

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 and certain other services, such as automated teller machine (“ATM”) transfers, telephone bill-payment services, point-of-sale transfers at retail establishments, electronic check conversion, gov’t benefit accounts and prepaid accounts, preauthorized transfers from or to a consumer’s account, overdraft protection, gift cards, remittance transfers, and others. 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 (“Board”) 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 Board to the Bureau of Consumer Financial Protection (“BCFP”) on July 21, 2011 (“transfer date”). Although the Dodd-Frank Act transferred most rulemaking authority under EFTA to the BCFP, the Board retained rulemaking authority for certain motor vehicle dealers¹ and also for certain interchange-related requirements under EFTA.² The BCFP’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 the Board’s Regulation II, 12 C.F.R. Part 235, rather than EFTA’s implementing Regulation E).

³ Because both the Board and the BCFP 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 Board-issued Regulation E; 12 C.F.R. 1005 refers to the BCFP-issued Regulation E. These two aspects of Regulation E are largely similar, but have separate citations. However, the BCFP-issued Regulation E includes

As a result of the Dodd-Frank Act, the FTC and the BCFP generally share the authority to enforce Regulation E for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers⁴ and certain state-chartered credit unions.⁵ 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.⁶

Recordkeeping

Section 205.13(b)/1005.13(b) 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.

remittance transfer requirements, and also includes prepaid account requirements added by the BCFP in November 2016, with amendments in January 2018; the Board-issued Regulation E does not.

⁴ *See* Dodd-Frank Act § 1029(a), as limited by subsection (b) as to motor vehicle dealers. Subsection (b) does not preclude BCFP 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 to consumers, where the contract is not routinely assigned to unaffiliated third parties.

⁵ The FTC's enforcement authority includes state-chartered credit unions. In varying ways, other federal agencies also have enforcement authority over state-chartered credit unions. For example, for large credit unions (exceeding \$10 billion in assets), the BCFP has certain authority. The National Credit Union Administration also has certain authority for state-chartered federally insured credit unions, and it additionally provides insurance for certain state-chartered credit unions through the National Credit Union Share Insurance Fund and examines state-chartered credit unions for various purposes. *See generally* Dodd-Frank Act, §§ 1061, 1025, 1026.

⁶ *See* Dodd-Frank Act, § 1029(a), -(c).

The Board and BCFP 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

The FTC, other agencies, and private litigants use the recordkeeping information 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 are necessary for the FTC and private litigants to enforce the EFTA.

3. Consideration of the Use of Improved Information Technology

The Board and BCFP 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 Board Official Staff Commentary; Section 1005.13(b)-1 of the BCFP 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 Board and BCFP.

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 previously 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 Board and BCFP. 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 Paperwork Reduction Act ("PRA") clearance request for these regulations, in accordance with 5 C.F.R. 1320.8(d). See 83 Fed. Reg. 14,273 (April 3, 2018). 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: 7,184,905 (251,947 recordkeeping hours: 233,947 + 17,106 carve-out + 7,184,905 disclosure hours: 7,165,931 + 18,974 carve-out)

Given their generally shared enforcement jurisdiction for Regulation E,⁷ the FTC and

⁷ See *supra* notes 4 and 5 and accompanying text.

BCFP have divided the FTC's previously cleared PRA burden estimates between them, except that the FTC has assumed all of the burden estimates associated with motor vehicle dealers and now is also doing so, when appropriate, regarding estimated burden for state-chartered credit unions (these respective assumptions of burden estimation are reflected in the burden summaries below and immediately above as a "carve-out").⁸ The division of PRA burden hours not attributable to motor vehicle dealers and, when appropriate, to state-chartered credit unions, is reflected in the BCFP's PRA clearance requests to OMB,⁹ as well as in the FTC's burden estimates below.

The following discussion and tables present FTC estimates under the PRA of recordkeeping and disclosure time and labor costs, excluding that which the FTC believes entities incur customarily in the normal course of business¹⁰ and information compiled and produced in response to FTC law enforcement investigations or prosecutions.¹¹

Recordkeeping

Staff estimates that Regulation E's recordkeeping requirements affect 251,053 firms offering EFT and certain other 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 251,053 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, prepaid account entities, etc. Below is staff's best estimate of burden applicable to this very broad spectrum of covered entities.

⁸ As of the third quarter of 2017, there was approximately the following number of state-chartered credit unions: 2,347 state-chartered credit unions - 2,106 federally insured, 125 privately insured, and 116 in Puerto Rico insured by a quasi-governmental entity. Because of the difficulty in parsing out PRA burden for such entities in view of agencies' overlapping enforcement authority (*see supra* note 5 and accompanying text), the FTC's estimates include PRA burden for all state-chartered credit unions (rounded to 2,300). Similarly, because it is not practicable for PRA purposes to estimate the portion of motor vehicle dealers that engage in one form of financing versus another (and that would or would not be subject to BCFP oversight), the FTC staff's "carve-out" for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. These attributions of burden estimation for motor vehicle dealers and state-chartered credit unions do not bear on actual enforcement authority.

⁹ OMB Control Number 3170-0014 (Regulation E).

¹⁰ PRA "burden" does not include "time, effort, and financial resources" expended in the normal course of business, regardless of any regulatory requirements. *See* 5 C.F.R. 1320.3(b)(2).

¹¹ *See* 5 C.F.R. 1320.4(a) (excluding information collected in response to, among other things, a federal civil action or "during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities") pertinent to this PRA submission.

Regulation E: Disclosures – Burden Hours

Disclosures ¹	----- 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	27,300	.5	13,650	273,000	.02	91	13,741
Change in terms	8,550	.5	4,275	11,286,000	.02	3,762	8,037
Periodic statements	27,300	.5	13,650	327,600,000	.02	109,200	122,850
Error resolution	27,300	.5	13,650	273,000	5	22,750	36,400
Transaction receipts	27,300	.5	13,650	1,375,000,000	.02	458,333	471,983
Preauthorized transfers ²	258,553	.5	129,277	6,463,825	.25	26,933	156,210
Service provider notices	20,000	.25	5,000	200,000	.25	833	5,833
ATM notices	125	.25	31	25,000,000	.25	104,167	104,198
Electronic check conversion ³	48,553	.5	24,277	728,295	.02	243	24,520
Overdraft services	15,000	.5	7,500	1,500,000	.02	500	8,000
Gift cards	15,000	.5	7,500	750,000,000	.02	250,000	257,500
Remittance transfers							
Disclosures	4,800	1.25	6,000	96,000,000	.9	1,440,000	1,446,000
Error resolution	4,800	1.25	6,000	120,960,000	.9	1,814,400	1,820,400
Agent compliance	4,800	1.25	6,000	96,000,000	.9	1,440,000	1,446,000
Prepaid accounts and gov't benefits ⁴							
Disclosures	550	40x10 ⁵	220,000	2,750,000,000	.02	916,667	1,136,667
Disclosures - updates	138	1x10	1,380 ⁶	N/A			1,380
Access to account information	550	20x10 ⁷	110,000	1,100,000	.01	183	110,183
Error resolution	300	4x4	4,800	275,000	2	9,167	13,967
Error resolution – followup ⁸		N/A		1,380	30	690	690
Submission of agreements	138	2x1	276	690	1	12	288
Updates to agreements ⁹		N/A		690	5	58	58
Total							7,184,905

¹ Except as noted below, most respondent tallies in this table have decreased due to business shifts and other market changes that result in fewer entities under FTC jurisdiction. Accordingly, related transactions under FTC jurisdiction have also decreased.

² Preauthorized transfers rules apply to “persons” and entities. The number of respondents and transactions by such persons have increased, as these preauthorized transfers are used more commonly than previously.

³ The total number of electronic check conversion respondents and transactions has decreased, particularly due to declining check usage.

⁴ Prepaid accounts are now covered by Regulation E (and payroll cards are included in this area). Government benefit notices are included also in this area, although some separate requirements for government benefits remain; these factors are accounted for in the estimates. The number of government benefit entities also have declined given business shifts that have reduced the number of entities under FTC jurisdiction (and prepaid entities under FTC jurisdiction are also few in number).

⁵ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

⁶ This reflects prepaid accounts’ updates of additional fee type disclosures. Individual burden hours are listed first, followed by the number of programs.

⁷ Burden hours are on a per program basis; individual burden hours are listed first, followed by the number of programs.

⁸ This pertains to prepaid accounts.

⁹ This pertains to prepaid accounts’ agreements.

Associated labor cost: \$316,720,410 (\$4,895,526 recordkeeping costs: \$4,561,949 + \$333,577 carve-out + \$311,824,884 disclosure costs: \$310,999,818 + \$825,066 carve-out)

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.¹²

Recordkeeping

For the 251,053 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 \$4,895,526.

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 \$311,824,884.

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	25,105	\$1,054,410	225,948	\$3,841,116	\$4,895,526
Disclosures:							
Initial terms	1,374	\$76,944	12,367	\$519,414	0	\$0	\$596,358
Change in terms	804	\$45,024	7,233	\$303,786	0	\$0	\$348,810
Periodic statements	12,285	\$687,960	110,565	\$4,643,730	0	\$0	\$5,331,690
Error resolution	3,640	\$203,840	32,760	\$1,375,920	0	\$0	\$1,579,760
Transaction receipts	47,198	\$2,643,088	424,785	\$17,840,970	0	\$0	\$20,484,058
Preauthorized transfers	15,621	\$874,776	140,589	\$5,904,738	0	\$0	\$6,779,514
Service provider notices	583	\$32,648	5,250	\$220,500	0	\$0	\$253,148
ATM notices	10,420	\$583,520	93,778	\$3,938,676	0	\$0	\$4,522,196
Electronic check conversion	2,452	\$137,312	22,068	\$926,856	0	\$0	\$1,064,168
Overdraft services	800	\$44,800	7,200	\$302,400	0	\$0	\$347,200
Gift cards	25,750	\$1,442,000	231,750	\$9,733,500	0	\$0	\$11,175,500
Remittance transfers							
Disclosures	144,600	\$8,097,600	1,301,400	\$54,658,800	0	\$0	\$62,756,400
Error resolution	182,040	\$10,194,240	1,638,360	\$68,811,120	0	\$0	\$79,005,360
Agent compliance	144,600	\$8,097,600	1,301,400	\$54,658,800	0	\$0	\$62,756,400
Prepaid accounts and gov't. benefits							
Disclosures	113,667	\$6,365,352	1,023,000	\$42,966,000	0	\$0	\$49,331,352
Disclosures - updates	138	\$7,728	1,242	\$52,164	0	\$0	\$59,892

¹² These inputs are based broadly on mean hourly data found within the “Bureau of Labor Statistics, Economic News Release,” March 31, 2017, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2016.” <http://www.bls.gov/news.release/ocwage.t01.htm>.

Access to account information	11,018	\$617,008	99,165	\$4,164,930	0	\$0	\$4,781,938
Error resolution	1,397	\$78,232	12,570	\$527,940	0	\$0	\$606,172
Error resolution – followup	69	\$3,864	621	\$26,082	0	\$0	\$29,946
Submission of agreements	29	\$1,624	259	\$10,878	0	\$0	\$12,502
Updates to agreements	6	\$336	52	\$2,184	0	\$0	\$2,520
Total Disclosures							\$311,824,884
Total Recordkeeping and Disclosures							\$316,720,410

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 Board and BCFP 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 \$86,805, 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 Board and BCFP 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 \$868,048. This estimate is based on the assumption that five 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

Estimated yearly burden hours (7,435,958) is reduced 76,407 hours from the previously cleared burden estimate (7,506,730). This is due to a reduced estimated number of entities under FTC jurisdiction occasioned by business shifts and other market changes.

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.