

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”). Although the Dodd-Frank Act transferred most rulemaking authority under EFTA to the CFPB, the FRB retained rulemaking authority for certain motor vehicle dealers¹ and also for certain interchange-related requirements under EFTA.² The CFPB’s regulations for entities under its jurisdiction for Regulation E appear in 12 C.F.R. Part 1005.³

¹ 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).

² 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).

³ 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

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. Use of the Information

FRB-issued Regulation E; 12 C.F.R. 1005 refers to the CFPB-issued Regulation E. These two aspects of Regulation E are largely similar, but have separate citations. However, the CFPB-issued Regulation E includes remittance transfer requirements, added by amendments in February 2012; the FRB-issued Regulation E does not.

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

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.*, and Sections 205.4(a)/1005.4(a) of Regulation E. 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 relevant comments 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 and Labor Cost Burden

Estimated Hours Burden: 7,506,730 (327,460 recordkeeping hours: 312,500 + 15,040 carve-out for motor vehicles + 7,179,270 disclosure hours: 7,162,563 + 16,707 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 has wholly assumed the part of that burden associated with motor vehicle dealers (for brevity, referred to in the burden summaries below as a "carve-out").⁶ The division of PRA burden

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

⁶ This includes 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

hours not attributable to 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 jurisdiction to enforce Regulation E for motor vehicle dealers.

Recordkeeping

Staff estimates that Regulation E’s recordkeeping requirements affect 327,460 firms offering EFT services to consumers and that are subject to the Commission’s jurisdiction, at an average annual burden of one hour per firm, for a total of 327,460 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	Respondents	----- Setup/Monitoring -----		Number of Transactions	----- Transaction-related-----		
		Average Burden per Respondent (hours)	Total Setup/Monitoring Burden (hours)		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	257,520	.5	128,760	6,438,000	.25	26,825	155,585
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	250	.25	63	50,000,000	.25	208,333	208,396
Electronic check conversion ²	57,520	.5	28,760	1,150,400	.02	383	29,143
Payroll cards	125	.5	63	500,000	3	25,000	25,063
Overdraft services	50,000	.5	25,000	2,500,000	.02	833	25,833
Gift cards ³	25,000	.5	12,500	1,250,000,000	.02	416,667	429,167
Remittance transfers ⁴							
Disclosures	5,000	1.25	6,250	100,000,000	.9	1,500,000	1,506,250
Error resolution	5,000	1.25	6,250	125,000,000	.9	1,875,000	1,881,250
Agent compliance	5,000	1.25	6,250	100,000,000	.9	1,500,000	1,506,250
Total							7,179,270

¹ Preauthorized transfer respondents and transactions have decreased slightly.

² Electronic check conversion respondents and transactions have decreased slightly.

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).

³ Gift card entities and transactions under FTC jurisdiction (which excludes banks and bank transactions) have decreased.

⁴ Remittance transfer respondents now focus primarily on those that may offer services and are responsible for legal requirements (not separate inclusion of their offices). Legal changes have eased compliance, but they require system changes causing an increase in setup burden and a decrease in transaction burden. Remittance transfers have increased substantially but error resolutions have increased to a smaller degree due to changes in legal requirements. The resulting transaction burden in each category for remittance transfers has increased due to the upswing in transaction volume.

Associated labor cost: \$317,974,124 (\$6,385,470 recordkeeping costs: \$6,092,190 + \$293,280 carve-out for motor vehicles + \$311,588,654 disclosure costs: \$310,863,566 + \$725,088 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 (\$56 for managerial time, \$42 for skilled technical time, and \$17 for clerical time) are averages.⁸

Recordkeeping

For the 327,460 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 \$6,385,470.

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 \$311,588,654.

Regulation E: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		-----Skilled Technical-----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$56/hr.)	Time (hours)	Cost (\$42/hr.)	Time (hours)	Cost (\$17/hr.)	
Recordkeeping	0	\$0	32,746	\$1,375,332	294,714	\$5,010,138	\$6,385,470
Disclosures:							
Initial terms	2,517	\$140,952	22,650	\$951,300	0	\$0	\$1,092,252
Change in terms	1,175	\$65,800	10,750	\$451,500	0	\$0	\$517,300
Periodic statements	22,500	\$1,260,000	202,500	\$8,505,000	0	\$0	\$9,765,000
Error resolution	6,667	\$373,352	60,000	\$2,520,000	0	\$0	\$2,893,352
Transaction receipts	85,833	\$4,806,648	772,500	\$32,445,000	0	\$0	\$37,251,648
Preauthorized transfers	15,558	\$871,248	140,027	\$5,881,134	0	\$0	\$6,752,382
Service provider notices	1,458	\$81,648	13,125	\$551,250	0	\$0	\$632,898
Govt. benefit notices	21,083	\$1,180,648	189,750	\$7,969,500	0	\$0	\$9,150,148
ATM notices	20,840	\$1,167,040	187,556	\$7,877,352	0	\$0	\$9,044,392
Electronic check conversion	2,914	\$163,184	26,229	\$1,101,618	0	\$0	\$1,264,802

⁸ These inputs are based broadly on mean hourly data found within the “Bureau of Labor Statistics, Economic News Release,” March 25, 2015, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014.” <http://www.bls.gov/news.release/ocwage.t01.htm>.

Payroll cards	2,506	\$140,336	22,557	\$947,394	0	\$0	\$1,087,730
Overdraft services	2,583	\$144,648	23,250	\$976,500	0	\$0	\$1,121,148
Gift cards	85,833	\$2,403,352	386,250	\$16,222,500	0	\$0	\$18,626,852
Remittance transfers							
Disclosures	150,625	\$8,435,000	1,355,625	\$56,936,250	0	\$0	\$65,371,250
Error resolution	188,125	\$10,535,000	1,693,125	\$71,111,250	0	\$0	\$81,646,250
Agent compliance	150,625	\$8,435,000	1,355,625	\$56,936,250	0	\$0	\$65,371,250
Total Disclosures							\$311,588,654
Total Recordkeeping and Disclosures							\$317,974,124

13. Estimated Capital and Other Non-Labor Costs

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

14. Estimated Cost to the Federal Government

The FRB 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 \$81,303, which is a representative year's 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 \$650,401. This estimate is based on the assumption that four attorney 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 3,095,813 hours

(from 4,410,917 to 7,506,730). Notwithstanding the continued burden splitting noted above regarding shared enforcement authority with the CFPB, staff has increased its prior overall estimate largely because of substantial increases in transaction volume for remittance transfers. In turn, cumulative labor costs have risen largely because of the increased disclosure burden hours occasioned by that increased activity, paired with updated increased estimates for mean hourly wages for the various labor categories assumed in staff's analysis.

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.