

Supporting Statement
Consumer Financial Protection Bureau (CFPB)
Regulation E--Electronic Fund Transfer Act (EFTA)
OMB Control No. 1557-NEW

This supporting statement is being submitted pursuant to the Prepaid Accounts final rules, issued by the CFPB on November 22, 2016, 81 FR 83934 and on February 13, 2018, 83 FR 6364.¹ The rules require financial institutions to make available to consumers disclosures before a consumer acquires a prepaid account.

A. Justification.

1. Circumstances that make collection necessary:

The EFTA² ensures adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services debiting or crediting a consumer's account. The disclosures required by the EFTA are triggered by certain specified events. The disclosures inform consumers about the terms of the electronic fund transfer service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors. Generally, Regulation E applies to "financial institutions," as that term is defined in Regulation E.³

2. Use of the information:

The CFPB's Prepaid Accounts final rules require financial institutions to make available to consumers disclosures before a consumer acquires a prepaid account.

Under 12 CFR 1005.18(b), a financial institution is required to make available a short form and a long form disclosure before the consumer acquires a prepaid account, subject to certain exceptions. Most of the content required in the long form disclosure is already provided in prepaid account agreements. Section 1005.18(f)(3) requires that certain disclosures be made on the actual prepaid account access device, including the name of the financial institution and the URL of its website, and a telephone number the consumer may use to contact the financial institution about the prepaid account.

Financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) may meet the requirement of providing the long form disclosure after acquisition by allowing the long form disclosure to be delivered electronically, without receiving consumer consent under the E-Sign Act,⁴ if the disclosure is not provided inside the prepaid

¹ 81 FR 83934 (November 22, 2016) and 83 FR 6364 (February 13, 2018).

² 15 U.S.C. 1693 *et seq.*

³ 12 CFR part 1005.

⁴ Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

account packaging material and the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information. If a financial institution provides pre-acquisition disclosures in writing and a consumer subsequently completes the acquisition process online or by telephone, the financial institution is not required to provide the disclosures again either electronically or orally. Financial institutions that disclose additional fee types with three or more fee variations may consolidate them into two categories and disclose them on the short form.

Section 1005.18(b)(9)(i)(C) includes a requirement that a financial institution provide pre-acquisition disclosures in a foreign language if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in that foreign language. That requirement is not applicable to payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party or directly by an employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account recipients.

Section 1005.18(c)(1) requires financial institutions to furnish periodic statements to the consumer unless the provider uses the alternative method of compliance. Under this alternative method, the periodic statements must include: (1) a telephone number that the consumer may call to obtain the account balance; (2) the means by which the consumer can obtain an electronic account history, such as the address of a website; and (3) a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. Section 1005.18(c)(5) requires that financial institutions disclose to consumers a summary total of the amount of all fees assessed against the consumer's prepaid account for both the prior month as well as the calendar year to date. This information must be disclosed on any periodic statement and any electronic or written history of account transactions provided or made available by the financial institution.

The limited liability and error provisions of Regulation E now extend to all prepaid accounts, except those that have not successfully completed the financial institution's consumer identification and verification process. With regard to accounts where the consumer's identity is later verified, financial institutions are not required to resolve errors and limit liability for disputed transactions occurring prior to the verification. For accounts in programs where there is no verification process, financial institutions must either explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there are no such protections, and that such financial institutions comply with the process (if any) that they disclose.⁵

Pursuant to § 1005.18(h)(1), except as provided in § 1005.18(h)(2) and (3), the effective date for the Prepaid Accounts rules is April 1, 2019. If, as a result of § 1005.18(h)(1), a financial

⁵ 12 CFR 1005.18(e)(1) and (2).

institution changes the terms and conditions of a prepaid account, such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must notify consumers with accounts acquired before April 1, 2019, at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information fewer than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to provide notice of the change within 30 days of obtaining the consumer's contact information.

If a financial institution has received an E-Sign consent from the consumer, the financial institution may notify the consumer electronically. Otherwise, if a financial institution mails or delivers written communications to the consumer within the applicable time period, that financial institution must send a notice in physical form. If the financial institution will not mail or deliver communications to the consumer within the applicable time period, then the financial institution may notify the consumer in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Section 1005.18(h)(2)(ii) requires that financial institutions notify any consumer who acquires a prepaid account after the effective date specified in packaging printed prior to the effective date of any changes as a result of § 1005.18(h)(1) taking effect that would have caused a change-in-terms notice to be required under § 1005.8(a) or § 1005.18(f)(2) for existing customers within 30 days of acquiring the customer's contact information. In addition, financial institutions must mail or deliver updated initial disclosures pursuant to §§ 1005.7 and 1005.18(f)(1) within 30 days of obtaining the consumer's contact information. Those financial institutions that are affected should not incur significant costs associated with notifying consumers and providing updated initial disclosures. Consumers who have consented to electronic communication may receive the notices and updated disclosures electronically, at a minimal cost to financial institutions. Those consumers who cannot be contacted electronically may receive the notices and updated initial disclosures together with another scheduled mailing within the 30-day time period. Any remaining consumers who are not scheduled to receive mailings may be notified without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Section 1005.19(b) requires certain issuers to submit to the CFPB, on a rolling basis, short form disclosures, prepaid account agreements (including fee schedules) that are offered, amended, or withdrawn. Prepaid account issuers are permitted to delay submitting a change in the list of names of other relevant parties to a particular prepaid account agreement until the earlier of such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements to the CFPB, or May 1 of each year (for updates between the last submission and April 1 of that year). Short form and long form disclosures may be provided to the CFPB as separate addenda to the agreement, rather than integrated into the agreement or as a single addendum.

3. Consideration of the use of improved information technology:

Institutions may use any technology that is reasonable and appropriate for their circumstances.

4. Efforts to identify duplication:

These requirements and disclosures are unique and cover an institution's particular circumstances. No duplication with other regulatory requirements exists.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

There are no alternatives that would result in lowering the burden on small institutions, while still accomplishing the purpose of the rules.

6. Consequences to the Federal program if the collection were conducted less frequently:

The public would not be protected adequately, and negative safety and soundness consequences could result.

7. Special circumstances necessitating collection inconsistent with 5 CFR part 1320:

Not applicable. The collection is conducted in accordance with the guidelines in 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

The OCC issued a notice for 60 days of comment regarding this collection on May 20, 2019, 84 FR 22931. No comments were received.

9. Payment to respondents:

There is no payment to respondents.

10. Any assurance of confidentiality:

The information collected will be kept private to the extent permitted by law.

11. Justification for questions of a sensitive nature:

Not applicable.

12. Burden estimate:

1,106 respondents x 5.971971 hours per respondent = 6,605 hours.

Cost of Hour Burden: 6,605 x \$114 = \$ 752,970

To estimate wages, we reviewed May 2018 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities excluding nondepository credit intermediaries (NAICS 5220A1). To estimate compensation costs associated with the rules, we use \$114 per hour, which is based on the average of the 90th percentile for nine occupations adjusted for inflation (2.8 percent as of Q1 2019 according to the BLS), plus an additional 33.2 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2018 for NAICS 522: credit intermediation and related activities).

13. Estimate of annualized cost to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Change in burden:

N/A.

16. Information regarding collections whose results are planned to be published for statistical use:

The OCC has no plans to publish the information for statistical use.

17. Exceptions to certification statement.

None.

B. Collections of information employing statistical methods.

Not applicable.