

Federal Trade Commission
Supporting Statement for Information Collection
Provisions of Regulation E
(Electronic Fund Transfer Act)
12 C.F.R. 205; 12 C.F.R. 1005
(OMB Control Number: 3084-0085)

1. Necessity for Collecting 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, preauthorized transfers from or to a consumer’s account, overdraft protection, gift cards, and remittance transfers. The EFTA also establishes error resolution procedures and limits consumer liability for unauthorized transfers in connection with EFT services.

Subject to the discussion below, 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.

The Board of Governors of the Federal Reserve System (“FRB”) promulgated the original Regulation E (12 C.F.R. Part 205) to implement the EFTA, as required by the statute. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. 111-203, 124 Stat. 1376 (2010), however, almost all rulemaking authority for the EFTA transferred from the FRB to the Consumer Financial Protection Bureau (“CFPB”) on July 21, 2011 (“transfer date”). To implement this transferred authority, the CFPB has published for public comment interim final rules for new regulations in 12 C.F.R. Part 1005 (Regulation E), which it amended thereafter by issuing rules for remittance transfers for those entities under its rulemaking jurisdiction.¹ Although the Dodd-Frank Act transferred most rulemaking authority under EFTA to the CFPB, the FRB retained rulemaking authority for certain motor vehicle

¹ 12 C.F.R. 1005 (Reg. E) (76 Fed. Reg. 81,020, Dec. 27, 2011) (amended, 77 Fed. Reg. 6194, Fed. 7, 2012). Because both the FRB and the CFPB have certain rulemaking authority under Regulation E – as discussed further below – citations to both aspects of the regulation are included in this document. Hence, 12 C.F.R. 205 refers to the FRB-issued Regulation E; 12 C.F.R. 1005 refers to the CFPB-issued Regulation E. In most instances, these two aspects of Regulation E are virtually identical, other than occasional minor technical differences, and citations. However, the CFPB-issued Regulation E includes remittance transfer requirements, added by amendments in February 2012; the FRB-issued Regulation E does not.

dealers² and also for certain interchange-related requirements under EFTA.³

As a result of the Dodd-Frank Act, the FTC and the CFPB now share the authority to enforce Regulation E for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers. The FTC generally has sole authority to enforce Regulation E regarding motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁴

Recordkeeping

Section 205.13(c)/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 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 C.F.R. 205.6, 12 C.F.R. 1005.6, 15 U.S.C. 1693g; initial disclosures, 12 C.F.R. 205.7, 12 C.F.R. 1005.7, 15 U.S.C. 1693c(a); change in terms, 12 C.F.R. 205.8, 12 C.F.R. 1005.8, 15 U.S.C. 1693c(b); receipts at electronic terminals, 12 C.F.R. 205.9(a), 12 C.F.R. 1005.9(a), 15 U.S.C. 1693d(a); periodic statements, 12 C.F.R. 205.9(b), 12 C.F.R. 1005.9(b), 15 U.S.C. 1693c; preauthorized transfers, 12 C.F.R. 205.10, 12 C.F.R. 1005.10, 15 U.S.C. 1693e; error resolution, 12 C.F.R. 205.11, 12 C.F.R. 1005.11, 15 U.S.C. 1693f; gift cards, 12 C.F.R. 205.20, 12 C.F.R. 1005.20, 15 U.S.C. 1693l-1; remittance transfers, 12 C.F.R. 1005.30-36, 15 U.S.C. 1693o-1.

The FRB and CFPB have 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 12 C.F.R. Part 205; Appendix A to 12 C.F.R. Part 1005. Correct use of these model forms and clauses protects entities from liability for the respective requirements under the EFTA and Regulation E. *Id.*

² Generally, these are dealers “predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” *See* Dodd-Frank Act, § 1029(a), -(c).

³ *See* Dodd-Frank Act, § 1075 (these requirements are implemented through FRB Regulation II, 12 C.F.R. Part 235, rather than EFTA’s implementing Regulation E).

⁴ *See* Dodd-Frank Act, § 1029(a), -(c).

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 and CFPB have issued 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 Fed. Reg. 63,452 (Nov. 9, 2007); 76 Fed. Reg. 81,020 (Dec. 27, 2011); 77 Fed. Reg. 6194 (Feb. 7, 2012). These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act (“GPEA”), 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; Section 1005.13(b)-1 of the CFPB Official Staff Commentary.

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 and CFPB.

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 need not make a receipt available at the time a consumer initiates an EFT of \$15 or less at an electronic terminal. EFTA also exempts preauthorized transfers to or from an account if the assets of the account-holding financial institutions have \$100 million or less in assets.

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 C.F.R. 1320.5(d)(2).

8. Consultation Outside the Agency

The recordkeeping and disclosures requirements of Regulation E were issued by the FRB and CFPB. Before the regulation was initially issued and prior to each amendment, the amendments were published for public comment in the Federal Register.

More recently, the FTC sought public comment in connection with its latest PRA clearance request for these regulations, in accordance with 5 C.F.R. 1320.8(d). See 77 Fed. Reg. 6114 (Feb. 7, 2012). No comments on Regulation E were received. Consistent with 5 C.F.R. 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, which 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 C.F.R. 4.10, and by the applicable exemptions under the Freedom of Information Act, 5 U.S.C. 552(b).

12. Estimated Hours Burden: 4,410,917 (391,120 recordkeeping hours: 375,881 + 15,239 carve-out for motor vehicles + 4,019,797 disclosure hours: 4,002,868 + 16,929 carve-out for motor vehicles)

Because of their shared enforcement jurisdiction for Regulation E, the two agencies have divided the FTC's previously-cleared PRA burden between them,⁵ except that the FTC retained all of the part of that burden associated with certain motor vehicle dealers (for brevity, referred to in the burden summaries below as a "carve-out").⁶ The division of PRA burden hours not attributable to certain motor vehicle dealers is reflected in the CFPB's recent PRA clearance requests to OMB.⁷ The FTC's burden estimates below reflect both the shared enforcement jurisdiction and the FTC's separate accounting under the PRA for its exclusive jurisdiction to enforce Regulation E for such motor vehicle dealers.

⁵ The CFPB also factored into its burden estimates respondents over which it has jurisdiction but the FTC does not.

⁶ These are dealers specified by the Dodd-Frank Act under § 1029 (a), but as limited by subsection (b). Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff's "carve-out" for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

⁷ OMB Control Number 3170-0014 (Regulation E).

Recordkeeping

Staff estimates that Regulation E's recordkeeping requirements affect 391,120 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 391,120 hours.

Disclosure

Regulation E applies to financial institutions, retailers, gift card issuers and others that provide gift cards, service providers, various federal and state agencies offering EFTs, remittance transfer providers, etc. Below is staff's best estimate of burden applicable to this very broad spectrum of covered entities.

Regulation E: Disclosures – Burden Hours

Disclosures	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	50,000	.5	25,000	500,000	.02	167	25,167
Change in terms	12,500	.5	6,250	16,500,000	.02	5,500	11,750
Periodic statements	50,000	.5	25,000	600,000,000	.02	200,000	225,000
Error resolution	50,000	.5	25,000	500,000	5	41,667	66,667
Transaction receipts	50,000	.5	25,000	2,500,000,000	.02	833,333	858,333
Preauthorized transfers ¹	257,620	.5	128,810	6,440,500	.25	26,835	155,645
Service provider notices	50,000	.25	12,500	500,000	.25	2,083	14,583
Govt. benefit notices	5,000	.5	2,500	50,000,000	.25	208,333	210,833
ATM notices ²	250	.25	63	50,000,000	.25	208,333	208,396
Electronic check conversion ³	57,620	.5	28,810	1,152,400	.02	384	29,194
Payroll cards ⁴	125	.5	63	500,000	3	25,000	25,063
Overdraft services ⁵	50,000	.5	25,000	2,500,000	.02	833	25,833
Gift cards ⁶	50,000	.5	25,000	2,500,000,000	.02	833,333	858,333
Remittance transfers ⁷							
Disclosures	35,000	1	35,000	18,000,000	1	300,000	335,000
Error resolution	35,000	1	35,000	36,000,000	1	600,000	635,000
Agent compliance	35,000	1	35,000	18,000,000	1	300,000	335,000
Total							4,019,797

¹ Estimated preauthorized transfers have increased from the FTC's previously cleared estimate.

² Estimated ATM transactions have increased from the FTC's previously cleared estimate.

³ Estimated electronic check conversion has decreased from the FTC's previously cleared estimate.

⁴ Payroll card entities and transactions have increased greatly over the years, in large part due to the evolving economy as well as companies seeking ways to cut costs and reduce the amount of paper used in daily operations.

⁵ Regulation E now covers overdraft services.

⁶ Regulation E now, in part, covers gift cards.

⁷ Regulation E now covers remittance transfers.

Associated labor cost: \$135,042,449 (\$6,805,488 recordkeeping costs: \$6,540,328 + \$265,160 carve-out for motor vehicles + \$128,236,961 disclosure costs: \$127,696,924 + \$540,037 carve-out for motor vehicles)

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$49 for managerial time, \$30 for skilled technical time, and \$16 for clerical time) are averages.

Recordkeeping

For the 391,120 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 \$6,805,488.

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 \$128,236,961.

Regulation E: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		-----Skilled Technical-----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
Recordkeeping	0	\$0	39,112	\$1,173,360	352,008	\$5,632,128	\$6,805,488
Disclosures:							
Initial terms	2,517	\$123,333	22,650	\$679,500	0	\$0	\$802,833
Change in terms	1,175	\$57,575	10,750	\$322,500	0	\$0	\$380,075
Periodic statements	22,500	\$1,102,500	202,500	\$6,075,000	0	\$0	\$7,177,500
Error resolution	6,667	\$326,883	60,000	\$1,800,000	0	\$0	\$2,126,883
Transaction receipts	85,833	\$4,205,817	772,500	\$23,175,000	0	\$0	\$27,380,817
Preauthorized transfers	15,565	\$762,685	140,080	\$4,202,400	0	\$0	\$4,965,085
Service provider notices	1,458	\$71,442	13,125	\$393,750	0	\$0	\$465,192
Govt. benefit notices	21,083	\$1,033,067	189,750	\$5,692,500	0	\$0	\$6,725,567
ATM notices	20,840	\$1,021,160	187,500	\$5,626,680	0	\$0	\$6,647,840
Electronic check conversion	2,919	\$143,031	26,275	\$788,250	0	\$0	\$931,281
Payroll cards	2,506	\$122,794	22,557	\$676,710	0	\$0	\$799,504
Overdraft services	2,583	\$126,567	23,250	\$697,500	0	\$0	\$824,067
Gift cards	85,833	\$4,205,817	772,500	\$23,175,000	0	\$0	\$27,380,817
Remittance transfers							
Disclosures	33,500	\$1,641,500	301,500	\$9,045,000	0	\$0	\$10,686,500
Error resolution	63,500	\$3,111,500	571,500	\$17,145,000	0	\$0	\$20,256,500
Agent compliance	33,500	\$1,641,500	301,500	\$9,045,000	0	\$0	\$10,686,500
Total Disclosures							\$128,236,961
Total Recordkeeping and Disclosures							\$135,042,449

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 and CFPB issued 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 \$78,909, 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-half of one attorney work year will be expended. Clerical and other support services are included in this estimate.

The FRB and CFPB issued the disclosure requirements of Regulation E, so there is no cost to the FTC for that purpose. Regarding the enforcement of the disclosure requirements for Regulation E, staff estimates that the cost to the FTC Bureau of Consumer Protection will approximate \$631,266. This estimate is based on the assumption that three attorney work years and one other professional work years 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 679,574 hours (from 3,731,343 to 4,410,917). Notwithstanding the burden splitting noted above regarding shared enforcement authority with the CFPB, staff has increased its prior estimate because of an increase in entities offering EFT services to consumers, and new requirements for gift cards, overdraft services, and remittance transfers. Moreover, estimated preauthorized transfers have greatly increased from the FTC's 2009 cleared estimate.

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.

