

**CONSUMER FINANCIAL PROTECTION BUREAU  
REQUEST FOR EMERGENCY PROCESSING AND APPROVAL  
ELECTRONIC FUND TRANSFER ACT (REGULATION E) 12 CFR 1005**

**EMERGENCY JUSTIFICATION**

The Bureau of Consumer Financial Protection (CFPB) respectfully requests emergency processing and approval of the collection of information discussed below because the use of normal clearance procedures is reasonably likely to prevent and disrupt an existing collection of information.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 111–203, 124 Stat. 1376 (2010), rulemaking authority for the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, transferred from the Board of Governors of the Federal Reserve System (Board) to the CFPB on July 21, 2011, except with respect to Section 920 of the EFTA, dealing with debit card interchange fees, network arrangements, and routing restrictions. In addition to the transfer of rulemaking authority under the Dodd-Frank Act, the CFPB received certain enforcement authorities with respect to the EFTA. The CFPB is in the process of publishing for public comment an interim final rule establishing a new regulation in 12 CFR Part 1005 (Regulation E). This interim final rule substantially replicates the Board’s EFTA rule, and will not impose any new substantive obligations on regulated entities or any new information collection requirements.

As the CFPB now has enforcement authority over certain populations that have been under the jurisdiction of other agencies, the CFPB is requesting approval of a new OMB control number for its collection activities under Regulation E. To prevent disruption of an approved information collection, the CFPB is requesting emergency processing and approval of the following information collection request. Upon receipt of emergency approval from the Office of Management and Budget, the CFPB will begin a standard approval process for this collection and will seek public input at that time.

**CONSUMER FINANCIAL PROTECTION BUREAU  
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT  
ELECTRONIC FUND TRANSFER ACT (REGULATION E) 12 CFR 1005  
(OMB CONTROL NUMBER: 3170-XXXX)**

**A. JUSTIFICATION**

**1. Circumstances Necessitating the Data Collection**

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. Further, the EFTA and Regulation E were recently amended to impose disclosure and other requirements on issuers and sellers of gift cards, gift certificates, and general-use prepaid cards.

Historically, the EFTA was implemented in Regulation E of the Board of Governors of the Federal Reserve System (Board), 12 CFR Part 205. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 111-203, 124 Stat. 1376 (2010) transferred rulemaking authority for the EFTA to the Bureau of Consumer Financial Protection (CFPB), effective July 21, 2011. Under the Dodd-Frank Act, in addition to the transfer of rulemaking authority, the CFPB received certain enforcement authorities with respect to the EFTA. The EFTA also contains a private right of action with a one-year statute of limitations for aggrieved consumers.

**Recordkeeping**

Section 1005.13(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 CFPB (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 Federal 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 1005.6, 15 U.S.C. 1693g; initial disclosures, 12 CFR 1005.7, 15 U.S.C. 1693c(a); change in terms, 12 CFR 1005.8, 15 U.S.C. 1693c(b); receipts at electronic terminals, 12 CFR 1005.9(a), 15 U.S.C. 1693d(a); periodic statements, 12 CFR 1005.9(b), 15 U.S.C. 1693c; preauthorized transfers, 12 CFR 1005.10, 15 U.S.C. 1693e; and error

resolution, 12 CFR 1005.11, 15 U.S.C. 1693f. The CFPB 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**

Federal 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 will provide the primary evidence of law violations in EFTA enforcement actions brought by the CFPB. Without the Regulation E recordkeeping requirement, the CFPB'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 decision making. 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 CFPB and private litigants to enforce the EFTA and Regulation E.

## **3. Use of Information Technology**

Regulation E provides 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 63452 (Nov. 9, 2007). These rules enable businesses to use electronic disclosures, 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. Comment 1005.13(b)-1.

In addition, due to the nature of electronic fund transfers, most entities that use 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**

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 Entities**

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.

Most EFT entities today utilize some degree of computerization in their businesses, which further assists in facilitating compliance with Regulation E. Additionally, as noted above, Regulation E provides model forms that may be used in compliance with its requirements. Correct use of these forms insulates a financial entity from liability from the respective requirements.

## **6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction**

The current record retention period of two years supports the one-year statute of limitations for private actions, and the CFPB's 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 decision making 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 CFPB and other administrative agencies charged with enforcing the EFTA could not fulfill their mandates.

## **7. Circumstances Requiring Special Information Collection**

The collections of information in Regulation E are consistent with the applicable 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 Federal Reserve Board of Governors 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.

This Supporting Statement is based on the FTC's most recent Supporting Statement for OMB Control Number 3084-0085 (Supporting Statement for Information Collection Provisions of Regulation E (Electronic Fund Transfer Act)). The CFPB has consulted with the FTC with respect to burden

allocations. As this is a request for emergency processing and approval of the transfer of certain burdens from existing information collections to the CFPB, the CFPB has not sought public comment on this information collection request. Upon receipt of OMB's emergency approval, the CFPB will begin the standard approval process and will seek public input and input from other agencies at that time.

## **9. Payments or Gifts to Respondents**

Not applicable.

## **10. & 11. Assurances of Confidentiality/Justification for Sensitive Questions**

The required recordkeeping and disclosures contain private financial information about consumers who use EFT services. Such information 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 CFPB would be covered by the protections of 12 CFR 1070.40 *et seq.*, Section 1022(c) of the Dodd-Frank Act, and by the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

## **12. Estimated Burden of Information Collection**

Hours: 1,904,000

CFPB's estimate of the burden for ongoing recordkeeping and disclosure requirements under Regulation E is based on the assumption that the total ongoing burden for this regulation, across all agencies, remains the same as it was before the regulation was restated by the CFPB. Prior to the passage of the Dodd-Frank Act, the ongoing recordkeeping and disclosure burdens for Regulation E allocated to the prudential regulators and the FTC were approximately 5,596,000 hours.<sup>1</sup> In light of the changes made by the Dodd-Frank Act, roughly 1,904,000 hours of that burden is being reallocated to the CFPB. Specifically, CFPB is being allocated burden for 180 depository institutions (comprising depository institutions with total assets of more than \$10 billion and their depository affiliates) which is the approximate number of such depository entities that the CFPB now has primary enforcement authority for with respect to Regulation E.<sup>2</sup> The CFPB is also being allocated half of the Federal Trade Commission (FTC) burden amount after subtracting the burden which the FTC has attributed to itself for motor vehicle dealers.<sup>3</sup>

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<sup>1</sup>For purposes of the current request for emergency review and approval, the CFPB has relied on the estimates previously developed by the Board, OCC, OTS, FDIC, NCUA, and FTC concerning the number of entities subject to Regulation E and the hours of paperwork burden under the statute (for a detailed breakdown of the burden estimates of the prudential regulators and the FTC, please reference the other agencies' supporting statements for Regulation E, which can be found at [www.reginfo.gov](http://www.reginfo.gov)). The CFPB's enforcement authority is not necessarily limited to the entities covered by these agencies' estimates. In some instances, information regarding actual burden hours or dollar costs, or breakdowns of these hours or costs was not available from the other agencies. In these cases, CFPB has estimated the relevant figures based on data provided by the OCC and in some cases by the Board. The CFPB will conduct a more detailed review of burden allocations and provide more detailed estimates in its follow-up application to OMB for a standard approval of this information collection.

<sup>2</sup>These include 27 from the Board, 70 from the OCC, 24 from the OTS, 3 from the NCUA, and 56 from the FDIC.

<sup>3</sup>The Dodd-Frank Act exempts certain motor vehicle dealers from CFPB's enforcement authority. However, due to the difficulty of making a reliable estimate of those dealers, the FTC has attributed to itself the PRA burden for all motor vehicle dealers. This attribution does not change actual enforcement authority.

Associated Labor Costs: \$ 56,401,000

The CFPB calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used are those associated with the burden hours assumed from the other regulatory agencies, which differ by agency.

The CFPB estimates that the ongoing recordkeeping and disclosure costs allocated to the CFPB under Regulation E are \$56,401,000. This estimate was calculated by summing the CFPB's share of costs from the supporting statements of the other agencies, following each agency's own cost analysis. For a detailed breakdown of the cost analysis, please reference the other agencies' supporting statements for Regulation E.

**13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers**

None.

**14. Estimated Cost to the Federal Government**

As the CFPB does not collect any information, the cost to the CFPB is negligible.

**15. Program Changes or Adjustments**

Not applicable.

**16. Plans for Tabulation, Statistical Analysis, and Publication**

Not applicable.

**17. Display of Expiration Date**

Not applicable.

**18. Exceptions to the Certification Requirement**

None.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.