

**CONSUMER FINANCIAL PROTECTION BUREAU  
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT  
ELECTRONIC FUND TRANSFER ACT (REGULATION E) 12 CFR 1005  
(OMB CONTROL NUMBER: 3170-0014)**

**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 and remittance transfer 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 EFTA and Regulation E impose disclosure and other requirements on issuers and sellers of gift cards, gift certificates, and general-use prepaid cards. Further, the EFTA and Regulation E were recently amended to provide protections for consumers in the United States who send remittance transfers to persons in a foreign country.

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 or the Bureau), effective July 21, 2011. On December 27, 2011, the CFPB republished Regulation E in 12 CFR part 1005, making technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. Under the Dodd-Frank Act, the CFPB must issue a final rule implementing the amendments to EFTA concerning remittance transfers by January 21, 2012 (January 2012 Final Rule). Concurrent with the January 2012 Final Rule, the CFPB is also publishing a notice of proposed rulemaking proposing amendments and soliciting comment on additional modifications to reduce regulatory burden or facilitate compliance for remittance transfer providers that do not send remittance transfers as a normal course of business or that provide remittance transfers scheduled in advance (January 2012 Proposed Rule or the proposal).

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.

The CFPB is currently discussing appropriate methodologies and burden sharing arrangements with the other Federal agencies that share administrative enforcement authority under this and other regulations for which certain rulewriting and enforcement authority transferred to the Bureau on July 21, 2011. Given the statutory deadline, the CFPB is submitting the collection of information to OMB prior to the conclusion of the discussions. If the estimates described herein change as a result of the

discussions, the CFPB will submit revised estimates to OMB.

### 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.

In addition, section 1005.33(g)(2) requires the policies and procedures concerning error resolution of remittance transfer providers must include provisions regarding the retention of documentation related to error investigations. Remittance transfer providers must retain evidence of this compliance for two years.

### Disclosure

The vast majority of Regulation E's disclosure requirements are statutorily mandated by the EFTA. *See, e.g.*; initial disclosures, 12 CFR 1005.7, 15 U.S.C. 1693c(a), 1005.18(c)(1); 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; certain preauthorized transfer requirements 12 CFR 1005.10, 15 U.S.C. 1693e; certain error resolution requirements, 12 CFR 1005.11, 15 U.S.C. 1693f; and disclosures for remittance transfers, 12 CFR 1005.31, 15 U.S.C. 1693o-1. 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 services covered under Regulation E have been provided and other required actions (for example, error resolution and limitation of consumer liability for unauthorized transfers) have been taken. This information will provide the primary evidence of law violations in EFTA enforcement actions brought by the CFPB and other Federal agencies. Without the Regulation E recordkeeping requirements, the Federal agencies' abilities to enforce the EFTA would be significantly impaired.

Consumers rely on the disclosures required by the EFTA and Regulation E to facilitate informed EFT, gift card, and remittance transfer 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 unauthorized transfers and errors in their EFT and remittance transfer transactions. These disclosures and provisions are also necessary for the enforcement agencies 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 and remittance 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 taking other required actions regarding EFT and other services covered under Regulation E. The entity is the only source of this information. No other federal law mandates its retention, although some states may have similar requirements.

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 and other services covered under Regulation E.

### **5. Efforts to Minimize Burdens on Small Entities**

The Regulation E recordkeeping and disclosure requirements are imposed on financial institutions and entities offering EFT and other services covered under Regulation E. The recordkeeping requirement is mandated by Regulation E. The disclosure requirements are mandated by the EFTA and/or Regulation E.

Most entities offering EFT and other services covered under Regulation E 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**

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. 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, gift card, and remittance transfer 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 Board 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.

On November 30, 2011, OMB granted emergency approval for the CFPB's information collections under Regulation E. Prior to receiving emergency approval, the CFPB consulted with the Federal Trade Commission (FTC) with respect to burden allocations. Due to time constraints, the CFPB was unable to obtain public input prior to receiving emergency approval; however, the CFPB has submitted for publication in the *Federal Register* a 60 day request for public comment as part of the standard approval process.

On May 23, 2011, the Board published a notice of proposed rulemaking in the *Federal Register* for public comment (76 FR 29902). The proposal contained new protections for consumers who send remittance transfers to other consumers or entities in a foreign country by providing senders with disclosures and error resolution and cancellation rights and implemented other statutory requirements set forth in the Dodd-Frank Act. For a discussion of the comments received in response to the Board's notice of proposed rulemaking, please see the Amended Supporting Statement for Regulation E, submitted in connection with the January 2012 Final Rule.

In January 2012, the CFPB is publishing a notice of proposed rulemaking in the *Federal Register* for public comment. The comment period will expire 60 days after publication in the *Federal Register*. Comment letters will be reviewed prior to issuing a final rule.

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

Not applicable.

## **10. Assurances of Confidentiality**

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.

## **11. Justification for Sensitive Questions**

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

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

Hours: 4,003,000.

Associated Labor Costs: \$118,568,860.

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.

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 was reallocated to the CFPB. Specifically, CFPB was allocated burden for depository institutions with total assets of more than \$10 billion and their depository affiliates for which the CFPB now has primary enforcement authority with respect to Regulation E. The CFPB was also 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>2</sup> The total hours reported above is the sum of 1,904,000 hours and the one-time and annual ongoing burden estimates reported below.

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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>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.

The January 2012 Proposed Rule would provide safe harbors and additional flexibility to provide estimates that respondents may use at their option in order to reduce compliance burden. Therefore, the Bureau believes that the proposed provisions do not impose any additional burden on respondents for PRA purposes. The Bureau expects that the amount of time required to implement the proposed provisions for a given institution may vary based on the size and complexity of the respondent as well as whether the respondent qualifies for and elects to use the proposed safe harbors or additional flexibility to provide estimates. However, the Bureau believes that the burden associated with providing disclosures under the proposed provisions is already accounted for in the Bureau's January 2012 Final Rule estimates because the final rule already requires certain disclosures addressed by the proposed provisions. Specifically, the Bureau expects respondents that rely on proposed § 1005.32(b)(2) to provide estimates for certain disclosures would incorporate these changes into the updates to their systems already required in order to comply with the disclosure requirements addressed in § 1005.31. For the reasons stated above, the Bureau estimates that there would be no increase in the one-time or ongoing burden to comply with the requirements under proposed § 1005.32(b)(2). Accordingly, the proposal would not increase the one-time or ongoing burden estimates for PRA purposes.

However, the Bureau notes that some of the additional proposed modifications to the January 2012 Final Rule, if adopted, could affect the burden for PRA purposes. In particular, the proposal solicits comment on whether use of estimates should be permitted in the following two circumstances: (i) a consumer schedules a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized; or (ii) a consumer enters into an agreement for preauthorized remittance transfers where the amount of the transfers can vary and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The Bureau also requests comment on whether a provider that uses estimates in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized in the two situations described above should be required to provide a second receipt with accurate information within a reasonable time prior to the scheduled date of the transfer.

The Bureau notes these proposed modifications would provide additional flexibility and that the second receipt would only be required if the provider used estimates, at their option, in the two circumstances described above. Generally, these proposed modifications could lower ongoing costs from estimating certain amounts in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized instead of determining accurate amounts, however, the additional accurate receipt could increase burden for PRA purposes. The Bureau notes, however, that this potential increase in burden would be voluntary.

The Bureau estimates that for the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau, these proposed modifications would increase the one-time burden by 620 hours and would increase the ongoing burden by 7440 hours. In addition, the Bureau estimates that for money transmitters, these proposed modifications would increase the one-time burden by 24,000 hours and would increase the ongoing burden by 44,468 hours.

The Bureau is soliciting comment concerning the disclosure of the sender's cancellation rights (deadline to cancel). One proposed modification allows, at their option, providers that provide both transfers scheduled more than three business days in advance and within three business days before the date of transfer to describe both cancellation provisions on one receipt. Under another proposed modification, the Bureau is requesting comment on whether providers should be required to disclose the

deadline to cancel in the pre-payment disclosure for transfers subsequent to the first in a series of preauthorized remittance transfers, instead of being required to make that disclosure in the receipt for the transfer.

The Bureau estimates that for the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau, the first proposed modification would increase the one-time burden by 620 hours and the ongoing burden by 7440 hours. In addition, the Bureau estimates that for money transmitters, the proposed modification would increase the one-time burden by 24,000 hours and the ongoing burden by 44,468 hours.

The Bureau estimates that for the 155 depository institutions and credit unions supervised by the Bureau, the second proposed modification would increase the one-time burden by 1240 hours and the ongoing burden by 14,880 hours. In addition, the Bureau estimates that for money transmitters, the second proposed modification would increase the one-time burden by 48,000 hours and the ongoing burden by 88,936 hours.

The Bureau also is soliciting comment on whether the disclosure of the three-business-day deadline to cancel in the receipt for these transfers should include a description of the provider's business days or whether the provider should be required to disclose in the receipt the specific date on which the right to cancel that transfer expires.

The Bureau estimates that for the 155 depository institutions and credit unions supervised by the Bureau, the proposed modification to provide a specific date on the receipt would increase the one-time burden by 620 hours and the ongoing burden by 7,440 hours. In addition, the Bureau estimates that for money transmitters, the proposed modification would increase the one-time burden by 24,000 hours and the ongoing burden by 44,468 hours.

The Bureau is requesting comment on mitigating the burden on providers imposed by § 1005.31(b)(1) as it pertains to subsequent transfers by eliminating the pre-payment disclosure for transfers that occur after the first transfer in a series of preauthorized remittance transfers. The Bureau is also soliciting comment on whether changes should be made to the three-business-day cancellation deadline that applies to transfers scheduled by the sender more than three-business days prior to the scheduled date of the transfer, such as whether the deadline to cancel these transfers should be earlier or later than three business day. The Bureau believes that these proposed modifications, if adopted, would not increase the one-time or ongoing burden for PRA purposes.

### **13. Estimated Total Annual Non-Labor / Capital Cost Burden to Respondents or Recordkeepers**

None.

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

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

### **15. Program Changes or Adjustments**

None.

**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.