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. The Dodd-Frank Act gave the CFPB a statutory deadline to issue a final rule implementing the amendments to EFTA concerning remittance transfers. This final rule was published in the *Federal Register* on February 7, 2012 (the February Final Rule). Concurrent with the February Final Rule, the CFPB published 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 in the normal course of business or that provide remittance transfers scheduled before the date of transfer (February 2012 Proposed Rule or the Proposal). The CFPB is currently finalizing the proposal and will submit the final rule (August Final Rule) to the Office of the Federal Register on August 7, 2012.

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 evidence of their compliance with the regulation for two years. 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) of Regulation E 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. <u>Use of the Information</u>

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 recordkeeping requirements of Regulation E, 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. <u>Use of Information Technology</u>

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 February Final Rule. In February 2012, the CFPB is published a notice of proposed rulemaking in the *Federal Register* for public comment. In conjunction with the February Proposal, the Bureau received comments regarding the burden of compliance generally, the relative burden of providing actual exchange rates and estimates, whether or how information regarding cancellation periods should be disclosed, and comments on whether particular disclosure forms should be required. These comments relate to core issues in the February Proposal and the Bureau's responses to these comments are discussed in the section-by-section analysis portion of the August Final Rule preamble. The Bureau received no comments specifically challenging the Bureau's proposed PRA burden estimates or numbers of respondents.

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 for Bureau Respondents

Hours: 4,005,122[1]

Associated Labor Costs: $118,631,714

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.[2] In light of the changes made by the Dodd-Frank Act, the Bureau assumed roughly 1,904,000 hours of that burden. Specifically, CPPB assumed burden for depository institutions with total assets of more than $10 billion and their depository institution affiliates for which the CFPB now has primary enforcement authority with respect to Regulation E. Because the CFPB and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions subject to Regulation E, the

[1] This number includes (1) the 1,904,000 hours that the Bureau obtained from other Federal agencies as part of its "restatement of Regulation E"; (2) the 631,000 hours of one-time burden and 1,468,000 hours of ongoing burden estimated for the Final Rule; and (3) the 2,122 hours of one-time burden estimated for the August Final Rule.

[2] In applying for its initial approval from OMB for this control number under an emergency clearance, the CFPB 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). 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 those cases, CFPB estimated the relevant figures based on data provided by the OCC and in some cases by the Board.

CFPB also assumed half of the Federal Trade Commission (FTC) burden for non-depository institutions after subtracting the burden which the FTC has attributed to itself for motor vehicle dealers, where applicable.[3]

February Final Rule

In the February Final Rule, the Bureau estimated that the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau would take, on average, 120 hours (three business weeks) to update their systems to comply with the disclosure requirements addressed in § 1005.31. This one-time revision would increase the burden by 18,600 hours. These respondents would take, on average, 40 hours (one business week) to develop written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under § 1005.33. This one-time revision would increase the burden by 6,200 hours. These respondents would take, on average, 40 hours (one business week) to establish policies and procedures for agent compliance as addressed under § 1005.35. This one-time revision would increase the burden by 6,200 hours. In summary, the Bureau estimated the rule imposed a one-time increase in the estimated annual burden on the 155 large depository institutions and credit unions supervised by the Bureau of 31,000 hours. The Bureau estimated that the rule would impose a one-time annual burden on 6,000 non-depository money transmitters (500 networks and 5,500 agents) of 200 hours. This one-time revision would increase the burden by 1,200,000 hours. The Bureau has allocated itself 600,000 hours from this total. The total one-time burden allocated to the Bureau was therefore 631,000 hours.[4]

On a continuing basis, the Bureau estimates that the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau would take, on average, approximately 8 hours (one business day) monthly to maintain their systems to comply with the disclosure requirements under § 1005.31. This would increase the ongoing annual burden by 14,880 hours. The Bureau estimates on average 262,500 consumers would spend 5 minutes in order to provide a notice of error as required under section 1005.33(b). The Bureau estimates that 155 respondents supervised by the Bureau would take, on average, approximately 12 hours (monthly) to address a sender's notice of error as required by § 1005.33(c)(1). This would increase the ongoing burden by 21,875 hours as well. The Bureau estimates that the 155 respondents would take, on average, 8 hours (one business day) annually to maintain written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under § 1005.33. This would increase the ongoing burden by 1,240 hours. These respondents would take, on average, 8 hours (one business day) annually to maintain policies and procedures for agent compliance under § 1005.35. This would increase the ongoing burden by 1,240 hours. In summary, the rule would increase the estimated ongoing annual burden on the 155 respondents supervised by the Bureau by approximately 61,000 hours. The Bureau estimated that the February Final Rule would impose an ongoing annual burden on 67,000 non-depository money transmitters of 42 hours. This would increase the ongoing annual burden by 2,814,000 hours. The Bureau allocated itself 1,407,000 hours from this total. The total ongoing annual burden allocated to the Bureau was therefore 1,468,000 hours.[5]

[3]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.

[4] 31,000+600,000 hours.

[5] 61,000+1,407,000 hours.

August Final Rule

The August Final Rule provides a safe harbor and additional flexibility with respect to certain provisions of the February Final Rule that respondents may use at their option in order to reduce their overall compliance burden. In addition, there is an additional requirement to disclose the date of the transfer in disclosures provided for certain types of remittance transfers, as well as additional information relating to cancellation for a smaller subset of these transfers.

The Bureau expects that the amount of time required to implement the information collection requirements 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 safe harbors or additional flexibility provided by certain provisions.

The August Final Rule includes a safe harbor clarifying when a respondent does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a "remittance transfer provider" and therefore must comply with (and assume the burdens associated with) subpart B of Regulation E. For the purpose of its PRA analysis, the Bureau assumes that none of its respondents qualify for the safe harbor, and therefore the safe harbor has no effect on the burden incurred by Bureau respondents.

The August Final Rule includes two provisions that potentially affect the number of disclosures made in connection with certain transfers. In both cases, the provisions permit additional flexibility that respondents may use at their option. One provision potentially increases the number of disclosures made. In the final rule, § 1005.32(b)(2) permits disclosures required to be provided prior to or when payment is made to contain estimates in certain cases for remittance transfers scheduled five or more days before the date of the transfer, including preauthorized remittance transfers. If a remittance transfer provider gives disclosures that include estimates under this provision, the August Final Rule requires that the provider later give senders receipts with accurate figures (unless providers are permitted to provide estimates under a statutory exception, in which case the receipt may include estimates consistent with the applicable exception). A second provision potentially decreases the number of disclosures made. The August Final Rule eliminates the requirement that remittance transfer providers mail or deliver a pre-payment disclosure a reasonable time prior to each subsequent preauthorized remittance transfer.[6] The Bureau does not know how many respondents will elect to use the additional flexibility provided by these provisions. Therefore, the Bureau assumes that these two provisions, taken together, do not affect respondent burden for the purpose of this PRA analysis.

Some information requirements involve the modification of existing disclosures (or permit providers to comply by modifying existing disclosures) with respect to the cancellation period.[7] The Bureau assumes that no ongoing burden is incurred by respondents from the modification of a disclosure otherwise required by the February Final Rule. The Bureau assumes that the alteration of existing disclosures is generally included in the one-time burden and does not affect ongoing burden. The burden

[6] However, if certain disclosed information on the receipt provided prior to the first transfer in a series of preauthorized transfers changes before the date of the transfer, the provider must provide a receipt to the consumer within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer.

[7] For the purpose of computing PRA burden, the Bureau assumes that respondents needing to disclose the date of the transfer and other information in connection with subsequent preauthorized remittance transfers scheduled at least five business days from the date of the transfer will elect to modify an existing disclosure with this information. However, these respondents maintain the flexibility to disclose this information in a separate disclosure if they choose to do so.

associated with updating systems to comply with disclosure requirements is generally included in the burden attributed to the February Final Rule but may involve a modest, incremental one-time cost. Given that these provisions involve the modification of disclosures, the Bureau assumes these modifications are performed by money transmitters and not their agents.

The August Final Rule requires that the date of the transfer be disclosed in receipts given in association with any transfer scheduled at least three business days before the date of the transfer, as well as the first transfer in a series of preauthorized remittance transfers and any subsequent preauthorized transfer in that series for which the date of transfer is four or less business days after the date on which payment is made for that transfer.

The Bureau estimates that this provision will increase one-time burden by 616 hours for the 154 large depository institutions and credit unions (including their depository and credit union affiliates). In addition, the Bureau estimates that, for money transmitters, this provision will increase one-time burden by 1,000 hours.[8]

The August Final Rule also requires that, for preauthorized remittance transfers scheduled five or more business days from the date of the transfer, the remittance transfer provider disclose the date or dates on which the remittance transfer provider will execute such subsequent transfers in the series of preauthorized remittance transfers as well as additional cancellation information. The August Final Rule permits providers some flexibility in determining how these disclosures may be provided, although there are specific timing requirements.

The Bureau estimates that this provision will increase one-time burden by 616 hours for the 154 large depository institutions and credit unions (including their depository and credit union affiliates). In addition, the Bureau estimates that, for money transmitters, this provision will increase one-time burden by 1,000 hours.[9]

Additionally, the August Final Rule permits providers to describe on the same receipt both the three-business-day and 30-minute cancellation periods (the latter applying to remittance transfers scheduled fewer than three business days before the date of the transfer) and either describe the transfers to which each period applies or, alternatively, use a check box or other method to designate which cancellation period is applicable to the transfer. To the extent that programming has not yet occurred, this flexibility could result in a slightly lower cost for providers opting to use this flexibility since one receipt form must be designed.

The Bureau estimates this provision will decrease one-time burden by 616 hours for the 154 large depository institutions and credit unions (including depository and credit union affiliates). In addition, the Bureau estimates that, for money transmitters, this provision would decrease one-time burden by 1,000 hours.[10]

Finally, the Bureau estimates that respondents will incur some burden in reviewing these changes to subpart B of Regulation E. The Bureau estimates that this will result in 193 hours of one-time burden for the 154 large depository institutions and credit unions (including their depository and credit union affiliates). In addition, the Bureau estimates that, for money transmitters, this will result in 313 hours of

[8] This represents the Bureau's half of the burden incurred by the 500 money transmitter respondents.
[9] This represents the Bureau's half of the burden incurred by the 500 money transmitter respondents.
[10] This represents the Bureau's half of the burden incurred by the 500 money transmitter respondents.

one-time burden.[11] As a result of the August Final Rule, the Bureau estimates that one-time burden increases by 809 hours for the 154 large depository institutions and credit unions (including depository and credit union affiliates). In addition, the Bureau estimates that one-time burden for money transmitters will increase by 1,313 hours.[12]

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

Given the specific provisions of the August Final Rule, the Bureau assumes that only money transmitters (and not their agents) assume burden associated with the modification of existing disclosures. The February Proposal also attributed ongoing burden to a receipt modification. For the purpose of the August Final Rule, the Bureau assumes that no ongoing burden is associated with the modification of an existing disclosure that is otherwise required by the February Final Rule. The Bureau additionally considers reduction of burden in two cases: (1) removal of one-time burden associated with programming two receipts for those respondents opting to combine cancellation periods into one receipt; and (2) potential burden reduction from the elimination of the requirement to provide subsequent pre-payment disclosures. Additionally, the Bureau considers burden incurred by respondents in reading the regulation. .

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.

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