	133,333
Transaction receipts ²	100,000	.5	50,000	5,000,000,000	.02	1,666,667	1,716,667
Preauthorized transfers	500,000	.5	250,000	1,000,000	.25	4,167	254,167
Service provider notices	100,000	.25	25,000	1,000,000	.25	4,167	29,167
Govt. benefit notices	10,000	.5	5,000	100,000,000	.25	416,667	421,667
ATM ³	500	.25	125	250,000	.25	1,041	1,166
Electronic check conversion ⁴	100,000	.5	50,000	3,500,000	.02	1,167	51,167
Payroll cards ⁵	100	.5	50	2,500	3	125	175
Total							3,131,342

¹ This reflects an increase in entities offering EFT services to consumers.

² Regulation E now exempts EFTs of \$15 or less from receipt requirements, which could decrease the burden of providing transaction receipts. However, use of the exemption could involve reprogramming costs. Due to the relatively recent change, the burden associated with transaction receipts has not been changed.

³ Regulation E now permits ATM operators that do not charge fees for services in all circumstances to disclose on signs that a fee "may" (rather than "will") be charged. However, making this change would require replacing existing signage, which could increase disclosure burden. Due to the relatively recent change and its voluntary nature, the burden associated with ATM notice has not been revised.

⁴ Regulation E now includes requirements for electronic check conversion.

⁵ Regulation E now includes requirements for payroll cards.

Associated labor cost: \$107,825,124

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$41 for managerial time, \$30 for skilled technical time, and \$16 for clerical time) are averages.

Recordkeeping

For the 600,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is \$10,440,000.

Disclosure

For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is \$97,385,124.

Regulation E: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		-----Skilled Technical-----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$41/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
Recordkeeping	0	\$0	60,000	\$1,800,000	540,000	\$8,640,000	\$10,440,000
Disclosures:							
Initial terms	5,033	\$206,353	45,300	\$1,359,000	0	\$0	\$1,565,353
Change in terms	2,350	\$96,350	21,150	\$634,500	0	\$0	\$730,850
Periodic statements	45,000	\$1,845,000	405,000	\$12,150,000	0	\$0	\$13,995,000
Error resolution	13,333	\$546,653	120,000	\$3,600,000	0	\$0	\$4,146,653
Transaction receipts	171,667	\$7,038,347	1,545,000	\$46,350,000	0	\$0	\$53,388,347
Preauthorized transfers	25,417	\$1,042,097	228,750	\$6,826,500	0	\$0	\$7,904,597
Service provider notices	2,917	\$119,597	26,250	\$787,500	0	\$0	\$907,097
Govt. benefit notices	42,167	\$1,728,874	379,500	\$11,385,000	0	\$0	\$13,113,874
ATM notices	116	\$4,756	1,050	\$31,500	0	\$0	\$36,256
Electronic check conversion	5,117	\$209,797	46,050	\$1,381,500	0	\$0	\$1,591,297
Payroll cards	50	\$2,050	125	\$3,750	0	\$0	\$5,800
Total Disclosures							\$97,385,124
Total Recordkeeping and Disclosures							\$107,825,124

13. Estimated Capital and Other Non-Labor Costs

The applicable requirements impose minimal start-up costs, as financial entities generally have or obtain necessary equipment for other business purposes. For the same reason, staff believes that the cost of printing and copying needed to comply with Regulation E is minimal. Staff anticipates that the requirements noted above necessitate ongoing, regular training so that financial entities stay current and have a clear understanding of federal mandates. This training, however, would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with collecting information to comply with Regulation E.

14. Estimated Cost to the Federal Government

The FRB promulgated the recordkeeping requirement of Regulation E, so there is no cost to the FTC for that purpose. Enforcement of the recordkeeping requirement of Regulation E is incidental to overall enforcement of the EFTA. In the course of compliance investigations, staff routinely requests records of EFT disclosures and other required actions. If the records requested are not available, it indicates that records are not being retained as required. Staff estimates that the current fiscal year cost to the FTC Bureau of Consumer Protection of implementing and administering this requirement will approximate \$9,824, which is a representative years' cost of enforcing Regulation E's requirement during the three-year clearance period sought. This estimate is based on the assumption that one-sixteenth of one

attorney work year will be expended. Clerical and other support services are included in this estimate.

Regarding the enforcement of the disclosure requirements for Regulation E, staff estimates that the cost to the FTC Bureau of Consumer Protection will approximate \$157,184. This estimate is based on the assumption that one attorney work year will be expended to enforce various aspects of the disclosure requirements. Clerical and other support services are also included in this estimate.

15. Program Changes or Adjustments

Staff has adjusted upward the FTC's previous annual burden estimate by 151,343 hours (from 3,580,000 to 3,731,343). This reflects an increase in entities offering EFT services to consumers, and new requirements for electronic check conversion and payroll cards.

16. Publishing Results of the Collection of Information

Not applicable.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for PRA Submissions

Not applicable.